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TO

Make provision relating to public passenger transport and ancillary services; and for connected purposes.

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

PART 1

PUBLIC PASSENGER TRANSPORT SERVICES

General

Provision of public passenger transport services [j90]

1.—(1) The Department must secure the provision of public passenger transport services with due regard to economy, efficiency and safety of operation.

(2) For that purpose the Department may—

- (a) enter into agreements with any operator for the provision of public passenger transport services;
- (b) enter into agreements with any person for the provision of services which are ancillary to public passenger transport services;
- (c) issue permits to any operator for the provision of non-contracted services;
- (d) determine the general level and structure of fares for services provided under a service agreement or a service permit;
- (e) provide vehicles, ticketing machines and systems, and other facilities on such terms as the Department thinks fit; and
- (f) exploit any commercial opportunities which the Department considers appropriate.

(3) The Department must, subject to subsection (1) and Regulation (EC) No. 1370/2007, secure that most public passenger transport services continue to be provided by the Holding Company and its subsidiaries.

(4) In this Act—

“public passenger transport services” means services available to the general public for the carriage of passengers and their luggage by road or rail at separate fares;

“service agreement” means an agreement entered into under this section;

“service permit” means a permit issued under this section.

(5) In this section—

“the Holding Company” has the same meaning as in the 1967 Act;

“non-contracted services” means public passenger transport services for the provision of which there is no agreement, excluding rail services;

“operator” means—

(a) the railway undertaking; or

(b) any person who holds an operator’s licence;

“operator’s licence” means—

(a) a licence under Part 2 of the 1967 Act; or

(b) an operator’s licence within the meaning of the Taxis Act (Northern Ireland) 2008 (c. 4);

“the railway undertaking” has the same meaning as in the 1967 Act.

(6) References in this Act to the provision of services under a service agreement include references to securing the provision of services.

(7) A person who, without reasonable excuse, provides an unregulated service shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(8) In subsection (7), “unregulated service”, in relation to a person, means a public passenger transport service other than an exempt service or a service for the provision of which—

(a) there is a service agreement with that person; or

(b) that person holds a service permit or is otherwise authorised to provide that service.

(9) The Department may by regulations make provision as to services which are to be treated as exempt services for the purposes of subsection (8).

BACKGROUND – POLICY

The Minister has specifically ruled out privatisation of the public transport system now or in the future. It is proposed that the public transport system will continue to be regulated. The Department will be required to secure the provision of public passenger transport services by road and rail. Clause 1 provides the Department with the necessary contracting powers to carry out this function and is also necessary to facilitate contracts for Belfast Rapid Transit.

This power, to enter into agreements, will be exercised by the Department through a departmental agency by the introduction of:

- directly awarded “public service contracts” (as defined in EC Regulation 1370/2007) with NITHC/Translink;
- competitively tendered commercial agreements with Translink or other

- operators; and
- service permits with Translink and other operators.

The agency will be responsible for specifying the requirements for the public transport network through the development of local public transport plans and will enter into agreements for these services.

Translink will continue to be the main provider and, as such, most public passenger transport services will continue to be provided by it under a direct award contract, as allowed under EC Regulation 1370/2007. Northern Ireland Railways will be the sole provider of railway services in Northern Ireland.

The purpose of service permits is to allow the Department to authorise the provision of services which are supplementary or complementary to the contracted network of services. The permit system will allow operators to identify opportunities and apply for permits for services which are not already being provided in the contracted network. This will facilitate innovation by operators, enable them to propose new services and allow the public transport market to grow. Service permits are intended to authorise services which are innovative and commercially viable. Therefore, these service would not be funded by DRD. However, such services would be eligible to apply for fuel duty rebate and participate in the concessionary fares scheme.

The Department proposes to regulate fare levels and fare structures for services provided under agreement. This will allow the Department to meet the requirements of EC Regulation 1370/2007 which requires that funding arrangements, including the treatment of revenue to be generated from fares, be agreed in advance.

The Department may also regulate fare levels and structures for services provided under permit, where fuel duty rebate or concessionary fares are paid.

COMMENTARY ON CLAUSE 1

Sub-section (1) introduces a duty on the Department for Regional Development to secure the provision of public passenger transport services.

Paragraphs (a) – (c) of sub-section (2), provide the mechanisms by which the Department can fulfil this duty, that is, by entering into service agreements (i.e. contracts) and issuing permits to operators. “Service agreements” under this sub-section encompasses both “public service contracts” awarded directly to an internal operator under the terms of EC Regulation 1370/2007 and competitively tendered contracts.

Paragraph (b) - The power to allow the Department to enter into agreements for services which are ancillary to the provision of public passenger transport services would allow the Department to contract for the provision of services which support public transport provision. This could include for example, the provision

of passenger information services, procurement of ticketing systems, and the installation and maintenance of equipment at bus rapid transit halts.

Paragraph (d) of sub-section (2) provides the Department with the power to determine the general level and structure of fares for services provided under agreement or permit. In respect of permits, the Department would only consider regulating fares where fuel duty rebate or concessionary fares are paid. Where operators receive no public money, they would be free to set their own fares.

Paragraph (e) of sub-section (2) allows the Department to provide facilities associated with the provision of services to operators on such terms as the Department thinks fit. This could be used, for example, to supply vehicles to an operator to be used in carrying out a particular contract and would allow the Department to retain control over these assets, should these services cease to be provided by that particular operator. For example, where a contract was renewed and the successful bidder was a different operator to the incumbent. It will also be important in achieving the reform objectives in relation to the introduction of integrated ticketing.

Paragraph (f) of sub-section (2) allows the Department to exploit any commercial opportunities which it considers appropriate in securing the provision of public passenger transport services. This could be used for example, to generate revenue from advertising at rapid transit halts.

Sub-section (3) provides that most public passenger transport services are provided by the Northern Ireland Transport Holding Company and its subsidiaries (i.e. the Translink companies). This secures Translink's position as the main supplier. This sub-section is subject to the Department's duty under sub-section (1) and the requirements of EC Regulation 1370/2007 that any contracts directly awarded to an internal operator are done so in a way that prevents overcompensation.

Sub-section (4) provides the definitions of "public passenger transport services", "service agreement" and "service permit" for the purposes of the Act.

Sub-section (5) defines "the Holding Company", "non-contracted services", "operator", "operator's licence" and "the railway undertaking" for this section.

"The Holding Company" is the Northern Ireland Transport Holding Company as established as a body corporate under section 47 of the Transport Act (Northern Ireland) 1967.

"Non-contracted services" are public passenger transport services by road for which operators can apply for service permits. These are services for which there is no agreement already in place. Therefore, a permit cannot be issued for a service which is already contracted.

An "operator" is any person who holds an "operator's licence"; or the "railway undertaking" (Northern Ireland Railways as defined in section 55 of the Transport

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Act (Northern Ireland) 1967).

An “operator’s licence” is either a Bus Operator’s Licence granted by DoE under Part II of the Transport Act (Northern Ireland) 1967 (as amended by this Bill) or a Taxi Operator’s Licence granted under the Taxis Act (Northern Ireland) 2008. The reason for including Taxi Operators is to take account of the current situation whereby a small number of taxi operators are licensed to provide regular public transport services on specific routes. It should be noted that the provisions of the Taxis Act (Northern Ireland) 2008 have not yet been commenced. As such, Taxi Operator’s licences are not yet in operation. Transitional arrangements will need to be made in respect of these services for moving from the current Road Service Licence system to the contracting/permit system to ensure there is no disruption to services.

Sub-section (6) states that references to the provision of services under a service agreement includes references to securing the provision of services. This would allow the Department to award contracts with the potential for sub-contracting in circumstances that the Department sees fit.

Sub-section (7) creates an offence of providing an unregulated service. The fine on summary conviction would be up to £5000 (level 5 on the standard scale as set out in the Fines and Penalties (Northern Ireland) Order 1984).

Sub-section (8) provides a definition of “unregulated service” for the purposes of the offence in sub-section (7). An “unregulated service” is a public passenger transport service provided by a person who does not have an agreement, permit or other authorisation to provide the service and which is not an exempt service. An example of an “otherwise authorised” service would be a cross-border bus service. International bus services are governed by EC Regulation 1073/2009, which requires cross-border authorisations to be issued by Member States for these services. These authorisations will be granted by the departmental agency.

Sub-section (9) allows the Department to make regulations as to services which are exempt for the purposes of sub-section (8). The Department would use this power to specify certain categories of public passenger transport services which are more aligned with commercial enterprise and do not impact on the services provided by operators that hold a service agreement or a service permit. It would not be necessary for these operators to hold a permit/agreement/other authorisation to provide these services. Holding an operator’s licence would automatically entitle them to provide such services. Examples of such a category would include excursions/ tours.

Service agreements

Service agreements [j91]

2.—(1) The Department may by regulations make provision as to matters which may or must be dealt with in service agreements.

(2) The power conferred by section 1(2) to enter into service agreements includes power to award public service contracts in accordance with Regulation (EC) No. 1370/2007.

(3) The Department may by regulations make provision for the review of decisions required by Article 5(7) of that Regulation.

BACKGROUND - POLICY

Article 4 of EC Regulation 1370/2007 sets out the mandatory content of “public service contracts” and as such, the power to enter into agreements should allow for the inclusion of these matters. Article 4 states that public service contracts shall:

- clearly define the public service obligations and the geographical areas concerned;
- establish in advance the parameters for the calculation of compensation payment;
- establish in advance the nature and extent of any exclusive rights granted;
- determine the arrangements for allocation of costs connected with the provision of services;
- determine the arrangements for allocation of revenue from the sale of tickets which may be kept by the operator, repaid to the competent authority or shared between the two;
- include requirements, in accordance with national law, to comply with certain quality standards;
- indicate whether and to what extent sub-contracting may be considered.

