



**Northern Ireland
Assembly**

**COMMITTEE FOR
REGIONAL DEVELOPMENT**

**OFFICIAL REPORT
(Hansard)**

Transport Bill

22 September 2010

NORTHERN IRELAND ASSEMBLY

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REGIONAL DEVELOPMENT**

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Members present for all or part of the proceedings:

Mr Fred Cobain (Chairperson)

Miss Michelle McIlveen (Deputy Chairperson)

Mr Cathal Boylan

Mr Allan Bresland

Mr Danny Kinahan

Mr Billy Leonard

Mr Trevor Lunn

Mr Fra McCann

Mr Ian McCrea

Mr Conall McDevitt

Mr George Robinson

Witnesses:

Mrs Anne Breen

Mr Sean Johnston

Mr Brian White

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Department for Regional Development

The Chairperson (Mr Cobain):

Good morning, Brian. You are here to brief the Committee on clauses 3 to 22 of the Transport Bill.

Mr Brian White (Department for Regional Development):

I will do my best. This morning, we are to look at clauses 3 to 22. We wish to discuss the provisions, clarify any issues resulting from the evidence received and identify any outstanding

issues on which the Committee requires further information.

Committee members have already received detailed commentary on the clauses from the Department for Regional Development (DRD), written evidence from stakeholders and the Department's response to the issues raised in the written submissions.

Clauses 3 to 17 deal with service permits, and it might help members if I start by providing a quick overview. Service permits, together with the proposed contracts awarded by the proposed departmental agency, will replace the current road service licensing system for regulating public transport services, which the Department of the Environment (DOE) currently operates. It is expected that current non-Translink services will be authorised through the permit system. However, the purpose of the permit system is also, importantly, to allow the Department to authorise the provision of services that are supplementary or complementary to the contracted network of services that Translink provides. The permit system will allow operators to identify opportunities and apply for permits for services that are not already being provided in the contracted network. That will facilitate innovation by operators, enable private operators to propose new services and allow the public transport market to grow. Under the current system, 31 private operators provide 94 services or routes in addition to those that Translink operates.

I hope that most of the clauses from 13 to 20 are relatively straightforward and do not need much further explanation other than that which is already provided in the Bill. I intend to highlight the clauses with which there were issues in the responses to the Committee's call for evidence. Obviously, if any questions arise, we will be more than happy to try to deal with them.

I will start with clause 4, which deals with applications. Clause 4 provides for applications for permits to be made to the Department. Permits must be made in such form and include such information that the Department may specify in the regulations, including the services proposed to be provided and the vehicles to be used. The Older People's Advocate sought assurance in its submission that the application process will comprise a robust set of standards for all applicants to ensure a transparent process. The Department does not consider it appropriate to include specific details of the application process in primary legislation, because it would contain operational detail and may be subject to more frequent change than is practical in primary legislation. The application process would be more appropriately dealt with in subordinate legislation, and the Department has the power to make regulations under clause 4. Of course,

subordinate legislation would be subject to Committee scrutiny. The requirements that we would include would be, for example, the requirement to have a map showing the proposed route, stopping points, timetable, details of vehicles to be used, and so on. If members are content, I will move on to discuss clause 6.

The Chairperson:

Do you have an issue to raise, Cathal?

Mr Boylan:

It is with clause 6.

Mr White:

Clause 6 sets out matters that the Department will consider when deciding whether to grant a permit. The evidence received by the Committee included suggestions that those matters should also include the views of passengers and potential users; the general effect on users; and representations made by the Equality Commission and the Community Transport Association (CTA). As I have already said, a key purpose of the permit system is to facilitate new commercial services where operators have identified a gap in the market and are prepared to offer services at their own risk. Those services would be in addition to the contracted network of services, and the basic assumption is that any service provided under permit is likely to be beneficial to users and potential users, provided it does not compromise or undermine existing services.

Decisions about permits will, of course, be taken in the context of local public transport plans, and clause 6(1)(c) of the Bill specifically requires the Department to have regard to:

“the extent ... to which the needs of persons likely to use the service to be provided are already adequately and economically served”.

In applying for a permit, the operator will be asked to support the application with evidence of demand. Such evidence could include passenger or customer surveys; letters of support from local residents, community groups or businesses; customer requests; or a change to the demographics of the local area, such as a new housing development. In addition, as at present, relevant councils and Departments, all licensed operators, the PSNI and the Tourist Board will be consulted.

