



**Northern Ireland  
Assembly**

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**COMMITTEE FOR  
REGIONAL DEVELOPMENT**

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**OFFICIAL REPORT  
(Hansard)**

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**Transport Bill**

29 September 2010

**NORTHERN IRELAND ASSEMBLY**

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REGIONAL DEVELOPMENT**

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**Transport Bill**

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**Members present for all or part of the proceedings:**

Mr Fred Cobain (Chairperson)  
Mr Cathal Boylan  
Mr Allan Bresland  
Mr Danny Kinahan  
Mr Billy Leonard  
Mr Fra McCann  
Mr Ian McCrea  
Mr Conall McDevitt  
Mr George Robinson

**Witnesses:**

Mr Sean Johnston        )  
Mr David Strain         )       Department for Regional Development  
Mr Brian White         )

**The Chairperson (Mr Cobain):**

Good morning, Brian.

**Mr Brian White (Department for Regional Development):**

Good morning, Chairman. If you are content, I will deal with clauses 23 to 50 in the same way in which we handled the earlier clauses last week. Committee members have a detailed commentary from the Department and have taken evidence from stakeholders. We will try to pick up on issues that have been raised with the Committee as we proceed.

I will start with clauses 23 and 24, which deal with the Consumer Council. The two clauses build on the statutory duties of the Consumer Council as outlined in the Transport Act (Northern Ireland) 1967. They place a duty on the council to produce a forward work programme and a duty on the Department for Regional Development (DRD) and the Consumer Council to make arrangements to co-operate on a memorandum of understanding. Submissions in response to the Committee's call for evidence were generally supportive of the clarification of the Consumer Council's role.

In its response, Northern Ireland Committee of the Irish Congress of Trade Unions (NICICTU) indicated its concern that recognising the shared interests of the Department and the Consumer Council may pose a threat to the retention of public transport services for the public

good, whereas the Department had previously said that there is no intention to privatise the public transport market now or in future.

The Bill requires that most public transport services be secured through the Northern Ireland Transport Holding Company (NITHCo). It does not change the statutory position of the holding company as a public corporation.

Submissions from the Northern Ireland Local Government Association (NILGA) and Omagh District Council pointed to the lack of a formal statutory relationship between the Department and local government. We believe that the involvement of local councils can be most appropriately addressed through their participation in the development of local public transport plans.

We are under an obligation to come back to the Committee on that issue further, as a result of the Committee Clerk's letter to us of 21 September. We will pick up on the points mentioned therein at a later date.

Part 4 of the Bill deals with enforcement. Clauses 25 to 31 set out provisions for the enforcement of public passenger transport services. Powers conferred under Part 4 include the power to enter into and inspect vehicles and premises, to seize documents and to obtain information. Clause 28 creates an offence of obstructing an authorised person, while clause 31 deals with prosecutions. In its response, NICICTU said that it considered the proposed fine levels to be too lenient. The fine levels were determined by taking account of recent precedent for similar offences for freight under the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010. The Department of Justice, which has oversight of those matters, was consulted, as is required, and we are content with the levels proposed. Not all the offences envisaged in the Bill will be dealt with by fines. The offence of obstruction could result in a prison term of up to six months. There also clauses elsewhere in the legislation — for example, clause 16 which deals with forgery — that could be dealt with through imprisonment or fine on indictment. The sanctions are not necessarily lenient.

NITHCo/Translink and the Federation of Passenger Transport (FPT) sought clarification on the meaning of “an authorised person” in Part 4. Such a person would be designated by the

Department in writing to carry out enforcement functions. That is dealt with in clause 47, which deals with interpretation. Constables would also have the same powers under clause 29(3).

The Department wishes to consider an amendment that will enable it to use the existing group of Department of the Environment (DOE) examiners, appointed under article 74 of the Road Traffic (Northern Ireland) Order 1995. The DOE's appointed examiners include both vehicle inspectors and enforcement officers. An amendment may be required to extend the definition of "authorised person" to include examiners appointed under the 1995 Order.

**Mr Boylan:**

Do you mean authorised officers plus Driver and Vehicle Agency (DVA) officials? I am concerned about the amount of enforcement that is going on at present.

**Mr White:**

What we are saying is that the DOE already has people appointed as authorised officers. We are considering circumstances in which they could also be authorised to deal with matters under this legislation. It is to have people who are already engaged in a very similar function to be used for

functions under the Bill.