In addition, the Department would envisage that the agreements would contain other elements including:

- service specifications (route, frequency, etc.);
- vehicle specifications (accessibility, emissions, age etc.);
- driver requirements (PCV licence, bus operator licence, uniform requirements);
- key performance indicators (reliability, punctuality, etc.);
- customer information requirements (provision of timetables to shared information centre);
- ticketing requirements (participation in integrated ticketing scheme, concessionary fares, ticketing equipment, etc.); and
- any incentives relating to performance.

COMMENTARY ON CLAUSE 2

Sub-section (1) gives power the Department to make regulations in respect of matters which may or must be dealt with in service agreements. Article 4 of EC Regulation 1370/2007 sets out the mandatory content of public service contracts, including the parameters for calculating compensation, revenue allocation, etc. The Department may also set out matters which may be dealt with in service agreements, for example, key performance indicators, environmental standards,

etc.

Sub-section (2) provides that the power for the Department to enter into service agreements includes power to award “public service contracts” in accordance with EC Regulation 1370/2007 (i.e. contracts for services for which there is a public service obligation). Article 5 of the EC Regulation allows for public service contracts to be awarded either directly to an internal operator; competitively tendered; or directly awarded to a third party provider where the contract value is less than €1m and less than 300,000 kms per annum or, in the case of award to a medium-sized enterprise, less than €2m and 600,000 kms per annum.

Sub-section (3) allows the Department to make regulations for the provision of a review mechanism for decisions taken in respect of the award of “public service contracts”. Article 5(7) of EC Regulation No. 1370/2007 requires Member States to make arrangements to ensure that any decisions taken in respect of the award of public service contracts can be reviewed effectively and rapidly at the request of an aggrieved party. Regulations made under this section will allow the Department to make such arrangements and to ensure compliance with the EC Regulation.

Service permits

Interpretation [j92]

3. In sections 4 to 17 “permit” means a service permit.

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Applications [j7]

4.—(1) An application for a permit shall be made to the Department.

(2) The application for a permit must be made in such form, and include such declarations and information, as may be prescribed.

(3) Without prejudice to subsection (2), regulations under that subsection shall require the applicant to provide prescribed particulars as to—

- (a) the services to be provided under the permit; and
- (b) the vehicles to be used on those services.

(4) The Department may require an applicant to provide, in such form as the Department may require, such further information as the Department may consider necessary for dealing with the application.

(5) If a person fails, without reasonable excuse, to provide information when required to do so under subsection (4), the Department may decline to proceed further with the application and refuse to issue the permit.

BACKGROUND - POLICY

The 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 currently operated by the Department of the Environment.

The purpose of service permits is to allow the Department to authorise the provision of services which are supplementary or complementary to the contracted network of services. The permit system will allow operators to identify opportunities and apply for permits for services which are not already being provided in the contracted network. This will facilitate innovation by operators, enable private operators to propose new services and allow the public transport market to grow.

COMMENTARY ON CLAUSE 4

Clause 4 deals with applications from operators for permits. Applications would be made to the departmental agency in such form and include such declarations and information as the Department may prescribe in regulations. This would include, for example, operator's licence information. It would also include particulars which must be provided by the applicant in respect of the proposed services to be provided under the permit, e.g. the route, timetable, stopping points, etc. and the vehicles to be used under the permit, e.g. size, accessibility standards, etc. The Department may require the applicant to provide any further information which is necessary to enable it to consider the permit application. This will allow the departmental agency to satisfy itself that it has obtained all the necessary information it requires to consider applications effectively and efficiently in order to reach a decision. If the applicant refuses to provide this information, the Department can refuse to proceed with the application.

Notification of subsequent events [j8]

5.—(1) A person who has made an application for a permit shall notify the Department if, in the interval between the making of the application and the date on which it is disposed of, there occurs any prescribed event affecting any information given to the Department under section 4.

(2) A person who knowingly fails to comply with subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) For the purposes of this section an application shall be taken to be disposed of—

(a) in a case where the Department is required by virtue of regulations under section 46(2)(a), to cause a statement containing its decision on the application to be issued, on the date on which that statement is issued, and

- (b) in any other case, on the date on which the applicant receives notice from the Department of its decision on the application.

COMMENTARY ON CLAUSE 5

Sub-section (1) requires operators to inform the Department of changes, which have occurred during the application process, to the information submitted in an application for a permit. The particular circumstances (“events”) of which the operator must inform the Department would be specified in regulations made by the Department. This means that the Department will be able to base its permit decisions on the most up-to-date and reliable information provided by the applicant and ensure that the applicant has a clear responsibility to advise the Department of any relevant changes that occur in the period of time between submission of the application and date of approval by the agency.

Sub-section (2) creates an offence in respect of failure to comply with sub-section (1) with a fine on summary conviction of up to £2500 (level 4 on the standard scale as set out in the Fines and Penalties (Northern Ireland) Order 1984).

Matters to which Department must have regard [j6T]

6.—(1) In deciding whether to issue or refuse a permit or to attach conditions to a permit, the Department shall in particular, have regard (where appropriate) to the following matters—

- (a) the suitability of the routes on which the service may be provided under the permit;
- (b) any applications for permits which the Department considers relevant;
- (c) the extent, if any, to which the needs of persons likely to use the service to be provided are already adequately and economically served;
- (d) the general effect which the grant of the permit would be expected to have on—
 - (i) other holders of permits;
 - (ii) persons with whom the Department has a service agreement;
- (e) the need for ensuring fair competition among persons providing public passenger transport services;
- (f) such other matters as may be prescribed.

(2) The Department shall also take into account—

- (a) any recommendations made by the Consumer Council;
- (b) any representations by—
 - (i) persons already providing public passenger transport services on any road along or near the routes which are the subject of the application;
 - (ii) the Chief Constable;
 - (iii) a district council;
 - (iv) a Northern Ireland department; or

(v)the Northern Ireland Tourist Board.

Duration [j15]

7.—(1) A permit shall, unless previously revoked, continue in force for a period of three years from the date on which it is expressed to take effect or such other period as may be specified in the permit.

(2) Nothing in this section shall prevent the attachment to a permit of a condition that the service shall be limited to one or more than one particular period or occasion.

(3) If the holder of a permit requests the Department to terminate it at any time, the Department shall comply with the request unless it is considering giving a direction in respect of the permit under section 10.

(4) If on the date of the expiration of a permit an application is before the Department for the grant of a new permit in substitution for an existing permit held by the applicant, the existing permit shall continue in force until the application is disposed of.

(5) If on the date of the expiration of a permit the permit is, by virtue of regulations under section 14(2), held by a person other than the person to whom the permit was issued, the permit shall continue in force until the application by that other person is disposed of in accordance with those regulations.

(6) A permit held by an individual terminates if—

(a) the individual dies, or

(b) the individual becomes a patient within the meaning of Article 2(2) of the Mental Health (Northern Ireland) Order 1986 (NI 4).

COMMENTARY ON CLAUSE 7

Clause 7, subsections (1) & (2) provide that a permit will usually be granted for a period of three years. However, they also give the Department flexibility to issue permits for a shorter or a longer period, or for one-off occasions e.g. special events such as concerts, tall ships, etc.

Sub-section (3) allows permit holders to surrender their permit to the Department. Informing the Department of this will ensure that it has accurate and up-to-date knowledge of the public passenger transport services being provided. The Department will comply with any request unless it is considering revoking, suspending or curtailing the permit. This will prevent the situation whereby a permit-holder could gain an advantage by relinquishing a permit to the Department to prevent any negative impact on “good repute” that revocation could have which would potentially affect eligibility to hold an operator’s licence.

Sub-section (4) allows that where a permit is being renewed, the old permit to continues to be valid until a decision on the renewal application is taken by the department agency. This will ensure that from a passenger perspective there will not be a need for temporary suspension of service to allow for completion of necessary administrative processes.

Sub-section (5) deals with the renewal of a permit where during the course of the previous permit, the holder either died or became a patient under the Mental Health Order which resulted in the permit being transferred to another person. The transferred permit will continue to be valid until a decision is taken on the renewal application made by the new holder. The transfer of permits in these circumstances is dealt with in clause 14(2). This clause reflects the position which is taken in other legislative provisions such as section 15(5) of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010 with regard to persons who become a patient under the Mental Health Order.

Sub-section (6) provides that a permit terminates whenever the holder dies or becomes a patient under the Mental Health Order. However, as discussed above, clause 14 deals with these circumstances in more detail and allows the Department to direct how these permits are to be treated.

Variation [j16]

8.—(1) On the application of the holder of a permit or otherwise, the Department may vary the permit.

(2) An application for the variation of a permit under this section must be made in such form and include such declarations and information as may be prescribed.

(3) The Department may require an applicant to furnish such other information as it considers necessary for dealing with the application.

(4) Section 5 shall apply for the purposes of this section as it applies for the purposes of section 4.

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COMMENTARY ON CLAUSE 8

Clause 8 deals with how variations to permits are dealt with.

Sub-section (4) relates to informing the Department of any relevant changes that occur in the period of time between submission of the application for variation and date of approval by the agency.

Conditions [j20]

9.—(1) On issuing a permit or on varying a permit under section 8, the Department may attach to the permit such conditions as it thinks fit.

(2) On varying a permit under section 8, the Department may vary or remove any condition attached to the permit under this section.

(3) Any person who contravenes any condition attached under this section to a permit of which that person is the holder shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(4) If any person acting with the knowledge or consent of the holder of a permit contravenes any condition attached to it under this section, the holder of the

permit shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

COMMENTARY ON CLAUSE 9

Clause 9 deals with the attachment of conditions to permits. This could include, for example, pick-up / set-down restrictions or closed-door elements to allow the Department to regulate the provision of public passenger transport services. This could be used, for example, where a proposed service would overlap with an existing service. Rather than refuse the application it would be possible to prevent the proposed service picking up or setting down on the overlapping section of the service..

Sub-section (3) creates an offence of breaching any conditions attached to a permit with a fine up to £2,500 (level 4 on the standard scale as set out by the Fines and Penalties Order (Northern Ireland) 1984).

