



**Northern Ireland
Assembly**

**COMMITTEE FOR
REGIONAL DEVELOPMENT**

**OFFICIAL REPORT
(Hansard)**

Transport Bill

24 November 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 Billy Armstrong

Mr Cathal Boylan

Mr Allan Bresland

Mr Billy Leonard

Ms Anna Lo

Mr Fra McCann

Mr Ian McCrea

Mr Conall McDevitt

Mr George Robinson

Witnesses:

Ms Doreen Brown)

Mr Sean Johnston) Department of Regional Development

Mr Brian White)

The Chairperson (Mr Cobain):

I welcome Doreen Brown, Sean Johnston and Brian White from the Department for Regional Development.

Ms Doreen Brown (Department for Regional Development):

Good morning. We plan to cover three sets of issues: first, there are the remaining issues raised

by the Committee in its letter of 8 November that we were not in a position to cover when we were here last week; secondly, there is the proposal to incorporate reference to payment of the national minimum wage, to which the Committee's letter of 18 November referred; and, thirdly, the Committee's letter of 18 November sought clarification on some aspects of the outline business case, to which we sent a reply on 22 November. Are members happy for me to run through matters in that sequence?

The Chairperson:

Yes.

Ms D Brown:

The first outstanding issue from the Committee's letter of 18 November was about the notice period and appeals process for the non-renewal of permits. The Committee noted that the Bill allows for a period of notice, an inquiry and an appeal where a licence is revoked because it is in the public interest that a route be provided under a service agreement. The Committee asked the Department to consider a mechanism similar to that used when a permit is not renewed for the same reasons. We accept the Committee's view that a gap exists, so we suggest adopting a mechanism to remedy that. We explored the matter with the draftsman and are considering a draft amendment, which we will share with the Committee shortly in conjunction with other outstanding amendments.

The Chairperson:

Will that address our concerns on the issue?

Ms D Brown:

Yes.

The Chairperson:

Good.

Ms D Brown:

Secondly, the Committee's letter asked about the monitoring and enforcement arrangements for service permits. Our response set out the arrangements envisaged for monitoring and enforcing permits as part of the wider function of specifying and procuring public transport services

identified in the outline business case (OBC) review. It also referred to the need to liaise with the Driver and Vehicle Agency in determining the enforcement arrangements, given the shared aim of ensuring that operators are properly licensed and authorised to run services. We want to ensure that enforcement arrangements are as robust as we can make them, and we envisage a form of agreement with the DOE for its input to the process. Our response also provided the Committee with information on procedures for the acquisition and disposal of land and the costs associated with the Upper Tribunal (Lands Tribunal) in the Magistrate's Court. We hope that that provides the Committee with all the information that it needs on that matter.

I turn now to the national minimum wage. We understand that the Committee is engaging with the Assembly's Legal Services and the Bill Office on a possible form of words, drawing on provisions in EC 1370/2007 to reflect what the Committee wants in this area, and we look forward to discussing that with members. There are ways in which it might be covered. For example, one possible solution that we have been looking at would be to amend clause 10(1), which deals with the revocation, suspension and curtailment of permits, to include offences under the National Minimum Wage Act 1998 as a cause for revoking a permit. We can discuss that in further detail.

The Chairperson:

Providing there is recognition of the issue, the Committee will be perfectly happy with whatever way you wish to work on finding a solution through primary legislation or through regulations. Either way would be a step forward for us, so long as we are on the same track.

Ms D Brown:

Absolutely, it is just a case of finding the best way to refer to it.

The Chairperson:

We want permit holders to be accountable for not paying the minimum wage, so we will be happy to support any ideas around that.