Therefore, the Department does not consider that changes are required, as there will already be a mechanism to take account of passengers' views when considering permit applications. Requiring potential operators to provide additional information would place a further burden on them, and it would be difficult to determine how much effort they should devote to establishing a representative view of potential users. In response to representations from the Equality Commission, the initiative for a service provided under a permit lies with the operator. Operators are not designated bodies under section 75 of the Northern Ireland Act 1998, and, as such, the Department takes the view that there is not a role for the Equality Commission specifically in considering permit applications.

The Department has said that it would consider an amendment to clause 6(2)(b)(i) to include representations from community transport providers. That would be to ensure that groups providing relevant services in the area would have the opportunity to comment on permit proposals. However, it should be remembered that applications for permits will be commercially driven and will not necessarily be targeted at addressing social need.

The Federation of Passenger Transport (FPT) sought clarification on the meaning of "suitability of the routes" in subsection (1)(a). When considering the suitability of a route, the Department may take account of matters such as the availability of stopping points, routes to be traversed, and so on. The Older People's Advocate commented that the word "shall" in clause 6(2) was not strong enough, and she suggested that "must" be used instead. In fact, in legislative interpretation, both terms are equally strong, and "shall" implies that it is a mandatory duty. That covers clause 6. I have already heard that some members have questions.

Mr Boylan:

Thank you for welcome clarification on some points. There is a role for the CTA, because clearly it has identified the gaps out there. I welcome that introduction. The main issue, for those of us who represent rural areas, is people being able to get the private operators' contracts out to address the needs of isolated communities. I hope that the clause is robust enough that someone will not be able to take a contract and then drop it within six months. I would like some clarity on that.

Mr White:

We need to take into account that it is not just the CTA. In considering a local area, it is probably more important to consult with a group that provides services in that area rather than see the CTA as a representative body. I think that that is entirely consistent with the view that you are taking on the importance of ensuring that people in the local area be properly consulted.

Mr Boylan:

I totally agree, but I have seen examples of cherry-picking, which you will have seen yourself. The CTA is representative of all the bodies. I know that it should be inclusive.

I do not apologise for mentioning rural areas, just in case these urbanites plan to say something. *[Laughter.]*

Mr White:

I would not expect you to.

Mr McDevitt:

To return to a general principle of the Bill, in reviewing the Hansard report of last week's meeting, it struck me that we had not really asked whether the expectation is that the Bill will increase public transport usage.

Mr White:

I think that it could do that. The Bill is primarily facilitating. Other factors that the Bill will not address will come into play concerning the use of public transport. Clearly, the level of subsidy that the Assembly and the Executive are prepared to provide to public transport would have an equally important impact on the level of uptake.

Moreover, on the issue of the permits, we are also trying to ensure that, in a regulated system, opportunities exist for people who see a need that is not being met to address it in a way that does not damage the rest of the system.

Mr McDevitt:

What specific parts of the Bill will lead to increased usage of public transport?

Mr White:

It is not about the Bill itself. The Bill sets up a system that will enable the Assembly and the Executive to set out their longer-term policies for public transport. It provides a mechanism that allows the growth of public transport through the development of policies. That is the answer to your question.

Mr McDevitt:

OK. You said that the Bill will provide a mechanism. How will that mechanism provide for an increase in the use of public transport?

Mr White:

As I said, part of the function of the Bill is to create the circumstances for an agency. An important part of that agency's role will be to assess the need for public transport services and to secure their provision through a contracted network. That is the basic mechanism or new principle in the Bill that allows public funding for public transport to be used in a way that is consistent with the public interest. If the public interest is in growing public transport, the Bill provides a mechanism for that to take place.

Mr McDevitt:

Is this just a reorganisation exercise?

Mr White:

I suppose you could assess it in that way. It is a reorganisation of a system that has been in operation since 1967. That system was designed at a time when the world looked very different from how it does today.

Mr McDevitt:

Clause 6(1)(a) states:

“the suitability of the routes on which the service may be provided under the permit”.

I know that you are roughly content with the suitability, but, as I understand it, one of the key barriers to suitability is planning policy. There are physical barriers to the suitability of routes, particularly in housing estates, and in some of the urban centres that have been planned. I do not know whether members are aware, although I think that Mr McCann is, but a number of estates in the outer southern outskirts of west Belfast that were designed in such a way that a bus cannot get

in or out of them. They are unsuitable for the application of public transport. Even though they are very large developments, they will never be able to have adequate public transport.

