



Northern Ireland
Assembly

**COMMITTEE FOR
REGIONAL DEVELOPMENT**

**OFFICIAL REPORT
(Hansard)**

**Transport Bill: Clause-by-Clause
Scrutiny**

8 December 2010

NORTHERN IRELAND ASSEMBLY

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REGIONAL DEVELOPMENT**

Transport Bill: Clause-by-Clause Scrutiny

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Members present for all or part of the proceedings:

Mr Fred Cobain (Chairperson)
Miss Michelle McIlveen (Deputy Chairperson)
Mr Billy Leonard
Ms Anna Lo
Mr Conall McDevitt

Witnesses:

Ms Doreen Brown)
Mr Sean Johnston) Department for Regional Development
Mr Brian White)

The Chairperson (Mr Cobain):

I draw members' attention to the draft text of the amendments to the Bill to date; additional information that has been provided by the Examiner of Statutory Rules on clause 45 of the Bill — the "Henry VIII clause"; a paper on formal clause-by-clause scrutiny of the Transport Bill, which was emailed to members on Monday 6 December 2010; and the third draft of the Committee's report on the Transport Bill, which was also emailed to members on Monday 6 December 2010. I remind members that the information from the Examiner of Statutory Rules is marked "Restricted" and should be treated accordingly.

The purpose of this meeting is to clarify a number of outstanding issues; take forward informal clause-by-clause scrutiny of the remaining clauses of the Transport Bill that were not fully

addressed at last week's meeting; take forward formal clause-by-clause scrutiny, and consider the latest draft of the Committee's report to the Assembly. Departmental officials are in attendance to answer any questions that members might want to ask.

On Monday 6 December 2010, I met the Consumer Council to discuss, among other matters, the Committee's requirement to secure its written assurance on consultation with local councils on its transport forward work programmes. I refer members to the tabled correspondence from the Consumer Council providing that undertaking.

I refer members to two items of tabled correspondence from the Department, which include clarification on a number of outstanding issues and the draft text of all amendments to the Bill.

At our meeting on 1 December 2010, the Committee agreed to defer decisions and informal clause-by-clause scrutiny of a number of clauses, which are 1, 6, 7, 10, 12, 14, 23, 24, 43 and 45 to 47 until today's meeting, pending receipt of the wording of proposed amendments and clarification on a number of issues. The tabled memo from the Committee Clerk, and the Department's correspondence, provide that clarity.

If members are content, we will proceed in the following order: we will clarify outstanding issues on clauses 7, 14, 23, 24 and 43; consider the draft text of amendments to clauses 1, 6, 10, 12, 46 and 47; consider additional information on clause 45, which we have received from the Examiner of Statutory Rules; conduct formal clause-by-clause consideration of the Bill; and consider a third draft of the Committee's report on the Transport Bill. Are members content to progress in that order?

Members indicated assent.

The Chairperson:

I draw members' attention to the Committee Clerk's memo, which is tabled in today's papers. It replaces the version in members' packs. You may find it useful to refer to that memo as we progress through the meeting. We will go quickly through the issues that were to be clarified, which are covered in paragraphs 3 to 9 of the Committee Clerk's memo.

The Committee Clerk:

Members will recall that at the meeting on 1 December, we considered a number of clauses formally and deferred a number of issues on which clarification was needed. As stated in the tabled paper, decisions were deferred on clauses 7, 14, 23, 24, and 43. Clauses 7 and 14 were deferred because they refer to the Mental Health (Northern Ireland) Order 1986. The memo in front of members contains an extract from the draft Committee report that reflects the discussion that took place at last week's meeting and how the Committee chose to deal with the issue of the Order and how it is referred to in clause 7.

“On consideration of all evidence received on clause 7(6)(b) the Committee was of the view that the Mental Health Order (Northern Ireland) 1986 was clearly outdated in approach and in need of reform and recommended that this be pursued with all reasonable and proper speed. Members recognised that possession of a bus operator's licence was a pre-requisite of the award of a permit, and hence the necessary link between the provisions in this Bill and the requirements of the Department of the Environment's bus operator's licence with regard to Article 2(2) of the Mental Health (Northern Ireland) Order 1986. The Committee also understands that once the planned Mental Capacity Bill has been enacted, together with the consequential repeals and amendments to other legislation arising from that Bill, that the provisions in relation to mental health issues and permits in this Bill will be amended to reflect the more modern, rights-based approach in the proposed Mental Capacity Bill.