Sub-section (4) applies the principle of vicarious liability to this offence. That is, that the permit holder is liable for the offence if the contravention is made by an employee / person acting on his behalf.

Revocation, suspension and curtailment of permits [j23]

10.—(1) Subject to the following provisions of this section and the provisions of section 12, the Department may direct that a permit be revoked, suspended or curtailed (within the meaning given in subsection (6)) for any reasonable cause including any of the following—

- (a) that the permit-holder has contravened any condition attached to the permit;
- (b) that during the 3 years ending with the date on which the direction is given there has occurred a prescribed event affecting information required to be given to the Department under section 4 or 5;
- (c) that the permit-holder made, or procured to be made, for the purposes of the permit-holder's application for the permit, a statement of fact that, whether to the permit-holder's knowledge or not, was false, or a statement of expectation that has not been fulfilled;
- (d) that the permit-holder, being an individual, has been adjudged bankrupt or, being a company, has gone into liquidation, other than voluntary liquidation for the purposes of reconstruction;
- (e) that since the permit was issued there has been a material change in any of the circumstances of the permit-holder that were relevant to the issue or variation of the permit;
- (f) that the permit is liable to revocation, suspension or curtailment by virtue of a direction given under section 11(3);
- (g) that an operator's licence (within the meaning of section 1) held by the permit-holder has been revoked or suspended or has expired;

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

(2) Where the Department has power to give a direction in respect of a permit under subsection (1) the Department also has power to direct that a condition be attached to the permit.

(3) Where the existence of any of the grounds mentioned in subsection (1) (except paragraph (h)) is brought to the notice of the Department, the Department shall consider whether or not to give a direction under this section in respect of that permit.

(4) Where the Department has given a direction suspending or curtailing a permit under subsection (1) it may—

- (a) cancel the direction;
- (b) with the consent of the permit-holder, vary the direction.

(5) Where a permit is suspended under this section, the permit remains in force during the time of its suspension subject to the limitation that no services are authorised to be provided under it.

(6) In this Act references to directing that a permit be curtailed are references to directing (with effect for the remainder of the duration of the permit or for any shorter period) either or both of the following—

- (a) that one or more of the vehicles specified in the permit be removed from it; and
- (b) that one or more of the services specified in the permit be removed from it.

COMMENTARY ON CLAUSE 10

Clause 10 gives the Department the power to revoke, suspend or curtail permits for any reasonable cause and sets out particular circumstances where the Department can do so.

Paragraph (h) refers to the situation where the Department considers it to be in the wider public interest for the service to be provided under a service agreement. This would be where it would be beneficial for the service being provided under permit to be an integral part of the contracted network. The Department would need to give maximum possible notice to the permit-holder of its intention to include particular routes in the specification for new contracts.

Disqualification [j25]

11.—(1) Where, under section 10(1), the Department directs that a permit be revoked, the Department may order the person who was the holder of the permit to be disqualified (either indefinitely or for such period as the Department thinks fit) from holding or obtaining a permit; and so long as the disqualification is in force, notwithstanding anything in section 6, no permit may be issued to that person.

(2) If a person applies for or obtains a permit while disqualified under subsection (1)—

- (a) the person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale, and
- (b) any permit issued on the application, or (as the case may be) the permit obtained by that person, shall be void.

(3) Where the Department makes an order under subsection (1) in respect of any person, the Department may direct that if that person, at any time or during such period as the Department may specify—

- (a) is a director of, or holds a controlling interest in—
 - (i) a company which holds a permit of the kind to which the order in question applies, or
 - (ii) a company of which such a company is a subsidiary, or
- (b) provides any service in partnership with a person who holds such a permit,

that permit of that company or, as the case may be, of that person, shall be liable to revocation, suspension or curtailment under section 10.

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(4) The powers conferred by subsections (1) and (3) in relation to the person who was the holder of a permit shall be exercisable also—

- (a) where that person was a company, in relation to any director of that company, and
- (b) where that person provided any service under the permit in partnership with other persons, in relation to any of those other persons;

and any reference in this section or in section 10 or 12 to subsection (1) or (3) includes a reference to that subsection as it applies by virtue of this subsection.

(5) Where the Department makes any order disqualifying a person under subsection (1), it may at any time—

- (a) cancel that order together with any direction that was given under subsection (3) when the order was made;
- (b) cancel any such direction; or
- (c) with the consent of the person disqualified, vary the order or any such direction (or both the order and any such direction).

(6) Where a permit is suspended under this section, the permit remains in force during the time of its suspension subject to the limitation that no services are authorised to be provided under it.

(7) For the purposes of this section, a person holds a controlling interest in a company if the person is the beneficial owner of more than half its equity share capital (as defined in section 548 of the Companies Act 2006 (c. 46)).

COMMENTARY ON CLAUSE 11

Clause 11 provides for the disqualification of permit holders and creates an offence in respect of disqualified persons applying for permits with a fine of up to £2500 (level 4 on the standard scale as set out in the Fines and Penalties (Northern Ireland) Order 1984).

Sub-section (3) deals with the scenario where a disqualified person becomes a

director of a company which holds a permit of the same kind as the disqualified person held or enters into a partnership with another person who holds such a permit. In these circumstances, the Department will have the power to revoke, suspend or curtail the permit of the company or partner. This aims to prevent any loopholes whereby a disqualified permit-holder can continue to provide services.

Sub-section (6) deals with the suspension of permits in the circumstances outlined above. The suspension of a permit protects the commercial interests of the permit holder during the period of suspension in that no other operator can apply for a permit to run that service. However, the agency may in those circumstances enter into an agreement for another operator to provide the service until such time as a decision is taken in respect of the suspended permit. This will ensure continuity of service to the passenger.

The robust nature of this clause will be of particular interest to key stakeholders as there has been criticism in the past that the enforcement measures for bus licensing were not sufficient to deter illegal operation of bus services within the regulated market. This clause strengthens the enforcement powers of the Department to ensure the regulated system is properly maintained.

Revocation, disqualification, etc.: supplementary provisions [j26]

12.—(1) The Department shall not—

- (a) give a direction under section 10(1) or (2) in respect of any permit, or
- (b) make an order or give a direction under section 11(1) or (3) in respect of any person,

without first giving the holder of the permit or (as the case may be) the person concerned notice that it is considering doing so and holding an inquiry if the holder of the permit or (as the case may be) the person concerned requests the Department to do so.

(2) The Department may direct that any direction or order given or made by it under—

- (a) section 10(1) or (2), or
- (b) section 11(1) or (3),

shall not take effect until the expiry of the time within which an appeal may be made to the Upper Tribunal against the direction or order and, if such an appeal is made, until the appeal has been disposed of.

(3) If the Department refuses to give a direction under subsection (2) the holder of the permit or (as the case may be) the person in respect of whom the direction or order was given or made may apply to the Upper Tribunal for such a direction.

(4) The Upper Tribunal shall give its decision on any application under subsection (3) within 14 days.

(5) An order under section 11(1) is not a statutory rule for the purpose of the Statutory Rules (Northern Ireland) Order 1979 (NI 12).

COMMENTARY ON CLAUSES 12

Clause 12 provides that the Department will not revoke, suspend, or curtail a permit, or disqualify a permit-holder unless it has given the permit-holder notice that it is considering doing so. It also allows the permit-holder to request that the Department holds an inquiry in respect of its considerations, which provides an initial appeal mechanism within the department.

Sub-section (2) allows the holder of the permit to appeal to the Upper Tribunal against its decision to revoke, suspend, curtail or disqualify and any decision will not have effect until the appeal has concluded.

The Upper Tribunal is a court of record with jurisdiction throughout the United Kingdom. It has been established by Parliament under the Tribunals, Courts and Enforcement Act 2007. Its main functions are:

- To take over hearing appeals to the courts, and similar bodies from the decisions of local tribunals;
- To decide certain cases that do not go through the First-tier Tribunal;
- To exercise powers of judicial review in certain circumstances; and
- To deal with enforcement of decisions, directions and orders made by tribunals.

Prior to the introduction of the Bill the Courts and Tribunal Service was consulted on the contents of the proposed Bill and was content that the provisions were appropriate.

Miscellaneous

Fees [j47]

13.—(1) Such fees, payable at such times, as may be prescribed shall be charged by the Department in respect of—

- (a) applications for permits; and
- (b) the issue of permits.

(2) The Department may decline to proceed with—

- (a) any application for a permit, or
- (b) the issue of any permit,

until any fee in respect of the application or issue (as the case may be) is duly paid.

(3) If, in the case of any application for a permit, any fee in respect of the application or the issue of the permit is not duly paid by the prescribed time—

- (a) the application shall be treated as withdrawn at that time, and

- (b) any decision made or direction given on the application, and any permit issued or variation effected in pursuance of such a direction, ceases to have effect or terminates at that time.
- (4) The Department may, if it considers there to be exceptional circumstances that justify its doing so in any case where subsection (3) has applied, direct that as from the time mentioned in that subsection its effect in that case be disregarded.
- (5) Where such a direction is given in respect of a permit, the Department may vary any such condition as it applies in relation to events occurring before the direction comes into force.
- (6) Regulations under this section may provide for fees to be remitted or refunded (in whole or part) in prescribed cases.

COMMENTARY ON CLAUSE 13

Clause 13 provides for the payment of fees for permit applications and the issuing of permits. The level of these fees would be set taking account of the administrative costs of the permit regime. The fees would be set in regulations made by the Department and subject to negative resolution of the Assembly.

Sub-section (3) allows the Department to treat any permit application as withdrawn or any permit issued as void if the fees are not paid when required. Sub-section (4) allows the Department to consider exceptional circumstances in relation to fees not being paid by the prescribed time.

Permits not to be transferable [j48]

14.—(1) Subject to any regulations under section 15, a permit is neither transferable nor assignable.