When we look at the legislation and at issues such as suitability, a question immediately arises. It is a difficult question, Mr White, and I am not sure that I have the answer. What role will the legislation play in identifying, and seeking to close, significant policy gaps so that suitability can be tested in a way that meets the Bill's objectives, as stated in clause 1?

Mr White:

There are two issues here. First, what is currently suitable? There are clearly circumstances in which one would not allow buses to go down certain roads, because it would just be a nonsense. Part of the rationale for the structures that we are creating is to have closer linkage between, for example, the design of the public transport system and the people involved in developing the road system. That is one of the things that has been missing in our system hitherto and is allowed for as part of the Bill.

I agree with you that there will be a further planning issue down the track. It is envisaged that the new public transport agency and, indeed, DRD will have a role in ensuring that public transport needs are taken into account properly in the development of plans. That is being done already. Roads Service is a consultee on planning applications and makes its views known where it feels that road provision for public transport is inadequate.

Mr McDevitt:

Where is that extra role in influencing planning decisions reflected in the Bill?

Mr Sean Johnston (Department for Regional Development):

It does not address that particular issue. Planning legislation that is going through the Committee for the Environment will address issues such as developer contributions and the associated mechanisms.

The Department of the Environment's guidance was issued in liaison with Roads Service about the impact on traffic in all reasonably sized developments. The extra role in influencing planning decision is addressed as part of that. Some of the more obvious problems, such as many housing estates not having turning circles for buses, have now been addressed. However, that is

not to say that everything has been addressed and that there is no scope for further improvement and liaison.

The Chairperson:

Roads Service is a consultee in any planning application, is that right?

Mrs Anne Breen (Department for Regional Development):

Yes. We have also liaised with the Planning Service in its work on reviewing planning legislation. It will consider who the statutory consultees will be as that progresses. We will remain tapped into that process.

Mr Leonard:

Until we get all the planning perfected, I hope that a smaller vehicle can do the job of serving some of the more difficult places. Common sense would go a long way.

What attitude will be taken to criss-crossing or the use of smaller parts of contracted routes? Is there a need to refer to that in primary legislation? There may not be, but there is a roll-out issue there. If someone sees a slot and operates on a contracted or part-contracted route at a time when that route is not served, is that person still in the mix for the permit?

Mr White:

Your point about criss-crossing is not technically about the sustainability of routes. There is an assumption that it is generally a good thing if someone wants to take a risk and provide an additional service. However, that is not a good thing if it undermines other services. The system allows conditions to be attached to permits that allow the service that the operator aims to provide and, at the same time, protects an existing permit holder or contracted service. The aim is for permits to have sufficient flexibility to pick up those sorts of points.

Mr Leonard:

Likewise, surely there will be flexibility in the system at least to assess the situations that I described.

Mrs Breen:

Yes. Such a condition might be that part of a route has to be a closed door on the new

application, because it covers something that another operator already provides. We can attach those sorts of conditions.

Mr Johnston:

Inadequately served periods will be part of the consideration about whether an area is adequately served. Therefore, as with the current system, gaps of hours will not be permitted.

Mr Leonard:

In the context of our scrutiny of the Bill, is there a need to include the suitability of a route and time? Is that necessary, or is the system —

Mr Johnston:

To be honest, the whole subject of conditions is for regulations, because issues that you consider now might not be relevant in five years' time.

Mr F McCann:

On the back of what Conall said, how do you determine whether a road or street is safe enough for a bus route? Is it to do with the width of the road or the size of the bus?

Mr Johnston:

Those are considerations, and turning is a big issue. If buses are brought into an estate, there must be somewhere for them to turn. The ability to reverse buses in an estate is another big issue. Such problems prevent some places, which were designed years ago, from being served properly.

Mr F McCann:

Buses are getting bigger. Do you constantly monitor whether they break the criteria that you have laid down?

Mr Johnston:

That problem can be overcome, to some degree, by using smaller buses on main routes.

Mr White:

Many services in rural areas are already provided by small buses.

Mr G Robinson:

Town services.