Ms D Brown:

The third area in your letter of 18 November was on the OBC review. You requested clarification on a number of points, and we replied on 22 November. I shall quickly run through the headlines from that reply. Your first query was on how the new figures in the OBC review will affect the

evaluation and outcomes of the original OBC. In short, the new figures do not lead to different conclusions. Although the figures changed, as better information became available, the ranking of options for the way forward has not changed. The changed figures feed in to each of the options. It is not just that the net present value of the agency option has reduced; the net present value of any alternative model has also reduced by an equivalent figure.

In other words, no alternative option emerges as being more attractive. The figures have changed but the way forward has not. We do not believe that the new figure work undermines the preferred option.

Your letter also mentions some areas of information that were not addressed in the OBC review. I will explain the difficulty of getting comparative data on passenger kilometres. That information is closely guarded in the transport industry for commercial reasons — that just seems to be a fact of life in the industry. The only way to get that sort of information is through benchmarking clubs. There are not many of those, and, at the moment, Translink is not a member of a benchmarking club, so we were not able to get that set of data, but, as you saw in the OBC review —

The Chairperson:

How do we know that we are as efficient as we need to be if there is no benchmarking?

Ms D Brown:

There is benchmarking of other aspects, and that information is set out.

The Chairperson:

People tell me that passenger kilometres is one of the main benchmarks of efficiency; is that not true?

Ms D Brown:

If the information were there it would be a good way —

The Chairperson:

I understand that.

Ms D Brown:

However, because the information is not there, benchmarking is not currently done on that basis. It would be nice if it were done on that basis.

The Chairperson:

So, is it done like that anywhere?

Ms D Brown:

We have not come across that information to allow benchmarking to take place.

The Chairperson:

Is it done on the mainland?

Ms D Brown:

Not that we are aware of.

The Chairperson:

OK.

Ms D Brown:

You also raised a point about school transport. The OBC review refers to the impact of that on Translink and highlights the benefits gained by combining school transport with public transport. It is a particular feature in rural areas. We believe that the OBC says as much as possible about the impact of school transport.

You picked up on some of the figures relating to the Metro service, and one of your questions was whether we intended to set a target for reducing Metro by 38% or £12.8 million. Our reply pointed out that the comparison in question was extreme. The OBC review went on, in the same section, to compare Metro to operations in smaller urban areas. That is actually a better type of comparison to make.

Setting targets will have to be done in a way that balances the desirability of getting cost savings with possible detrimental impacts on services. The aim is to reduce costs without damaging services, so setting a very ambitious short-term target without proper care and attention

would be a very blunt instrument that could do more damage than good. Target setting is something that we will do to take us down a path, but we have to be careful about the level that we set.

The Chairperson:

The outline business case review, which the Department commissioned, states that:

“Cost per vehicle kilometre is an important measure of cost-efficiency for bus services, covering the delivery of service outputs (in this case, running services across the bus network) at the lowest cost possible.”

You do not think that cost per vehicle kilometre is a benchmark of efficiency, even though the outline business case review states that it is important?

Ms D Brown:

Of course, it is important. It is important to look at where there could be cost efficiencies, but it is also important to remember that a number of different elements play into the way in which we might achieve cost savings. Some are easy, some are not easy, and some could damage services.

The Chairperson:

But, the cost per vehicle kilometre is an important measure of cost-efficiency. Is that not so?

Mr Sean Johnston (Department for Regional Development):

Yes, cost per passenger kilometre is in the report. However, it is the total kilometres travelled by passengers — in other words, passenger numbers — that you will not get. That metric is not available. The cost per passenger kilometre mentioned in the report is a measure of cost-efficiency. That was one of the key areas that we assessed. However, passenger numbers are guarded with a great degree of secrecy. Everybody runs into difficulty in getting those figures; they are not available, but cost per passenger kilometre is in the report for Ulsterbus and Metro.

The Chairperson:

So, having revisited that area, the review found that:

“Bringing Metro’s 2008-09 cost per passenger kilometre down to the levels reported in metropolitan areas of England would involve a reduction of some 38%, or £12.8m.”

It adds the caveat that Metro would struggle to achieve the necessary economies of scale.