Although this situation is far from satisfactory, the Committee decided it was the most practical in the short term, by ensuring that the modernisation of mental health legislation in the proposed Mental Capacity Bill would be coherently and consistently implemented in this, and other public transport related legislation.

In the interim, the Department has assured the Committee that provisions in clause 14 of the Bill can be used to transfer a permit in cases where the permit holder dies, or becomes a patient within the meaning of Article 2(2) of the Mental Health (Northern Ireland) Order 1986. The Committee also decided to write to both the Committee for the Environment and the Health, Social Services and Public Safety Committee on this matter.”

The Chairperson:

Are members content?

Members indicated assent.

Miss McIlveen:

Have we received responses from those Committees?

The Committee Clerk:

Not yet. If they are received before next week, they can be tabled and reflected in the Committee's report.

The Chairperson:

Clauses 23 and 24 relate to the Consumer Council. The issue concerns how the Consumer Council will interact with local councils.

The Committee Clerk:

There is an extract in the memo reflecting how that will be handled in the Committee report. Members have been provided with a copy of a letter from the Consumer Council providing the undertaking that the Committee requested.

The Chairperson:

Are members happy with that?

Members indicated assent.

The Committee Clerk:

Clause 43 makes provision for shared transport facilities. The evidence illustrated that there are different viewpoints as to what may be meant by the term "any place" in relation to access to shared facilities. The Committee decided that, rather than seek to put a definition of shared transport facilities on the face of the Bill, it would recommend that regulations made on access to shared services would be consulted on and would be subject to draft affirmative resolution. The Department was content with that. There is an extract from the Committee's report in the memo setting out the Committee's views and reflecting how the issue was handled. Members should note that no amendment has been made to clause 43 because the amendment is made at clause 46, which deals with regulation-making powers.

The Chairperson:

Are members happy with that?

Members indicated assent.

The Chairperson:

Are members happy with the insertion of “sustainability” and “accessibility” to clause 1?

Members indicated assent.

The Committee Clerk:

Paragraphs 13 and 14 of the memo show the text of the amendment to clause 1 and how the revised clause would read.

The Chairperson:

Are members happy with the proposed amended clause 1(1)?

Members indicated assent.

The Committee Clerk:

Paragraphs 15 to 17 of the memo deal with matters to which the Department would have regard. The amendment is about changing clause 6 to reflect representations from community transport operators. Again, the memo includes the text of the amendment and how the revised clause will read.

The Chairperson:

Are members happy with that?

Members indicated assent.

The Chairperson:

We move to the proposed amendment to clause 10, revocation, suspension and curtailment of permits, and the non-payment of the national minimum wage.

The Committee Clerk:

Again, the memo gives the text of the amendment and the impact it would have on the revised clause. The numbering will be adjusted when members indicate that they are content with the change.

Miss McIlveen:

May I just ask a couple of questions? Do we have any information as to how many cases there have been of convictions in which employers had breached the national minimum wage?

The Chairperson:

No.

Miss McIlveen:

If we were to include this amendment, would it include those who have previously been convicted?

The Chairperson:

No, I do not think that we can have retrospective legislation.

Miss McIlveen:

Would it be taken into consideration during the assessment of prospective permit holders?

The Chairperson:

When a permit is given, the rules would apply.

Miss McIlveen:

But, would it not be taken into consideration as criteria at the time a permit is being given?

The Committee Clerk:

We could ask the officials to come to the table. Previously, a briefing was provided on the issue of good repute and the way in which the Department of the Environment assesses that. However, the officials could provide clarification.

Mr McDevitt:

The reading of the proposed amended clause is that the power that it gives is the power to revoke, suspend or curtail a permit within reasonable cause, including “any of the following”. We are basically saying that one of “the following” will include the provision that the permit holder has been convicted of an offence under the National Minimum Wage Act 1998. Therefore, if at any

point in the past an individual was convicted, that would be grounds for revocation according to the legislation as amended.