Mr White:

Clause 7, titled “Duration”, states that a permit will usually be granted for three years, although it provides the Department with the flexibility to issue permits for a shorter or longer period or for one-off occasions. The Older People’s Advocate suggested that there should be a requirement to monitor permits annually. The Department considers three years to be an appropriate duration for most permits in order to offer stability and a proper return on investment to operators.

To ensure that permitted routes are operated properly, the Department intends to operate a use-it-or-lose-it policy. Bus operators’ licences and PSV certificates are renewed annually, which is important for safety. Adequate checks will be put in place to ensure the validity of those operating requirements.

The Chairperson:

Are members content?

Mr Boylan:

I have a minor point to make. Is this the Transport Bill or the Belfast Transport Bill?

In fact, I do have concerns. You say that the Driver and Vehicle Agency (DVA) will be responsible for the condition of buses. How will you manage the quality of service if you do not look at it annually? What checks will there be to ensure the quality of service and that it is operating properly?

Mr White:

We are talking about permitted routes. People providing services on permitted routes will have to meet certain standards, including safety standards, and there will be mechanisms to detect when operators infringe the terms and conditions of their permit, which can be withdrawn.

There is a difference between services provided under contract by Translink and permitted services that will form part of the clearly regulated public transport services. Standards are likely

to be set higher for permitted services. If a service is not provided to a particular standard, people will not use it and the operator will lose money, so there is —

Mr Boylan:

Brian, I agree. I understand that, but as I said last week, the starting points are the passenger and the provision of service. No matter what legislation we bring through the Assembly, it is always about enforcement. You said that the Bill is sufficiently robust to deal with the issues that arise.

Mr White:

I think so, yes.

Mr Johnston:

The biggest risk when a permit is awarded is that someone applied for it simply as a blocking mechanism to keep everyone else out. What we do not want to happen is for someone to get a permit, and have us think that they are using it, yet it turns out that it is not being used. In that scenario, we can take the permit off the person.

Mr White:

I do not have any points to make on clauses 8 and 9.

Mr Kinahan:

If technology changes to make buses more environmentally friendly, can that be linked to a system of permits, and can rules be enforced to get more and more environmentally friendly buses?

Mr White:

That raises a further set of issues. We are trying to ensure that issues of detail can be dealt with in regulations. Then, regulations can be made and changed to take account of developments.

Clause 10 deals with revocation, suspension and curtailment of permits. It allows the Department to do those things where there is reasonable cause. The Older People's Advocate suggested that the Department should consider complaints from the public in deciding on the continuation of a permit. The Department will require permit holders to put in place an appropriate complaints procedure as a condition of their permit. Any breach of that condition

will be investigated, and, where appropriate, the permit may be revoked or suspended. More generally, the agency will also have a complaints process.

The Community Transport Association suggested that a mechanism is required for the delivery of public transport services where a permit has been suspended. The Department agrees that continuity of a permitted service may be important, and, where appropriate, it can make temporary arrangements for the continuation of suspended services.

Attracting powers under clause 1(2)(a) would allow the Department to award directly a contract to the internal operator — Translink — to meet passenger need during any period of suspension. The Department would also have power to issue permits for a period shorter than three years. Again, that would allow for the issue of a temporary permit. In those circumstances, I suppose that the Department does not think that further legislative provision is required on that point.

The Chairperson:

Is everyone happy enough?

Members indicated assent.

Mr White:

Clause 13 allows the Department to set fees to be paid for application for permits and for issuing them. In the Committee's call for evidence, the Northern Ireland Local Government Association (NILGA) and Omagh District Council said that the level of fees should be fair and reasonable. The Department will set the fee at a level that reflects the administrative costs associated with permit applications and consideration of their issue. We will ensure that fees are reasonable and not prohibitive to smaller operators. The level of fees will be described in regulations, which will be subject to the Committee's scrutiny.

The Chairperson:

OK. Are members happy enough?

Members indicated assent.

Mr White:

Clauses 18 amends section 81(1) of the Transport Act (Northern Ireland) 1967. “Road service licence” will be renamed “bus operator’s licence”.

Clauses 19 and 20 amend sections 5 and 6 of the 1967 Act to remove the route licensing functions, which are replaced by the permit clause of the Bill. Paragraphs 3 to 16 of schedule 1 to the Bill deal with the consequential amendments of that change. It is all to facilitate the split of licensing responsibilities required for the planning of routes, and for service provision to pass from DOE to DRD. As I said, DOE will retain operator licensing responsibility, alongside its other responsibilities for vehicle and operator licensing.