Mr Johnston:

The conclusion was that that is too big a step —

The Chairperson:

Who came to that conclusion, Sean?

Mr Johnston:

That is the recommendation of the consultants. The metropolitan areas are, largely, the big areas such as Manchester, Leeds and Liverpool. It is fine to look at them with respect to cost-effectiveness from a crude benchmarking perspective. However, when it came to setting targets, we erred on the side of caution. We compared the other cost-efficiency measures, such as staffing, with those in smaller cities, which we thought was more realistic. In other words, we did not base it on the passenger transport executives (PTEs).

The Chairperson:

So, was basing it on the metropolitan areas wrong?

Mr Johnston:

No, it is not wrong. That is a good measure.

Mr Brian White (Department for Regional Development):

There is a substantial amount of information on Metro in that chapter. It follows through logically how the team has gone about its task. There is an element — and you are quoting from it — in which there is comparison across the board with the major PTEs that operate in Great Britain. In certain ways, that is a valid comparison to make. Then, as the chapter develops, the report goes on to indicate that, in considering the savings that might be achieved by Metro, the better comparison is with smaller operators in geographical areas that are more similar to here than the big metropolitan areas. The report does not say anything that is wrong or incorrect; it merely sets a starting point and then goes on to modify that.

The Chairperson:

Would I be cynical in thinking that you are liable to get a better result by doing it in smaller areas

rather than in metropolitan areas?

Mr Johnston:

It is a more accurate comparison when setting efficiency targets.

The Chairperson:

We could go through this all day. That is the worst thing about information such as this. I find it very frustrating that, if we are going to benchmark, you are saying that it is better to benchmark against smaller areas rather than metropolitan centres, because that will give you a better result. I do not mean a better result for the company —

Ms D Brown:

It is fairer.

Mr Johnston:

Let us be clear about benchmarking. The figures available are for PTE areas, which are the big metropolitan areas, and non-PTE areas. Non-PTE areas mean everywhere apart from London. To compare Metro with everywhere else across the UK would not be reasonable. That is why the PTE is the nearest benchmark that we can get on the figures available. However, the efficiency targets are set on the smaller areas, which we think is more reasonable.

The Chairperson:

It is as clear as muck to me.

Mr White:

We are doing our best. *[Laughter.]*

Ms D Brown:

There is a sequence in the OBC review that explains different comparators and concludes that smaller urban areas, because they are like the Metro area of Belfast, are the legitimate comparator, rather than the headline of the big metropolitan areas and the cost per passenger kilometre reduction of £12.8 million.

The next question in your letter was about how satisfied we were that all the costs are clearly

and robustly included in the OBC. In short, we are satisfied, but this is not a once-and-for-all analysis. The information in the OBC about enhancing performance, benchmarking, and so forth, is something that we will continue to use and roll forward. That is the way in which we are going to have to continue to try to demonstrate, under European regulations, that we have sufficient clarity about how Translink is operating and that we can demonstrate that it is not being overcompensated, or, if it is, that we are taking action to reduce that overcompensation. We will continue to scrutinise the other cost areas identified in the OBC review, including the costs of administering the arrangements. We will keep those to the minimum, consistent with meeting the needs of the public transport system and the requirements of the EU regulations.

Your letter also asks about the impact of the revised OBC figures on the costs shown in the explanatory and financial memorandum (EFM) attached to the Transport Bill. Our reply sets out the revised figures. The EFM referred to staffing costs of £3.5 million with £2 million covered by existing sources, leaving an additional cost of £1.5 million. The OBC review reduced that figure to £1.3 million. That figure includes the costs of the functions that will be transferred from Translink to the agency, but we do not intend to take any money from Translink. The original EFM showed £600,000 transferring from Translink to the Department, but we do not intend to strip that resource out. We do not give revenue funding to Translink to cover those functions and there is no way that we could take the money back. However, we expect Translink to reduce its cost base by that amount or direct those resources to improving services for passengers. That summarises our letter to the Committee.