(2) Regulations may make provision enabling the Department, where the holder of a permit has died or become a patient within the meaning of Article 2(2) of the Mental Health (Northern Ireland) Order 1986 (NI 4), to direct that the permit be treated—

- (a) as not having terminated at the time when the permit-holder died or became a patient but as having been suspended (that is, as having remained in force but subject to the limitation that no services were authorised to be provided under it) from that time until the time when the direction comes into force; and
 - (b) as having effect from the time when the direction comes into force for a specified period and as being held during that period (for such purposes and to such extent as may be specified) not by the person to whom it was issued but by such other person carrying on that person's business, or part of that person's business, as may be specified.
- (3) Regulations may make provision enabling the Department in prescribed circumstances to direct that any permit is to be treated (for such purposes, for such period and to such extent as may be specified) as held not by the person to whom it was issued but by such other person carrying on that person's business, or part of that person's business, as may be specified.

(4) Regulations may make provision enabling the Department to direct, for the purpose of giving effect to or supplementing a direction given by it by virtue of subsection (2) or (3), that this Act is to apply with specified modifications in relation to the person who is to be treated under the direction as the holder of a permit.

(5) In this section “specified”, in relation to a direction, means specified—

- (a) in the regulations under which the direction was given; or
- (b) in the direction in accordance with those regulations.

COMMENTARY ON CLAUSE 14

Clause 14 provides that a permit is neither transferable nor assignable. This ensures that the licensed operator who has applied for and holds a permit is the one who continues to hold it.

Sub-section (2) makes provision for how permits are to be treated in the event that the holder of the permit either dies or becomes a patient under the Mental Health Order. In particular, that permits are suspended from the time which the person dies/becomes a patient until such time as the Department issues a direction that the permit is treated as being held by another person carrying on the business of the original permit-holder. The meaning of “patient” under the Mental Health (Northern Ireland) Order 1986 is “a person suffering or appearing to be suffering from mental disorder”. This clause once again reflects the position which is taken in other legislative provisions such as section 48 of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010 with regard to persons who become a patient under the Mental Health Order.

Sub-section (3) allows the Department to specify in regulations other circumstances where it may direct that permits are to be treated as held by another person carrying on the business of the original permit-holder.

These provisions will assist in providing continuity of service to the public.

Holding companies and subsidiaries [j52]

15. Regulations may make provision for a service agreement made with, or a service permit held by, any company or other body corporate to apply also to the provision of services by any of its subsidiaries.

COMMENTARY ON CLAUSE 15

This clause is particularly important given the status of the Northern Ireland Transport Holding Company which operates services through its subsidiary companies.

Forgery, false statements, etc.

Forgery, etc. [j36]

16.—(1) A person who, with intent to deceive—

- (a) forges, alters or uses a permit;
- (b) lends to, or allows to be used by, any other person a permit; or
- (c) makes or has in his or her possession any document so closely resembling a permit as to be calculated to deceive,

shall be guilty of an offence.

(2) A person guilty of an offence under subsection (1) shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(3) In subsection (1) “forges” means makes a false document in order that it may be used as genuine.

False statements [j37]

17.—(1) A person who knowingly or recklessly makes, or causes to be made a statement or furnishes information which is false or misleading in any material particular for the purpose of—

- (a) obtaining the issue of a permit;
- (b) obtaining the variation of a permit;
- (c) preventing the issue or variation of a permit;
- (d) procuring or preventing the imposition of a condition in relation to a permit,

shall be guilty of an offence.

(2) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

PART 1

COMMENTARY ON CLAUSES 16 AND 17

Clauses 16 and 17 create offences in respect of forgery and false statements in relation to permits. These offences and fines / imprisonment terms are based on those currently in place for freight licensing. The Department of Justice has been consulted on these offences and is content with the proposals.

PART 2

BUSES, TAXIS AND TRAINS

Bus operator's licences

Road service licence renamed [j674]

18.—(1) In section 4(1) of the 1967 Act (grant of road service licences), for the words ““road service licence”) to provide such a service as may be specified therein” there shall be substituted the words ““bus operator’s licence”)”.

(2) In section 81(1) of the 1967 Act (interpretation)—

(a) after the definition of “the Authority” there shall be inserted the following definition—

““bus operator’s licence” has the meaning assigned to it by section 4(1);”;

(b) the definition of “road service licence” shall cease to have effect.

BACKGROUND POLICY

Under the new arrangements it is proposed to split the current road service licence into a *bus operator’s licence*, granted by DoE which would consider the operator’s repute, financial standing and professional competence, and a *public transport service permit*, granted by the proposed new DRD Agency that would be issued for routes falling outside the contracted network of services. An operator would be required to hold a bus operator’s licence (or in some circumstances a taxi operator’s licence – see commentary on clause 1) in order to be awarded an agreement or permit for the provision of public passenger transport services. This legislative split is necessary to allow the responsibility for planning of routes and service provision for public passenger transport to pass from DoE to DRD.

DoE would retain responsibility for bus operator licensing (alongside its other responsibilities for driver and vehicle licensing) through the amendment of the road service licensing system, which would include renaming the current road service licence a bus operator’s licence. The purpose of the operator’s licence would be to authorise the entry into the market.

Holding a bus operator’s licence would allow operators to run services that are deemed not to require regulation, for example regular contract carriage services, occasional private hire services, and excursions and tours, without the need for DRD’s approval.

The Department would be responsible for regulating the public passenger transport services including “stage carriage”, “express” and “demand responsive” public transport services, either by service agreements or public transport service permits.

COMMENTARY ON CLAUSES 18 TO 20

Clauses 18 to 20 make the required amendments to Part 2 of the Transport Act (Northern Ireland) 1967, including renaming the “Road Service Licence” as “Bus Operator’s Licence”, amending the function of the licence to operator aspects only and removing the statutory role of the Consumer Council in licence applications (this role is replaced by clause 6(2)(a) of this Bill which requires the Department to take account of recommendations made by the Consumer Council in permit applications). These amendments have been agreed with DoE.

Particulars to be provided [j675]

19. In section 5(1) of the 1967 Act (particulars to be provided by applicants), paragraphs (b) and (c) shall cease to have effect.

Functions as to grant of licences [j676]

20. In section 6 of the 1967 Act (functions as to grant of licences), the following provisions (which relate to services to be provided under the licence) shall cease to have effect—

- (a) in subsection (1)—
 - (i) the words “have regard to the interests of persons likely to use the service to be provided under the licence and those of persons holding other road service licences, and” and the word “shall” in the second place where it occurs;
 - (ii) paragraphs (a), (b), (h) and (i);
- (b) subsections (2) and (3) (role of General Consumer Council and representations by others).

Taxis

Amendments of the Taxis Act (Northern Ireland) 2008 [j10TAXI]

21.—(1) The Taxis Act (Northern Ireland) 2008 (c. 4) shall be amended as follows.

PART 2

(2) In section 5 (hiring of taxis at separate fares - general), in subsection (1) for paragraph (c) (operator authorised under operator’s licence) there shall be substituted the following paragraph—

“(c) a service agreement or service permit under the Transport Act (Northern Ireland) 2010 so provides.”.

(3) In section 8 (operator’s licence authorising separate fares)—

- (a) paragraph (a) shall cease to have effect;

Transport

- (b) in paragraph (b), for the words “that taxi service” there shall be substituted the words “a taxi service for or in respect of the carriage of passengers at separate fares”;
 - (c) in the heading for the word “authorising” there shall be substituted the words “conditions relating to”.
- (4) The following provisions shall cease to have effect—
- (a) section 9 (duty to give information for the purposes of section 10);
 - (b) section 10 (functions of the Department of the Environment in relation to licence authorising separate fares);
 - (c) section 11 (appeals in relation to operator’s licence authorising separate fares);
 - (d) section 54(3) (licence authorising separate fares deemed for purposes of section 14 of Finance Act (Northern Ireland) 1966 to be road service licence under Part 2 of 1967 Act).

BACKGROUND POLICY

There are a number of public passenger transport services being provided on particular routes by taxis. These taxis operate bus-type services (e.g. West Belfast Taxis and Derry Taxis) under the current Road Service Licensing System (RSL). The route element of the RSL will transfer to DRD under the proposals to grant service permits. The Taxis Act (Northern Ireland) 2008 (the provisions of which have not yet been commenced) provides for a Taxi Operator’s Licence granted by DoE and includes provision for an operator’s licence authorising separate fares (including bus-type services). This was required under the Taxi legislation to recognise the role played by such services within the current licensing regime. Under the proposed new arrangements, DRD will be responsible for regulating such services as part of the overall public transport network i.e. through service agreements and service permits. Therefore, amendments are required to the Taxis Act (Northern Ireland) 2008 to take account of the new arrangements.

COMMENTARY ON CLAUSE 21

Clause 21 amends the Taxis Act (Northern Ireland) 2008 to take account of the revised arrangements for the provision of public passenger transport services. It amends the provisions relating to taxis operating at separate fares to take account of the transfer of responsibility for authorising these services from DoE to DRD. These amendments have been agreed with DoE.

Railway services

Provision of railway services [j55T]

22. In section 55 of the 1967 Act (provision of railway services), in subsection (1) (duty of railway undertaking), after the words “in Northern Ireland” there shall

be inserted the words “in accordance with any service agreement under the Transport Act (Northern Ireland) 2010”.

BACKGROUND POLICY

In view of the small scale of the railway network (some 200 miles of track) it is proposed that rail infrastructure (track) and the operation of rail services should continue to be managed together by Northern Ireland Railways (NIR), which would also retain its current responsibilities for health and safety on the rail network. NIR would continue to be responsible for delivery of these services for the foreseeable future. In order to comply with the requirements of EC Regulation 1370/2007, it is necessary for rail services to be part of the contracts awarded directly to Translink and for the financial and transparency requirements to be satisfied. The departmental agency would be responsible for setting and monitoring NIR’s performance standards against agreed contracts. This would include assessing performance outcomes and customer satisfaction levels to produce an annual performance report, as required by EC regulation 1370/2007.