Part 5 of the Bill which deal with grants. Clauses 32 to 37 clarifies and builds on the Department's existing powers to pay grants for the purchase of vehicles; services for the benefit of people with disability, elderly people and those living in rural areas; the provision of uneconomical services; and for the provision of advice, information and support for passenger transport training. An example of that is the grants paid to the Community Transport Association (CTA). A number of the responses to the Committee's call for evidence made comments relating to defining a minimum service level and the criteria for assessing and prioritising the public's needs. Those comments relate more to the practical outworking of schemes than to the specific provisions in the legislation.

In that context, it should be noted that the Department's grant-making power is in addition to the Department's powers to enter into agreements with operators to provide services. It is also in addition to the duty that already exists in clause 1 to secure public transport services that meet certain conditions.

In developing local public transport plans, the Department will identify the service requirements and design a network of services in consultation with a wide range of stakeholders. That will include taking account of available funding.

The Older People's Advocate sought clarification on clause 36, which deals with a supplementary power to pay grants. The clause allows the Department to pay grants where there is no other explicit power for it to do so. That will ensure that the Department has sufficient power to provide funding for public transport services and provides the flexibility to allow for future developments in public transport. The important point is that those grants would, as usual, be subject to Department of Finance and Personnel (DFP) approval.

**Mr Leonard:**

Is there any need for reference in the primary legislation to any of the EU standards on competition or anything similar? I know that that is a bit of a question in the dark.

**Mr Sean Johnston (Department for Regional Development):**

The legislation does refer to those at the beginning.



**Mr Leonard:**

OK, so it is covered.

**Mr White:**

The Older People's Advocate also sought clarification on clause 37 about DFP approval. The Department has clarified DFP's approval in relation to the approval of grant payments in its written response to the Committee. It is a standard role that DFP has and has had.

Clauses 38 to 40 deal with the acquisition and disposal of land. The clauses contain powers for the Department to acquire and dispose of land, either by agreement or compulsorily. When giving evidence, NITHCo/Translink sought assurance that those powers will not conflict with NITHCo's statutory remit for land. The purpose of that power is to allow the Department to acquire and dispose of land for public transport purposes in instances in which Translink may not be the service provider; for example, for rapid transit. NITHCo would retain its statutory powers there.

Clause 41 deals with appointments to NITHCo. The clause applies section 18(2) of the Interpretation Act (Northern Ireland) 1954 to appointments made under section 47 of the Transport Act 1967. That will provide the Department with a clear power to terminate appointments made to NITHCo under that section. It has been included in the Bill to comply with the requirement to ensure that, where a Department has power to make a public appointment, it should also have clear authority to terminate that appointment. That requirement arose out of the recommendation in the Public Accounts Committee's report on the Hospitality Association of Northern Ireland. That recommendation was accepted by the Executive.

Clause 42 deals with conduct in bus stations. The power will allow the Department to make regulations over conduct there. That will bring the position for bus stations into line with that for railway stations, where conduct is regulated through by-laws. When giving evidence, the Older People's Advocate asked for clarification about the regulation of conduct on board buses. Conduct on buses is already covered by DOE regulations, which cover all public service vehicles, including buses, taxis, coaches, and so on. Those are the Public Service Vehicles Regulations (Northern Ireland) 1985.

**The Chairperson:**

Before we leave that, the issue concerning bus stations is that there is no way in which to supervise behaviour. Is that right?

**Mr White:**

The point is that there has not been a specific by-law-making power for bus stations, whereas there has been that power for train stations. It would enable a series of by-laws to be drawn up, which would create offences that could then be dealt with through using those by-laws. It is a simpler mechanism of dealing with behaviour problems and other problems that might occur in bus stations.

**Mr F McCann:**

Does that take in matters such as the consumption of alcohol, drugs, and so on, in the confines of bus stations? I know that bus shelters, at which buses stop, is mentioned somewhere. Are bus shelters included?

**Mr White:**

It is specifically about bus stations, but, to answer your first question, yes, by-law powers would enable behaviour of the sort that you mentioned to be forbidden in bus stations.

**Mr F McCann:**

The reason that I raise the issue is that many of the problems do not occur in bus stations. Much antisocial activity take place in and around bus shelters, because of the nature of those shelters.

**Mr Johnston:**

That would probably be dealt with through council by-laws.

**Mr White:**

My understanding is that other powers would be available, particularly to deal with drinking.

There are already powers to prevent drinking in certain public places.

Clause 43 deals with shared facilities and allows the Department to direct that any place that is used for the provision of public passenger transport services be available for the provision of

other specified services. NITHCo/Translink raised a point of clarification about that power and suggested an amendment under which “any place” should be changed to “premises or facilities”. The wording “any place” was used to prevent any ambiguity over what can and cannot be included in directions. For example, the use of premises could be interpreted as excluding bus stops. We want to ensure that bus stops are not excluded by accident from the terms of the legislation.