The Chairperson:

OK. Among the issues that we spoke about last week was the Henry VIII clause. The Committee would prefer that clause to be removed from the Bill, rather than address it in some form or legislate around definitions. It would be easier and clearer for us if it were taken out. I know that you are having some discussions tomorrow.

Ms D Brown:

Yes.

The Chairperson:

We look forward to a number of issues being clarified through those discussions.

Ms D Brown:

OK.

Mr Boylan:

I want to clarify a few points. You spoke about monitoring arrangements and enforcement resources, and there seems to be a role for the DOE in that. In your letter to the Committee, you suggested that resources will be utilised sufficiently between the DRD and the DOE. When will we see what they are trying to do, and when will it be rolled out? Enforcement is a major issue, but it is normally a last resort.

You also suggest that the safe operation of public transport passenger services will be achieved by maintaining vehicle standards. A vehicle may be fine when it leaves a PSV testing centre, but it may not be fine three weeks later. When will we see those proposals and how they will be phased in? Will there be a full cost recovery? If not, what do you propose?

Mr Johnston:

We responded to the Committee about licence fees. We have yet to reach a conclusion on fees, but we gave the Committee some examples of the sort of charges that are available.

Some detailed process work must still be undertaken on enforcement. One reason that we wanted to amend the Bill to include DOE staff as authorised persons was that if they are out on the road doing checks we do not want them to be able to do their checks but not ours. It will kill two birds with one stone and will save us having two groups on the road when one will do.

The detail still has to be worked out, but we expect agreement to be reached with the DOE on how it will work and the amount of effort that will be put in. We could debate how much effort the DOE puts into the bus element of enforcement, but it is resourced for that work, and we need to get more detailed commitments from it. We also expect the agency to have some enforcement capability, so we do not rely on DOE staff to carry out all of the enforcement work.

Mr Boylan:

When will we see the detail?

Mr Johnston:

I suspect that it will be in the regulations, which will be made after the Bill is enacted.

Mr Boylan:

Will those be made as soon as the Bill passes?

Mr Johnston:

Yes; as soon as we take on that function. It will part of the transfer of the function, which we must make regulations for. It will be part of that package.

Mr Leonard:

To rewind the tape to the OBC, the difference between OBC and son of OBC is quite clear and there are real questions about how that difference can be so vast. However, I do not want to dwell on negatives. It points the way to the future, it may be for a future Committee to take forward, and I am unsure how relevant my comments are this morning.

In your letter, you said that you need to concentrate on more detailed process design of the new functions, et cetera, and on that whole area of work. I do not know whether that type of work has been brought to a Committee in the past, but if we are to scrutinise, we need to know your operating system. The system underpinning your monitoring needs to be brought to a future Committee, so that, as that this is rolled out in practice, the conversation can be a lot more informed. If there is secrecy around passenger numbers, we have a weak starting point.

Mr Johnston:

That is not our secrecy; it is the industry's secrecy.

Mr Leonard:

I totally appreciate that, Sean. However, there is also the evolution of comparators. When you get on to a new platform — and excuse the use of that word — I think there should be more work between the Department and this Committee, and succeeding Committees.

Ms D Brown:

Yes, indeed. That ties in with the role of the middle tier, which will be setting and monitoring standards and making sure that everything is moving in the right direction. The sorts of

measurements in the OBC are those that we will have to continue, and that is the information that the Department will be bringing to the Committee on a regular basis.

Mr Johnston:

The Bill provides for quite a few regulations to be produced; and with those regulations will come processes that will underpin them as to how we will make this work in practice. As we go through the detailed regulations, the Committee might reasonably expect us to have, for example, the detail you asked for on how we will enforce this with the DOE. I cannot give you chapter and verse on that today, but when we come to make regulations, we will have the underpinning resources and processes.

The Chairperson:

Thank you.