COMMENTARY ON CLAUSE 22

NIR will retain its duty under section 55 of the Transport Act (Northern Ireland) 1967. Clause 22 amends this duty to take account of the public service contract, as required by EC Regulation 1370/2007.

PART 3

CONSUMER COUNCIL

Forward work programme [j10E]

23.—(1) The Consumer Council shall, before each financial year, publish a document (the “forward work programme”) containing a general description of the projects which it plans to undertake during the year in the exercise of its transport functions (other than projects comprising routine activities in the exercise of those functions).

(2) That description shall include the objectives of each project.

(3) The forward work programme for any year shall also include an estimate of the overall expenditure which the Consumer Council expects to incur during the year in the exercise of its transport functions.

(4) Before publishing the forward work programme for any year, the Consumer Council shall give notice—

- (a) containing a draft of the forward work programme; and
- (b) specifying the time within which representations or objections to the proposals contained in it may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(5) The notice under subsection (4) shall be published by the Consumer Council in such manner as it considers appropriate for the purpose of bringing the matters contained in it to the attention of persons likely to be affected by them.

(6) The Consumer Council shall send a copy of any notice given by it under subsection (4) to the Department.

(7) In this section and section 24 “transport functions” means functions under paragraph (1) of Article 5 of the General Consumer Council (Northern Ireland) Order 1984 (NI 12) so far as they relate to passenger transport.

Co-operation between the Department and the Consumer Council [j11E]

24.—(1) The Department and the Consumer Council (in respect of its transport functions) shall make arrangements with a view to securing—

- (a) co-operation and the exchange of information between them; and
- (b) consistent treatment of matters which affect both of them.

(2) As soon as practicable after agreement is reached on those arrangements, the Department and the Consumer Council shall prepare a memorandum setting them out.

(3) Arrangements under this section shall be kept under review by the Department and the Consumer Council.

(4) As soon as practicable after agreement is reached on any changes to those arrangements, the Department and the Consumer Council shall revise their memorandum.

(5) The Department shall lay a copy of any memorandum prepared or revised under this Article before the Assembly.

BACKGROUND

The Consumer Council was set up by Government in 1984 and is funded by the Department of Enterprise, Trade and Investment (DETI). The Council has a Chairman, Deputy Chair and 13 members appointed by Ministers.

The General Consumer Council (Northern Ireland) Order 1984 (No. 1822 (N.I. 12)) sets out the Council’s general functions and statutory responsibilities in respect of public transport and enables the Council to exercise certain functions formerly carried out by the Transport Users Committee, established in the Transport Act (Northern Ireland) 1967. These functions include licensing arrangements under sections 6(2) and 6(3) (repealed by this Bill and replaced by Clause 6(2)(a)), complaints as to the inadequacy of railway services (sections 59(1) and (2)) and section 60(2) relating to the discontinuance of railway services.

In August 2008, the Department produced a paper “Consumer Representation under the New Arrangements” which was designed to set out the current statutory and non statutory roles of the Consumer Council in the public transport sector and map out how the proposed changes to the existing regime would impact those roles. A copy can be provided if that would be useful.

Following the issue of this paper, which was shared with key stakeholders, the Department's Reform Team engaged in further consultation with the Council to consider initial responses and provide clarification on the issues highlighted.

This engagement was further enhanced through pre-consultation discussions where departmental officials addressed the Council and its members on the reform proposals, received feedback and took account of the Council's views in preparing the final drafts of the Consultation Pack prior to submitting to the Regional Development Committee.

CURRENT PRACTICE

The Consumer Council, under the Transport Act (NI) 1967, has a number of statutory responsibilities in relation to public transport, as follows:

- providing input and recommendations on applications for Road Service Licences;
- representing users in relation to complaints about any inadequacy in rail services; and
- representing users in relation to proposals to close a railway service.

Also under the General Consumer Council (NI) Order 1984, the Council also has a general power to safeguard the interests of consumers, including the power to investigate consumer complaints.

More informally the Council has :-

- a clear role in Translink's formal complaints service;
- a consultative role in the setting of fares; and
- a role in the complaints process for Door to Door services provided under contract to the Department.

IMPACT OF PUBLIC TRANSPORT REFORM (NON LEGISLATIVE)

COMPLAINTS

In relation to complaints under the new arrangements, it is proposed that the Consumer Council would continue to represent the consumer interest in unresolved complaints, about either the departmental agency, when it is established, or any licensed operator providing services under contract or permit. These arrangements are likely to be similar to those already set out in Translink's formal complaints procedures and will be developed in consultation with the Consumer Council during the design phase of the agency's functions.

CONSULTATION

Local Public Transport Plans

The requirement for the departmental agency to develop local public transport plans in consultation with other public bodies highlights the need for local consumer and community groups to be consulted as part of this process. It is envisaged that the Consumer Council will play a key role in this process both during the development phase and following the establishment of the agency.

Service Specification

The Consumer Council would also be consulted separately on service specifications prior to the award of any contracts.

Fares Regulation

The Consumer Council will be consulted on issues relating to the regulation and setting of fares.

IMPACT OF REFORM (LEGISLATIVE)

LICENSING

It is proposed that the licensing arrangements as set out in the Transport Act (NI) 1967 will change. Responsibility for the route element of the licensing regime will transfer from the Department of the Environment to the proposed DRD agency. New arrangements for the regulation of bus services will be put in place. This will include contractual arrangements with both Translink and private operators supported by a service permit system whereby operators would be able to identify gaps in service provision and apply for a permit to run services.

As discussed above, the Consumer Council will be consulted with regard to the specification of those contracts (non legislative element). There will be a statutory role for the Consumer Council to provide comments on applications for service permits before any decision is taken by the agency. This will replace the Consumer Council's current statutory licensing role under the Transport Act (NI) 1967.

SHARED INTERESTS

Recognising the shared interest between the departmental agency and the Consumer Council in relation to the services provided to public transport users, it is proposed that they both would have a new statutory duty to make arrangements to ensure consistent treatment of matters that affect both organisations and to co-operate and exchange information (but not commercially sensitive information). It is envisaged that the detailed arrangements would be set out in a Memorandum of Understanding between the two organisations. The Consumer Council would also have a statutory duty to produce a forward work programme which would need to be sent to the departmental agency in draft form for comment before publication. These obligations will be similar to that which is already in place in relation to the Consumer Council's role for water and energy.

RAIL

At present the Consumer Council has a statutory role under section 60 of the Transport Act (Northern Ireland) 1967 relating to the discontinuance of Railway Services. This will continue under the new arrangements.

SUMMARY OF FUTURE ARRANGEMENTS FOR CONSUMER COUNCIL

STATUTORY RESPONSIBILITIES

- Clear statutory role in informing the decision making process on all applications for service permits
- Requirement to share information and produce a forward work programme
- Retention of role in respect of rail services

COMPLAINTS

- Agreed role in Agency's and contracted operators' complaints process

CONSULTATION

- Key role in the development of Local Public Transport Plans

- Consultation on service specification (for contracts)
- Consultation in relation to the regulation/setting of fares.

COMMENTARY ON CLAUSES 23 AND 24

Clause 23 and 24 set out provisions similar to those set out in the Energy (NI) Order 2003 which legislates for co-operation between the regulator and the Council.

These provisions will ensure that the Consumer Council consults with the departmental agency on its forward work programme and that the parameters for sharing of information between the Consumer Council and departmental agency are clearly defined.

It is intended that these provisions would then be implemented through the development of a memorandum of understanding between the two organisations, making it relatively easy to amend the approach as circumstances evolve.

It also provides for memorandum to be laid before the Assembly, including where the arrangements entered into are revised. Under this procedure, the Department would be required to send copies of the document to the Assembly Business Office for laying, which in turn distributes them to the Assembly Library and the Committee.

PART 4

ENFORCEMENT

Powers of entry [j38]

25.—(1) The powers conferred on an authorised person by this section are exercisable for the purpose of ascertaining whether any provisions of, or made under, this Act are being complied with.

(2) An authorised person (A) shall have the power to enter and inspect any vehicle used for passenger transport; and for that purpose A may stop and detain the vehicle during such time as is required for the inspection.

(3) Subject to subsection (4), an authorised person (A) shall at any time which is reasonable having regard to the circumstances have the power to enter and inspect any premises—

- (a) in or on which A has reason to believe that a vehicle used for passenger transport is kept;
- (b) which A has reason to believe are used or intended to be used in connection with passenger transport.

(4) An authorised person may not under subsection (3) enter premises which are occupied as a private dwelling unless under the authority of a warrant issued under subsection (5)(c).

(5) Where a lay magistrate is satisfied by complaint on oath—

- (a) that an authorised person has been refused admission to any premises which the authorised person has a right to enter under subsection (3), or that such a refusal is apprehended, and that notice of the intention to apply for the warrant has been given to the occupier;
- (b) that an application for admission to the premises, or the giving of such a notice, would defeat the object of the entry, or that the premises are unoccupied or that the owner is temporarily absent; or
- (c) that admission to the premises is reasonably required for the purposes specified in the complaint and that an authorised person would, apart from subsection (4), be entitled for that purpose to exercise in respect of the premises a power of entry under subsection (3),

the lay magistrate may issue a warrant authorising the authorised person to enter the premises.

(6) An authorised person (A) entering any premises under this section may be accompanied by such other persons as appear to A to be necessary.

(7) A warrant issued under subsection (5) shall continue in force until the purpose for which entry is required has been satisfied.

(8) Where an authorised person (A) exercises a power of entry on any premises by virtue of this section, A shall ensure that the premises are left no less secure by reason of the entry, and the Department shall make good or pay compensation for any damage to property caused by A in entering the premises, in carrying out any inspection or in making the premises secure.

(9) Any question of disputed compensation shall be referred to and determined by the Lands Tribunal.