The Chairperson:

Why does the Department that is issuing the licences not ensure that operators are upholding the law by paying the national minimum wage?

Mr Johnston:

I think that the Irish Congress of Trade Unions (ICTU) raised that issue. Our response indicated that that was a matter for Revenue and Customs.

The Chairperson:

Why is it not the responsibility of the Department to ensure that it is acting lawfully? Before issuing a permit, why does the Department not ensure that the applicant is reputable and that there is no issue over the paying of minimum wage?

Mr White:

There is a mechanism to ensure that permits are issued only to people who are reputable. If people are not reputable, or have been in breach of the law, there is the power to remove the permit from them. That is slightly different from placing a responsibility on the Department to check that an operator is currently obeying all aspects of the law. Clearly, if operators are breaking the law, there is a mechanism for removing licences from them. There is also a mechanism to ensure that those people will not be given a new licence in other circumstances.

Mr McDevitt:

There is probably precedent in the Department for that, because the social clause arrangements,

which the Department applies when tendering for major capital works, include a number of specific requirements as to the terms and conditions that employees are expected to enjoy. It also, unfortunately, has not quite been able to negotiate further social clause obligations — which it has an ambition to do — which are to require people from a long-term unemployed background to be given specific training opportunities and for there to be quotas of trainees and apprentices in the staff body.

Transport is a sector that is given to apprenticeship work and to meeting some of the long-term structural issues in the region, particularly the people not in education, employment or training (NEET) issues. On the Chairperson's point, is there an opportunity in the legislation to express a positive desire to have social clauses, in the widest possible sense, included in the conditions for permitting?

Mr White:

I take the point generally, and it is something that we can look at. I think that there is a difference between the sorts of duties that it is appropriate to impose when entering into a contract with a person to provide services on the Department's behalf and the mechanisms that we are talking about here. However, I understand the point that you make, and it is something that could be considered.

Mr Leonard:

I appreciate the point that there is legislation to cover that, but if the minimum wage is a condition of the permit, that solidifies the position and protects the employees.

Mr White:

The other point is that a minimum wage is the condition for any employer. It is the law.

Me Leonard:

Yes, but if it is a condition of someone's permit to run that business on that route —

Mr White:

It is the requirement of operators to operate lawfully, and there are mechanisms for licences to be taken off operators who do not act lawfully and fall into disrepute.

The Chairperson:

We are taking it for granted that they are all operators who are operating lawfully, and, if not, their permit is at risk. Is that right?

Mrs Breen:

They must have a valid bus operator licence before they can apply for the permit, so it is an issue there too.

Mr McDevitt:

I think that there is an important distinction to be made, Mr White. I take your point about operating lawfully, but failure to pay the minimum wage is not unlawful behaviour in relation to what you are talking about. It would not be a breach of contract between the Department and the operator but would be a breach of contract between the individual and his or her employer, which is quite a different thing. If I am not paid the minimum wage, I must go and seek redress from my employer. What we are saying to you on a pretty cross-party basis is that we believe that it should be a condition of contract between the state and the bus operator.

Mr White:

I should make it clear that a permit is not a contract.

Mr McDevitt:

Make it a condition of permit, then.

Mr White:

That is rather different from the contracts that we enter into with Translink. There is a distinction to be made between a contractual arrangement and a permit arrangement, but I note the point that you make, and I am sure that the Committee will want some further information on that.

Mr F McCann:

How do we follow up on that? It is an important point that has been raised.

The Chairperson:

We will be going back over this. That is only the Department's view; we have other individuals to take views from before the Committee forms its view, and we may have access to amendments

as the Bill goes through.

Mr White:

Clause 21 contains amendments to the Taxis Act (Northern Ireland) 2008 in order to accommodate the transfer of responsibility from DOE to DRD for authorising taxi firms that are operating public passenger transport services under a stage carriage licence. Primarily, that means the West Belfast Taxi Association and Derry Taxis. The only comment on the clause came from Translink, which suggested that taxi regulation should be included more formally in the public transport network. However, the Department currently has no plans to transfer taxi regulation responsibilities.

Clause 22 deals with the provision of railway services and amends the duty of Northern Ireland Railways (NIR) to take account of public service contracts put in place under EC regulation 1370/2007.

The Chairperson:

OK. Thank you very much.