Mr Brian White (Department for Regional Development):

That is not a question that we were expecting. *[Laughter.]*

The Chairperson:

This could be quite a delicate issue, because very little legislation is retrospective.

Mr White:

In this case, the issue is that this provision relates to a permit that is in existence — sorry, I am a bit croaky this morning.

As I said, it relates to an existing permit and defines circumstances in which that permit can be revoked. It is difficult to envisage a situation in which a permit would be granted to an individual with outstanding, unspent convictions.

Miss McIlveen:

But, a spent conviction will obviously not be considered, because doing so would discriminate against the permit applicant. Therefore, a spent conviction is not going to be taken into consideration.

Ms Doreen Brown (Department for Regional Development):

If it is spent for the purpose of DOE's consideration of good repute it will not be considered. Brian is right: the provision applies if there is a permit in existence and we are considering whether there are grounds to revoke, suspend or curtail that permit on the basis of a new conviction.

The Bill Clerk:

The legislation is not retrospective. A lot of legislation has criteria that people must meet. A similar analogy may be somebody undergoing a criminal record check before they go into a school. The Department has the discretion to look back, but, as was pointed out, when it is looking, it can revoke, suspend or curtail, so it has the discretion to use that information.

Miss McIlveen:

I really wanted to know whether it would be a criterion for granting the permit in the first instance.

Mr Leonard:

Surely, the good repute ethos would cover that when it comes to considering awarding the permit in the first place. After that, what is in the legislation, which is what we are talking about this morning, would take care of the operational issues.

The Chairperson:

Yes, but I assume that that would apply in the case of a company being fined or prosecuted around that issue. We could not look back in time and tell a company that it was prosecuted 10 years ago. These permits are new. I am not sure, but I do not think that we can have retrospective legislation unless it is specifically granted. Legislation applies from the day that it is made. Therefore, it does not matter what someone who applies for a permit did 10 years previously. It matters only what is happening when they apply for that permit. Is that where we are?

Mr White:

There are two things in play. The first is that the legislation that we are looking at relates to the permit. However, it is interrelated to arrangements for issuing licences in the first place, which have been around for some time. There are circumstances in which people who have been guilty of offences would be precluded from getting licences. That provision exists.

The Chairperson:

That is in another place, isn't it?

Mr White:

Yes, but it exists and will be carried forward.

Mr McDevitt:

I am comfortable with that, Chairperson, for two reasons. First, it does not place a statutory duty on the Department to do it: it does not say "shall" it says "may". Secondly, Mr Leonard's point is well made. As I read it, nothing in this will take away from existing good repute provisions.

Therefore, it does exactly what we wished it to do, which was to highlight and explicitly state that this issue of —

The Chairperson:

And give information to workers in a company that they have a right to —

Mr McDevitt:

— Yes.

The Chairperson:

— I mean all of that is in this.

Miss McIlveen:

I am fine with it. I just wanted clarification.

The Chairperson:

Are members content with the proposed amendment to clause 10?

Members indicated assent.

The Chairperson:

We now move to clause 12.

The Committee Clerk:

Paragraphs 22 and 23 of the memo set out the proposed amendment to clause 12 and how the revised clause would read. This provides for cases where, if a decision were taken for a service operating under a permit, it would be in the public interest to bring that into the regulated network. There would be a revocation process, and that process would also include a period of notice, and an appeals and inquiry mechanism. The clause is being amended to cover all cases in which revocation will happen.

The Chairperson:

Are members happy with that?

Members indicated assent.

The Chairperson:

We now move to “Regulations”, which are clauses 42 and 43. The Committee decided that it wished to amend the Bill to ensure that regulations provided for that create or amend criminal offences be subject to draft affirmative procedure of the Assembly, rather than negative resolution.