(10) Where an authorised person (A) exercises a power of entry under this section, A may seize and remove anything found on the vehicle or premises which A has reasonable cause to believe may be required as evidence in any proceedings for an offence under this Act.

(11) For the purposes of subsection (10) the power to seize includes power to detach from a vehicle.

BACKGROUND

The Bill creates a new contracting regime for the provision of public transport services by road and rail. This will be supported by a service permit system (for the provision of bus services outside the contracted network). The Department will require powers of entry to allow it to enforce service permits and agreements. The proposed offences and powers of entry for the public transport service permit system and contracting regime are:

- providing a public transport service without a service agreement or permit;
- failure to notify the Department of a prescribed event affecting a permit application;
- breach of the conditions attached to a permit;
- applying for a permit when disqualified;

- forgery of a permit;
- false statements to obtain a permit;
- power to enter vehicles and premises used in connection with the provision of a service under service agreement or permit;
- power to seize documents;
- power to obtain information in relation to services for the carriage of passengers by road;
- obstruction of an authorised person.

The Department considers that the equivalent fine levels set out in the Goods Vehicles (Licensing of Operators) Act 2010 would provide appropriate precedent in respect of the offences in this Bill. The proposed powers reflect those currently held by DoE in relation to road service licensing (Part IV of the Transport Act (Northern Ireland) 1967). Enforcement of bus operator’s licences would continue to be the responsibility of DoE. The Department will appoint enforcement officers and will regulate the service agreement/permit system by taking prosecutions where offences have occurred.

The tables below show the proposed offences and fine levels and the offences and fine levels currently in place, which would continue under the new arrangements. It should be noted that, should an operator be subject to any such fine, the DoE may choose to consider the operator’s continued eligibility to hold a bus operator’s licence to deliver services. The Department of Justice has been consulted and is content with the proposed offences and fine levels.

Table 1: Proposed Offences and Fine Levels for Service Agreement/Public transport Service Permit System

Offence	Proposed Fine
Service Agreement/Public transport Service Permit System - Offences and Fine Levels	
Providing a service outside the service agreement /public transport service permit system	Level 3 – currently £1,000
Conditions as to matters required to be notified	Level 4 – currently £2,500
Applying for a permit while disqualified	Level 4 – currently £2,500
Forgery of a permit	(i) On summary conviction, to a fine not exceeding; (ii) On conviction on indictment, to imprisonment for a term not exceeding two years, with or without a fine.
False Statements	Level 4 (£2,500)

Table 2: Current Offences and Fine Levels Which Will Continue

Offence	Current Fine
Operator Licensing (currently Road Service Licensing)	
Operating without an operator licence	Level 5 (£5,000)
Breach of Conditions of a licence	Level 3 (£1,000)
Conditions as to matters required to be notified	Level 4 (£2,500)
Forgery of a licence	(i) On summary conviction, to a fine not exceeding Level 3 (£1,000) on the standard scale or to imprisonment for a term not exceeding six months, or to both such fine and such imprisonment.; (ii) on conviction on indictment, to imprisonment for a term not exceeding two years, with or without a fine.
False statements	Level 3 (£1,000) and or imprisonment for a term not exceeding 6 months.

COMMENTARY ON CLAUSE 25 TO 31

Clauses 25 to 31 set out the provisions for the enforcement of public passenger transport services. The Department will have the power to enter into and inspect certain premises that are being used in connection with the carriage of passengers and their luggage by road and to seize certain documents and to obtain certain information. It will be an offence to obstruct an authorised officer in the exercise of functions under the Act. Clause 31 provides for prosecutions for offences under this Act.

In clauses 25 to 29, “authorised person” means any person authorised in writing by the Department for the purposes of this Act. Clause 29 provides that a constable can also carry out the functions of an authorised person.

Power to seize documents, etc. [j39]

26.—(1) If an authorised person (A) has reason to believe that—

- (a) a document or article carried on, or by the driver of, a vehicle, or
- (b) a document produced in pursuance of this Act,

is a document or article in relation to which an offence has been committed under section 16 or 17, A may seize that document or article.

(2) Where—

- (a) a document or article is seized under subsection (1),
- (b) no person has, within 6 months of the date on which the document or article was seized, been charged with an offence in relation to it under section 16 or 17, and
- (c) the document or article is still detained,

then any of the persons mentioned in subsection (3) may make an application to a court of summary jurisdiction.

(3) The persons who may make an application under subsection (2) are—

- (a) an authorised person;
- (b) the driver or owner of the vehicle; and
- (c) the person from whom the document or article was seized.

(4) On an application under subsection (2), the court of summary jurisdiction shall make such order respecting the disposal of the document or article, and award such costs, as the justice of the case may require.

(5) For the purposes of subsection (1), the power to seize includes a power to detach from a vehicle.

COMMENTARY ON CLAUSE 26

Offences under section 16 and 17 relate to forgery and false statements respectively.

Subsections 2 and 3 provide that where a document/article has been seized from a person and if they are not charged within six months, they can apply to the courts

(Magistrates' Court) for the document/article to be returned and can seek to be awarded costs.

Obtaining of information, etc. by authorised persons [j40]

27.—(1) Where an authorised person (A) has reasonable cause to believe that a vehicle is used for passenger transport—

- (a) the owner or driver of the vehicle,
- (b) any person who has made, is making or intends to make, use of that vehicle for passenger transport, or
- (c) any servant or agent of any person of the kind referred to in paragraphs (a) or (b),

shall furnish to A all such information, and produce for inspection all such documents, as A may reasonably require from that person for the purposes set out in subsection (2).

(2) The purposes referred to in subsection (1) are—

- (a) obtaining the name and address of the owner of the vehicle or of the person whose servant or agent the driver is, and
- (b) ascertaining, in relation to any passengers who have been, or are being, or are to be, carried on the vehicle for reward particulars of—
 - (i) the number of passengers;
 - (ii) the places from which and to which the passengers have been, are being, or are to be, carried;
 - (iii) the reward for the carriage of passengers.

PART 4

(3) The owner or occupier of any premises entered by an authorised person (A) under section 25, or any servant or agent of any such person, or any person found on any such premises, shall give to A such information as it is in the person's power to give as to—

- (a) the name and address of the owner of any vehicle used for passenger transport which is kept in or on those premises or of the person whose servant or agent the driver of any such vehicle is;
- (b) the matters referred to in subsection (2)(b)(i), (ii) and (iii), in relation to any passengers who have been, are being, or are to be, carried on any such vehicle kept in or on those premises;
- (c) any use of those premises in connection with passenger transport.

(4) An authorised person (A) may take copies of any documents—

- (a) produced under this section; or
- (b) relating to passenger transport, being documents which are found by the authorised person or constable on any vehicle or premises entered under section 25;

and for that purpose A may detain any document or vehicle for such time as is required for such copying.

Obstruction of authorised persons [j41]

28. Any person who—

- (a) wilfully obstructs an authorised person acting in the exercise of functions under this Act,
- (b) without reasonable cause fails to give an authorised person (A) any information, or to produce any documents, or to allow A to copy any documents, being information or documents which A may reasonably require of that person for the purpose of the exercise of those functions,
- (c) prevents, or attempts to prevent, any other person from giving any such information to any authorised person, or
- (d) in giving any such information to any authorised person makes any statement which that person knows to be false in a material particular,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding 6 months, or to both.

COMMENTARY ON CLAUSE 28

Clause 28 creates an offence of obstructing an authorised person subject to a fine of up to £1000 (level 3 on the standard scale as set by the Fines and Penalties (Northern Ireland) Order 1984) or imprisonment of up to six months.

Exercise of enforcement powers: authorised persons and constables [j42]

29.—(1) The powers conferred on an authorised person by this Act are exercisable on production by that person, if so required, of that person's authority.

(2) A constable may exercise the functions of an authorised person under this Act, but it shall not be necessary for a constable in uniform to produce any authority pursuant to subsection (1).

(3) Section 28 applies in relation to a constable as it applies in relation to an authorised person.

Evidence by certificate [j43]

30.—(1) In any proceedings for an offence under this Act a certificate such as is mentioned in subsection (2) shall be evidence of the facts stated in it.

(2) The certificate referred to in subsection (1) is a certificate issued by the Department which states—

- (a) that, on any date, a person was or was not the holder of a permit;
- (b) that, by virtue of a direction given by the Department under regulations made under section 14(2)(b) or (3), a person is to be treated as having been the holder of a permit on any date;
- (c) the date of the coming into force of a permit;
- (d) the date on which a permit ceased to be in force;
- (e) the terms and conditions of a permit;

- (f) that a person is by virtue of an order of the Department disqualified from holding or obtaining a service permit, either indefinitely or for a specified period;
- (g) that a direction, having effect indefinitely or for a specified period, has been given by the Department under section 11(3) in relation to any person;
- (h) that a service permit was on any date or during any specified period suspended by virtue of a direction given by the Department under section 10(1); or
- (i) that, by virtue of a direction given by the Department under regulations made under section 14(2)(a), a service permit is to be treated as having been suspended on any date or during any specified period.

(3) Any such certificate which purports to be issued by the Department shall be taken to be so issued unless the contrary is proved.

Prosecutions [j45]

31.—(1) Proceedings for an offence under any of the provisions of this Act shall not be instituted except by the Department or a constable.

(2) Article 10 of the Road Traffic Offenders (Northern Ireland) Order 1996 (NI 10) (time for bringing summary proceedings for certain offences) shall apply to an offence under section 5(2) or 17(1).

PART 5

GRANTS

Approved capital expenditure [j776]

32.—(1) The Department may pay grants towards approved capital expenditure incurred or to be incurred in—

- (a) providing vehicles;
- (b) providing, improving or developing facilities for passenger transport.

(2) In this section—

“approved” means approved by the Department;

“capital expenditure” means expenditure appearing to the Department to be of a capital nature;

“expenditure”, in relation to the provision of a vehicle by a person or body, includes, where the vehicle is provided by being manufactured or wholly or partly constructed by that person or body, such sum as appears to the Department to be properly attributable to its provision by that person or body in that manner.