NICICTU expressed concern over publicly funded facilities being used for private gain and over health and safety issues. The purpose of the power is to make public transport more convenient and accessible to public transport users. It is not intended that such a direction would extend to areas such as bus depots, maintenance depots, engineering services and office accommodation. Directions would concern access to any areas that are required to facilitate the pickup and set-down of passengers at a bus station. Private operators would be required to pay a non-prohibitive charge to cover any additional costs of making facilities available.

The Department will need to work closely with Translink to identify and resolve any potential

health and safety concerns in the implementation of the arrangements. However, there are many examples in other jurisdictions of successful management of access by multiple operators to bus stations and related facilities. The power to make regulations under the clause will allow the Department to ensure that it can take account of and manage issues such as insurance requirements and health and safety matters.

**Mr McDevitt:**

On the concern that Translink raised about the phrase “any place”, does a precedent for multiple use exist elsewhere on these islands?

**Mr White:**

For multiple use? Yes.

**Mr McDevitt:**

What term is used in the law there?

**Mr White:**

There is a rather different set of circumstances across the water. We are creating a power to ensure that facilities that Translink currently owns are taken apart so that they become more widely available. I do not know that precisely equivalent circumstances exist, certainly in Great Britain.

**Mr Johnston:**

They do. Multiple operators occupy every bus station in Great Britain. In the South, where CIÉ and Bus Éireann are the main providers, the recent legislation that set up the National Transport Authority (NTA) includes quite similar provisions that allow the NTA to direct CIÉ to allow other operators.

**Mr McDevitt:**

We are all supportive of the provision, but Translink makes a fair point about the phrase “any place”. What language has been used elsewhere in cases of legislators having to come up with language that reflects the need for passengers to be able to access transport, irrespective of who owns the signpost, the bit of ground or the bus station? It seems to me that Translink’s concern is

that we could end up in a situation whereby “any place” could extend to absolutely any place within the Translink estate. That could, down the line, force Translink into sharing facilities that are not essential for the provision of public transport.

**Mr Johnston:**

It would be the proposed agency that would do the designation. If a private operator comes in and says that he or she wants into the maintenance depot, we would say that that is not part of the deal. No such direction would be issued to Translink. Private operators could not come in, willy-nilly, and say that they want to get in.

**Mr White:**

The other thing to take into account is that the directions will be made under regulations. There is an opportunity to define more carefully in regulations for what the direction is being used. There is a second bite at the cherry.

**Mr McDevitt:**

I understand that. It seems to me that the point of the legislation is to ensure that passengers have



access to public transport and that no barriers to passenger access are put in place by any corporate body. If that is the point, why would we not simply define “a place” as a place that is necessary for a passenger’s access to public transport?

**Mr White:**

We did not do that, because we feel that there are at least two steps down the line in which that type of definition will be specified: in regulations and in the terms of the direction.

**Mr Johnston:**

Our specific difficulty with doing so was that bus stops are owned by a number of people. Translink does not own all the bus stops. Some are owned by councils, and some have been set up by Roads Service. The majority of bus stops are owned by Translink, but we wanted to prevent anybody from saying that a bus could not stop at a particular bus stop. If an operator applies for a licence, and is traversing a route, we will sometimes need that operator to stop at that stop.

**The Chairperson:**

Published regulations would be more specific around such issues as a means of sweeping up.

**Mr White:**

In clause 43, “direction” means a direction under regulations, and the regulations would need to be brought back to the Committee before being made.

**Mr McDevitt:**

We will return to the issue later, as you said.

**Mr White:**

I understand the point that you are making.

Clause 45 is a supplementary provision, which allows the Department to make, by order, further provisions that it considers necessary, including amending or repealing any statutory provision. That will allow the Department to ensure that the legislative provisions relating to the provision of public transport remain fit for purpose. The Department would be able to react and

adapt to changes in the public transport system. It would also allow the Department to take account of any further legislative provisions required after some experience with administering the new Act. There is an established precedent for similar powers in the Goods Vehicles (Licensing of Operators) Act 2010 and the Taxis Act (Northern Ireland) 2008, for instance. Orders made under that power are defined in their scope and must be related to giving effect to the Act or its provisions. Moreover, an Order made under clause 45 will be subject to affirmative resolution by the Assembly.