The Committee Clerk:

In line with previous decisions, the Committee agreed that powers where offences would be created in regulation would be subject to draft affirmative, rather than negative, resolution. There was also the issue with clause 43, concerning the regulations that will provide for access to shared transport facilities. That would allow for fuller debate at that point, rather than put an amendment in the Bill. As the process rolls out and the public transport reform programme is embedded, and as detail becomes available about what may, and will, want be shared, that will be subject to a view from the Committee at SL1 stage. However, there would also be draft affirmative procedures, and debate, or an opportunity for debate, on the Floor of the House.

The Chairperson:

Are members content?

Members indicated assent.

The Chairperson:

We move to “Enforcement”.

The Committee Clerk:

In order to provide for flexibility and joined-up working between the Department of the Environment and the Department for Regional Development on the enforcement and inspection regimes that already exist in the DOE for driver and vehicle licensing, and to create synergies between the working of those two Departments, the Department is seeking to amend this clause to bring within the definition of authorised persons the enforcement staff in the DOE. The text is set out at paragraph 29, and the revised wording is set at paragraph 30.

The Chairperson:

OK. We are now on to the “Henry VIII clause”.

The Committee Clerk:

The members’ information packs include additional information that the Examiner of Statutory Rules was asked to provide. There are examples of what are called “Henry VIII” clauses from other legislation, and from other jurisdictions. Last week, members deferred consideration until they had a chance to look at that information from the Examiner of Statutory Rules. Members may wish to change their view after having read that information.

Mr McDevitt:

I note the advice from the Examiner of Statutory Rules in that he is not really giving us specific advice on this issue. He is leaving it to our discretion. When I read that, I still feel very uncomfortable about the basic principle.

It is a highly permissive Bill, with a huge amount of secondary legislation. When you look through precedents in other devolved Administrations, and at Westminster, it still appears to me that that is normally applied in Bills with much tighter scope than this Bill. I suppose that you could mount an argument for being able to take powers to make significant changes within Bills that are reasonably tightly scoped out. However, given that this Bill covers three or four different aspects of transport policy, and as the officials themselves said at the beginning of our evidence sessions a few months ago, it really should not be called a transport Bill; it should be called a miscellaneous something Bill. It is that big and wide ranging. Given its permissiveness, I still suggest that we have that struck off the Bill.

Miss McIlveen:

I agree with Conall. Having read the information from the Examiner of Statutory Rules, that is my opinion. I understand that the Minister has agreed that it can be removed from the Bill, so do we need to go any further?

The Chairperson:

OK.

Mr Leonard:

When the Examiner gives the technical perspective, he says “however” or “having said that”. Therefore, there is obviously room to manoeuvre, and our thinking from previous meetings still pertains.

The Chairperson:

OK. We need to formally read this into the Hansard report.

Clause 1 (provision of public passenger transport services)

The Chairperson:

The Committee for Regional Development recommends to the Assembly that clause 1(1) be amended to read as follows:

“The Department must secure the provision of public passenger transport services with due regard to accessibility, economy, efficiency, safety of operation and sustainability.”

Question, That the Committee is content with the clause, subject to the Committee’s proposed amendment, *put and agreed to*.

Clause 1 agreed to.

Clauses 2 to 5 agreed to.

Clause 6 (Matters to which Department must have regard)

The Chairperson:

The Committee for Regional Development recommends to the Assembly that clauses 6(2)(1) be amended to remove the words “public passenger transport.” The Committee recommends that clause 6 be amended to add the following:

“(3) In subsection (2)(b)(i) ‘services’ means -
(a) public passenger transport services; or
(b) any other services to which section 33(1)(a) applies.”

Question, That the Committee is content with the clause, subject to the Committee’s proposed

amendment, *put and agreed to.*

Clause 6 agreed to.

Clauses 7 to 9 agreed to.

Clause 10 (Revocation, suspension and curtailment of permits)

The Chairperson:

The Committee recommends to the Assembly that clause 10 be amended to add the following:
After clause 10(1)(g) insert:

“() that the permit-holder has been convicted of an offence under the National Minimum Wage Act 1998 (c. 39).”

Question, That the Committee is content with the clause, subject to the Committee’s proposed amendment, *put and agreed to.*

Clause 10 agreed to.

Clause 11 agreed to.