PART 5

COMMENTARY ON CLAUSE 32

This clause replaces the power under Article 6 of the Transport (Northern Ireland) Order 1977 to pay grant to NITHC for the purchase of vehicles. This new clause

does not restrict the payment of grants to NITHC. This will allow the Department to provide capital grant to other operators for the purchase of vehicles, for example, the operator of rapid transit services.

Services for benefit of certain sections of the public [j1G]

33.—(1) The Department may pay grants towards expenditure incurred or to be incurred in—

- (a) the provision of services appearing to the Department to be wholly or mainly for the benefit of members of the public who have a disability or are elderly or live in rural areas;
- (b) the provision, maintenance or improvement of—
 - (i) any motor vehicle, equipment or other facilities provided wholly or mainly for the purpose of facilitating travel by members of the public who have a disability; or
 - (ii) any equipment or facilities specially designed or adapted for that purpose which are incorporated in any motor vehicle, equipment or other facilities not provided wholly or mainly for that purpose.

(2) In subsection (1) “services” means services provided under a service agreement or the use of a vehicle under a permit granted under section 10B of the 1967 Act.

BACKGROUND POLICY

The Transport Programme for People with Disabilities and the Rural Transport Fund were established in the 1990s to make transport more accessible for people, who by reason of age, disability or rural location, find it difficult or impossible to use mainstream public transport.

Since then, the Department has been funding community and voluntary sector transport operators for this purpose, including support to Rural Community Transport Partnerships to deliver rural transport and to Door-to-Door operators to deliver urban services. The Bill proposes to place the legislative authority currently being relied on onto a firmer statutory footing.

COMMENTARY ON CLAUSE 33

This clause replaces the current power under section 75A of the Transport Act (Northern Ireland) 1967. It expands on the sections of the public to which grants are payable to include members of the public who are elderly and those who live in rural areas.

Services in certain areas [j11T]

34. The Department may pay grants for the purpose of securing the provision of passenger transport in any area, to any person providing, or proposing to provide, it in that area under a service agreement, if the Department is satisfied—

- (a) that it is necessary to meet the reasonable needs of persons in that area;

- (b) that what is being provided or proposed to be provided will be carried on efficiently and economically; and
- (c) that the person providing or proposing to provide it will, if grants are not made under this section, be unable or unwilling to carry on, or provide, it in an efficient and economic manner.

COMMENTARY ON CLAUSE 34

This clause replaces the current power under section 11 of the Transport Act (Northern Ireland) 1967 to pay grants for securing the provision of passenger transport, taking account of the new service delivery arrangements. This will allow the Department to compensate operators who are contracted to carry out a public service obligation and to pay grants to support service provision in circumstances where the operator would not otherwise be able or willing to provide the service.

This power is to pay grants for securing the provision of “passenger transport”, which is defined as “public passenger transport services, excluding rail services and the use of a vehicle under 10B of the 1967 Act”. This allows the Department to make payments to contracted operators for carrying out public service obligations as well as continuing to pay grant for services run by community transport providers.

Advice and information, etc. [j513]

35. The Department may pay grants to any person towards expenditure incurred or to be incurred in the provision of advice, information, support or training relating to passenger transport.

BACKGROUND POLICY

In order to support the community transport sector, the Community Transport Association offers training, advice and information to its members and receives funding from the Department to do so. The Department currently provides this funding through the annual budgetary legislation. Clause 35 provides specific legislative provision for this funding, thus avoiding the need to use the current more cumbersome approach.

Supplementary [j514]

36. If the Department considers it appropriate in connection with any provision of, or the purposes of, this Act, but has not power to do so under any other provision of this Part, the Department may pay such grants to such persons as it considers appropriate.

PART 5

Terms, conditions and approval of Department of Finance and Personnel [j512]

37.—(1) Grants made under this Part shall be subject to such terms and conditions as the Department may, with the approval of the Department of Finance and Personnel, determine.

(2) Grants shall not be made under this Part without the approval of the Department of Finance and Personnel.

(3) Subsection (2) has effect subject to any direction given to the Department by the Department of Finance and Personnel.

COMMENTARY ON CLAUSE 37

Clause 37 requires grants made under this Part of the Bill to be subject to the approval of DFP, as the Department with overall responsibility for public expenditure. DFP has confirmed that it is content with the financial provisions of the Bill.

PART 6

MISCELLANEOUS AND SUPPLEMENTARY

Acquisition of land by agreement or compulsorily [j110R]

38.—(1) The Department may, for any purpose in connection with its functions under this Act, acquire by agreement or compulsorily any land.

(2) Article 113 of the Roads (Northern Ireland) Order 1993 (NI 15) (vesting orders) shall apply for the purposes of subsection (1) as it applies for the purposes of Article 110 of that Order.

COMMENTARY ON CLAUSES 38 TO 40

Clauses 38 to 40 provide for the acquisition and disposal of land, including powers for the Department to obtain information as to ownership of land and to enter onto land. A copy of Articles 113-120 of the Roads (Northern Ireland) Order 1993 is attached.

Disposal of land acquired under section 38 [j114R]

39.—(1) The Department may dispose of any land acquired under section 38 (acquisition of land by agreement or compulsorily).

(2) Section 5 of the Stormont Regulation and Government Property Act (Northern Ireland) 1933 (c. 6) shall not affect the disposal of land acquired under section 38.

Powers to obtain information and enter on land [j118R]

40.—(1) Article 118 of the Roads (Northern Ireland) Order 1993 (NI 15) (power to obtain information as to ownership of land) shall apply in relation to this Act as it applies in relation to that Order.

(2) Articles 119 and 120 of that Order (powers to enter on land) shall apply for the purposes of this Act but as if references in Article 119 to that Order were references to this Act.

Appointment of directors of N.I. Transport Holding Company [j47A]

41. In section 47 of the 1967 Act (establishment of the Northern Ireland Transport Holding Company), after subsection (3) there shall be inserted the following subsection—

“(3A) Section 18(2) of the Interpretation Act (Northern Ireland) 1954 (c. 33) shall apply to appointments under this section.”.

COMMENTARY ON CLAUSE 41

Clause 41 of the Bill applies section 18(2) of the Interpretation Act (Northern Ireland) 1954 to appointments made to the Northern Ireland Transport Holding Company under section 47 of the Transport Act (Northern Ireland) 1967. The effect of this is to provide the Department with a clear power to terminate appointments made under this section.

This clause has been included in the Bill to comply with the requirement to ensure that, where the Department has the power to make public appointments, it should also have clear authority to terminate that appointment. This requirement arose out of a recommendation of the Public Accounts Committee’s report on the Hospitality Association of Northern Ireland: A Case Study in Financial Management and the Public Appointments Process.

OFMdFM accepted this recommendation and asked all Departments to review their current legislation and, where necessary, to outline any plans to amend existing legislation.

Advice from the Departmental Solicitors’ Office was that there was currently no specific power to terminate appointments made to NITHC under the Transport Act (Northern Ireland) 1967 and that such provision could be made by applying section 18(2) of the Interpretation Act (Northern Ireland) 1954.

Conduct of persons at bus stations [j100]

42.—(1) The Department may make regulations—

- (a) for the purpose of regulating the conduct of persons at or near bus stations; and
- (b) conferring powers on authorised persons for the purpose of the enforcement of regulations made under this section.

(2) In this section—

“authorised persons”, in relation to a bus station, means any persons authorised in writing by a designated operator for the purpose of regulations made under this section or any constables;

“bus station” means any place used by a designated operator in connection with the provision of services under a service agreement or a service permit to the extent that the public has access to it, excluding any area to which byelaws under section 57 of the 1967 Act (power of railway undertaking to make byelaws) apply;

“designated” means designated by the Department in relation to any premises;
“operator” means a person providing services under a service agreement or a service permit.

(3) Regulations under this section may provide that a person who contravenes a specified provision of regulations under this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

BACKGROUND POLICY

Currently, there are no provisions in place regulating the conduct of persons in bus stations. There are, however, provisions for regulating conduct in rail stations under section 57 of the Transport Act (Northern Ireland) 1967. Transport operators have identified a need for such provisions and a power to allow the Department to make regulations for regulating passenger conduct in bus stations has been included in the Bill. It is proposed that these regulations would provide for matters similar to those included in the NIR Byelaws.

It is proposed that it would be an offence not to comply with the regulations on passenger conduct, with the maximum fine level included on the face of the Bill. The table below shows the current fine levels relating to byelaws for railways. It is proposed that these fine levels will continue and the fine level for regulations for bus stations would be at the same level as byelaws for railways.

Offence	Current Fine
Regulations	
Not complying with byelaws for Railways	Level 3 (£1,000)

COMMENTARY ON CLAUSE 42

Clause 42 confers power on the Department to make regulations for the purpose of regulating conduct of persons in bus premises and power to make regulations conferring powers on operators for the enforcement of these regulations.

Under these arrangements, the Department designates an operator in relation to any premises. This designated operator then authorises, in writing, persons responsible for the enforcement of these regulations in those premises.

The definition of “bus station” excludes any area to which the railway byelaws apply. This is to prevent any duplication of powers or any ambiguity as to whether passengers would be subject to the railway byelaws or the proposed bus premises regulations in integrated bus / rail stations.

Shared transport facilities [j1STF]

43.—(1) In this section—

“direction” means a direction under regulations;

“P” means a person with whom the Department has entered into a service agreement;

“regulations” means regulations under this section;

“specified” means specified in a direction.

(2) Regulations may make provision enabling the Department to direct that any place used by P for the provision of services under a service agreement shall be made available in accordance with the direction for the provision of specified services by another person.

(3) Regulations may make provision as to matters which may or must be dealt with in a direction.