**Mr McDevitt:**

I have a specific question around whether this Henry VIII clause is required to achieve what you have said that you want to achieve, which is to provide for amendment under the spirit of the legislation. Clause 45 allows you to amend much more than what you have said in your evidence, Mr White. Why have you gone for such a powerful clause, when your specific policy intent is quite focused?

**Mr White:**

I am not certain that I fully accept that the power is as wide-ranging as you state. The clause as

drafted makes it clear that the changes must be necessary to give full effect to the Act or the provisions in it, but it is not a power that can go off on its own and start delving into other legislative areas.

All of us know how difficult it is to see into the future and to see where new technologies will arise, for example. We are creating quite a new structure, so it is prudent to allow necessary amendments to be made down the line.

**Mr Leonard:**

There is a worry that the power could have massive effects, not only in theory but in practice.

Why do we need to go down such a different legislative avenue in the Transport Bill? Why can we not have a mild provision? What are the specifics? The wide effect of such a provision in a Bill to do with transport seems to jar. Therefore, what examples do you have of things that we may need to change, and could they not be changed by a different type of clause?

**Mr White:**

That is precisely the difficulty. If I were able to come to the Committee today and inform it of

the changes that we think that we need to make, we should be making them now, either in the Bill itself or through regulations. It is very difficult to see into the future. There are precedents in recent legislation that give similar powers. The basic point is that it is very difficult to look into the future and see the sorts of things that one may want to do in the future.

One way of looking at it would be just to look at some recent legislation. In Northern Ireland, primary legislation often has a list of miscellaneous provisions at the end of Acts and Orders that pick up such things. I noticed recently that the Road Traffic (Northern Ireland) Order 2007 gave a power to the Department to fund automatic number plate recognition. That was an Order made in 2007. It is difficult to think that that would have been on the cards when road traffic Orders were made in 1984, for example. That is the point.

**Mr Leonard:**

I appreciate your point about precedence. You are articulating what is precisely the problem, because we cannot say what will happen in the future. However, in the context of the Transport Bill, there are not that many unknowns, if we want to get into a famous quotation. I was almost going to describe him as an American politician, but I have difficulties even with using that

description. *[Laughter.]* However, the unknowns in the Transport Bill are not so vast as to require such stringent provision.

**Mr White:**

The reality is that things change; technology changes. We are very conscious of the fact that technology changes. We know that there are unknowns, if I may plagiarise. The point is that the provision is in the Bill, and we are making a case for it. I repeat the point that any changes made under clause 45 would be subject to affirmative resolution. Any changes would not be subject to negative resolution.

**The Chairperson:**

Brian, when any proposed change goes before the Assembly for vote by affirmative resolution, it is a case of voting yes or no. That is the difficulty.

**Mr White:**

That does include no.

**The Chairperson:**

Yes, but we would not have the same levels of scrutiny as we should have.

**Mr McDevitt:**

I take Mr White's point that the provision is rooted in the Bill. However, clause 45(1) does allow for every consequence of or event arising from the Bill to fall under the purview of that clause.

Clause 45(2) allows:

“An order under this section may amend, repeal or modify any statutory provision (including this Act).”

You are basically saying that just one vote in the Assembly in five years' time could dismiss and wipe away all the scrutiny work that we are putting into the Bill now.

There is an accountability issue, Mr White. Everyone is sensitive to the fact that a Department does not want to tie its hands or close down any avenues, but we effectively have a power in the Bill that would not allow a future Assembly to offer the same level of scrutiny in making any substantial changes that we were able to offer in shaping the legislation in the first place.

**Mr White:**

That, by definition, is correct. However, the current procedures for taking forward affirmative resolution Orders involve rigorous Committee scrutiny. Ultimately, I take your point that it goes to a vote in the Assembly. I understand that.

**The Chairperson:**

Or an amendment by the Committee.

**Mr White:**

Clearly, those are issues on which you will have to take a view.

**The Chairperson:**

It is one issue to which the Committee will return.

**Mr White:**

Clause 46 gives the Department power to make general regulations for the purpose of carrying the legislation into effect. Clause 48 deals with amendments and repeals. Clause 49 deals with



commencement and specifies a number of clauses that will come into force immediately on Royal Assent: clause 35, which relates to the payment of grants, and so on; clause 37, on DFP approval of grants; clause 41, which relates to the appointment of the directors of NITHCo; clause 45, on how to make supplementary provision; and clause 50, which is the Bill's short title.

Those clauses are not directly related to the reform arrangement for the delivery of public transport so can come into force straight away, as there is no reliance on the implementation arrangements for the reform being in place. The remaining clauses will come into force on such day as the Department appoints under a commencement order.

**The Chairperson:**

OK. Thanks very much.