Clause 12 (Revocation, disqualifications, etc.: supplementary provisions)

The Chairperson:

The Committee recommends to the Assembly that clause 12 be amended to add the following after clause 12(1)(b):

“() This subsection applies where-

“(a) an application is made for a new permit in respect of a service for which there is an existing permit;

(b) the applicant is the holder of the existing permit; and

(c) the Department considers that it is in the public interest for that service to be provided under a service agreement.

() Where subsection (a) applies, the Department shall not refuse the application without first giving the applicant notice that it is considering refusing the application for the reason mentioned in paragraph (c) of that subsection and holding an inquiry if the applicant requests the Department to do so.”

Question, That the Committee is content with the clause, subject to the Committee’s proposed

amendment, *put and agreed to.*

Clause 12 agreed to.

Clauses 13 to 44 agreed to.

Clause 45 (Supplementary provisions)

The Chairperson:

The Committee opposes the question that clause 45 stand part of the Bill.

Clause 46 (Regulations – general)

The Chairperson:

I propose that the Committee for Regional Development recommends to the Assembly that clause 46 be amended to substitute for clause 46(3), the following:

“(3) No regulations to which this subsection applies shall be made unless a draft of the regulations has been laid before, and approved by resolution of, the Assembly.

(3A) Subsection (3) applies to regulations under this Act if they include -

(a) regulations under section 42(3) or 43(2); or

(b) regulations under this section which make the declaration mentioned in subsection (4).

(3B) Any other regulations.”

Question, That the Committee is content with the clause, subject to the Committee’s proposed amendment, *put and agreed to.*

Clause 46 agreed to.

Clause 47 (Interpretation)

The Chairperson:

I propose that the Committee for Regional Development recommends to the Assembly that clause 47 be amended to substitute, for the definition of “authorised person”, the following:

“‘authorised person’, except in section 42, means

- (a) any person authorised in writing by the Department for the purposes of this Act; or
- (b) an examiner appointed by the Department of the Environment under Article 74 of the 1995 Order.”

Question, That the Committee is content with the clause, subject to the Committee’s proposed amendment, put and agreed to.

Clause 47 agreed to.

Clauses 48 to 50 agreed to.

Schedules 1 and 2 agreed to.

Long title agreed to.

The Chairperson:

That concludes the Committee’s formal clause-by-clause examination of the Transport Bill. Having formally considered the clauses, are members content that the comments made today are reflected in the Committee’s report on the Bill?

Members indicated assent.

The Chairperson:

Are members content that to take forward consideration of the next draft of the Committee’s report?

Members indicated assent.

The Chairperson:

I refer members to the draft report that was emailed to them on 6 December.

The Committee Clerk:

The first text that was amended since the last version of the report is on page 8 at paragraphs 24 and 25. As the Chairperson said, the draft report was emailed to members on 6 December. There are also copies on the Table if members need them. I am sorry that the quality of the photocopies

is not great. If members will take their ease for two minutes, we will get clearer versions.

The Chairperson:

We will have another meeting next Wednesday to sign off the report. We will run through the report even though the printing is not great. If there are any issues we can deal with them next week. The amendments we agreed earlier have been included in the relevant paragraphs in the report.

Paragraphs 29, 30, 33, 38, 39, 42, 43, 47, 56, 60, 61, 62, 63, 64, 65, 67, 71, 72, 73, 77, 100 and 104 agreed to.

Mr McDevitt:

I have a really silly question, but what about paragraph 101?

The Committee Clerk:

Paragraph 101 will be the text of the amendment that we agreed today.

The Chairperson:

These will be inserted and we will see the final draft next week.

Mr McDevitt:

Thanks, Chairperson.

Paragraphs 107, 108, 109, 110, 111, 112, 113, 123, 133, 136, 140, 141, 142, 143, 147, 148, 149, 150, 156, 176, 179, 180, 183, 192, 193, 197, 201, 202, 205, 206, 207, 215, 222, 240, 249, 250, 251, 252, 253, 254, 255, 256, 258, 259, 261, 262, 263, 285, 288, 289, 290, 298, 299, 300, 301, 302, 303, 304, 305, 310, 311, 312, 313, 315, 316 agreed to.

The Chairperson:

Thank you very much.