BACKGROUND POLICY

Currently all bus and rail stations are owned by NITHC/Translink and, with a few exceptions, are used exclusively for passengers of Translink services. Decisions regarding access to these facilities are a matter for NITHC/Translink, which has a duty to act commercially. This lack of access by licensed private operators causes inconvenience to the users of non-Translink services and is inconsistent with practices in other places where facilities are normally used by a variety of operators for the benefit of all passengers.

From the passenger’s point of view the current arrangements are unsatisfactory and confusing. Accordingly, the Department will require powers to direct that bus stations may be made available for use by other licensed bus operators, (i.e. those operators with a service agreement, issued with a service permit or service providers operating under grant awarded by the Department), can pick up and set down passengers in these locations where the travelling public would normally expect to board a public transport vehicle.

The Department would also require the power to make subordinate legislation to regulate the use and working of these facilities and to specify conditions for use of the stations. After consultation with NITHC/Translink and other public transport operators, the agency would specify the conditions under which other operators would be allowed access to the shared facilities. These would include:

- the level of access to be allowed;
- the services to be made available, including waiting space, equipment, training and customer information about the service;
- the level of charges to be levied on other operators using the shared facility; and
- any operating standards (defined either in the service agreement or service permit) that the non-Translink operator must meet, for example any additional insurance requirements necessary for the use of a particular facility.

COMMENTARY ON CLAUSE 43

Clause 43 allows the Department to direct, in the form of regulations, that any place used for the provision of services under a service agreement is to be made

available for the provision of other specified services. It also includes a power to make regulations as to matters which may or must be dealt with in directions. This could include, for example, health and safety requirements and insurance requirements.

Application of Act to partnerships [j53]

44. Regulations may provide for this Act to apply in relation to partnerships with such modifications as may be prescribed.

Supplementary provision [j3]

45.—(1) The Department may by order make such incidental, supplementary, consequential, transitory, transitional or saving provisions as it considers necessary or expedient for the purposes of, in consequence of or for giving full effect to this Act or any provision of it, or in connection with the coming into operation of any provision of this Act.

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

(3) The power conferred by this section is not restricted by any other provision of this Act.

(4) An order shall not be made under this section unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.

PART 6

COMMENTARY ON CLAUSE 45

This clause allows the Department to make, by order, any provisions which it considers necessary or expedient for the purposes of, in consequence of or for giving full effect to the Act.

This will allow the Department to ensure that the legislative provisions relating to the provision of public transport remain fit-for-purpose. The Department will be able to react and adapt to changes in the public transport system. It will also allow the Department to take account of any further legislative provisions required after some experience of administering the new Act.

Orders made under this power may amend, repeal or modify any statutory provision, including this Act and are subject to affirmative resolution of the Assembly.

Regulations - general [j4]

46.—(1) The Department may make regulations for any purpose for which regulations may be made under this Act, and for prescribing anything which may be prescribed under this Act, and generally for carrying this Act into effect.

(2) In particular, but without prejudice to the generality of subsection (1), the Department may make regulations with respect to the following matters—

- (a) the procedure on applications for, and the determination of questions in connection with, the issuing and variation of service permits;
- (b) the issue of service permits and the issue on payment of the prescribed fee of copies of service permits in the case of permits lost or defaced;
- (c) the notification to the Department of routes on which a service under a service permit has ceased to be provided;
- (d) the means by which vehicles may be identified, whether by plates, marks or otherwise, as providing a service under a service agreement or a service permit;
- (e) the custody, production, return and cancellation of service permits and of documents, plates and any other means of identification prescribed under paragraph (d);
- (f) ticketing machines and systems.

(3) Regulations under this Act shall be subject to negative resolution.

(4) Any person who contravenes a provision of regulations under this section, a contravention of which is declared by the regulations to be an offence, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) Regulations under this Act may contain such incidental, supplementary, consequential, transitory or saving provisions as the Department considers necessary or expedient.

COMMENTARY ON CLAUSE 46

This is a power to make general regulations for the purpose of carrying the Act into effect.

In addition, it includes specific matters for which the Department can make regulations:

- the procedure for the application for and issuing of service permits;
- fees payable for a replacement permit where lost or defaced;
- notification of routes where services under a permit are no longer being provided;
- the means by which vehicles operating services under agreement or permit can be identified;
- the custody, production, return and cancellation of service permits; and
- ticketing machines and systems.

This will allow the Department to make regulations in respect of the administrative procedures and operational workings of the functions of the Department under this Act.

Interpretation [j5]

47.—(1) In this Act—

“the 1967 Act” means the Transport Act (Northern Ireland) 1967 (c. 37);

“the 1995 Order” means the Road Traffic (Northern Ireland) Order 1995 (NI 18);

“authorised person”, except in section 42, means any person authorised in writing by the Department for the purposes of this Act;

“company” and “subsidiary” have the meanings given in section 1159 of the Companies Act 2006 (c. 46);

“the Consumer Council” means the General Consumer Council for Northern Ireland;

“the Department” means the Department for Regional Development;

“modification” includes addition, omission and alteration;

“owner”, in relation to any land in Northern Ireland, means a person, other than a mortgagee not in possession, who, whether in that person’s own right or as trustee for any other person, is entitled to receive the rack rent of the land or, where the land is not let at a rack rent, would be so entitled if it were so let;

“passenger transport”, except in the expression “public passenger transport services”, means—

(a) public passenger transport services excluding, except in sections 23(7) and 25(2), rail services; and

(b) the use of a vehicle under a permit under section 10B of the 1967 Act;

“prescribed” means prescribed by regulations;

“public passenger transport services” has the meaning given in section 1(3);

“public service contracts” has the same meaning as in Article 2 of Regulation (EC) No. 1370/2007 as amended from time to time;

“Regulation (EC) No. 1370/2007” means Regulation (EC) No. 1370/2007 of the European Parliament and of the Council of 23rd October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos. 1191/69 and 1107/70;

“regulations” means regulations made by the Department;

“reward” has the meaning in section 46(a) of the 1967 Act;

“road” has the same meaning as in Article 2(2) of the 1995 Order;

“service agreement” and “service permit” have the meanings given in section 1(4);

“statutory provision” has the same meaning as in section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33);

“Upper Tribunal” means the Upper Tribunal constituted under section 3 of the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(2) For the purposes of this Act, the driver of a vehicle, if it belongs to the driver or is in the driver’s possession under an agreement for hire, hire-purchase or loan, and in any other case the person whose servant or agent the driver is, shall be deemed to be the person using the vehicle.

(3) In its application to this Act, the Interpretation Act (Northern Ireland) 1954 (c. 33) has effect as if—

(a) in section 20 (offences by corporations), subsection (3) were omitted; and

(b) in section 24(1) (notice by post), the word “registering” were omitted.

Amendments and repeals [j59]

48.—(1) Schedule 1 (which contains amendments) shall have effect.

(2) The statutory provisions set out in the first column of Schedule 2 are hereby repealed to the extent specified in the second column of that Schedule.

(3) Part 5 of the Belfast Corporation Act (Northern Ireland) 1924 (c. iv) (omnibuses) is hereby repealed.

(4) The Department may by order subject to negative resolution—

(a) repeal any local or private Act in so far as it appears to the Department to be inconsistent with any provision of this Act;

(b) amend any such Act so as to render it consistent with the provisions of this Act.

Commencement [j2]

49.—(1) The following provisions of this Act shall come into operation on Royal Assent—

(a) sections 35, 37, 41, 45 and 47;

(b) this section; and

(c) section 50.

(2) The other provisions of this Act come into operation on such day or days as the Department may by order appoint.

(3) An order under subsection (2) may contain—

(a) such transitional provisions and savings;

(b) such supplementary, incidental or consequential provisions (including any provision amending this Act),

as the Department considers necessary or expedient in connection with the coming into operation of any of the provisions of this Act.

COMMENTARY ON CLAUSE 49

Clause 49 outlines the provisions of the Bill which will come into force immediately upon Royal Assent. These are:

- clause 35 – in respect of grants to the Community Transport Association;
- clause 37 – in respect of DFP approval of grants;
- clause 41 – relating to the appointment of directors of NITHC;
- clause 45 – power to make supplementary provision;
- clause 47 – interpretation (definitions used in the Bill);
- clause 49 – this clause relating to commencement; and
- clause 50 – short title of the Bill.

Transport

Clauses 35, 37 and 41 are not directly related to the reform of the arrangements for the provision of public transport and can come into force straight away as there is no reliance on the implementation arrangements for the reform.

Clauses 45, 47, 49 and 50 are general provisions in respect of the Act. Clause 45 will assist in making supplementary provision to support the transition from the current system to the new arrangements.

Short title [j1]

50. This Act may be cited as the Transport Act (Northern Ireland) 2010.

SCHEDULES

SCHEDULE 1

Section 48(1).

AMENDMENTS [S1]

COMMENTARY ON AMENDMENTS

There are a number of amendments which are consequential to the changes made to the current “Road Service Licence” System, most of which are to reflect the change of name and function of the Road Service Licence to Bus Operator’s Licence.

These are:

- **The Motor Vehicles and Road Traffic Act (Northern Ireland) 1930** – amendment to reflect name change of RSL to Bus Operator’s Licence
- **The Finance Act (Northern Ireland) 1966** – this Act deals with the payment of fuel duty rebate. This amendment reflects the change to the licensing arrangements in the definition of who is eligible to receive fuel duty rebate.
- **The Transport Act (Northern Ireland) 1967** – substitution of references to “Road Service Licence” to “Bus Operator’s Licence” to reflect the renaming and revised function of the licence under this Act.

The Motor Vehicles and Road Traffic Act (Northern Ireland) 1930 (c. 24)

1. In section 2 (conveyance of mails by public service vehicles), in subsection (3) for “road service” substitute “bus operator’s”.

The Finance Act (Northern Ireland) 1966 (c. 21)

2. In section 14 (grants to operators of bus services), in paragraph (e) of the definition of “operator” for the words from “road service licence” to “1967” substitute “service agreement or service permit under the Transport Act (Northern Ireland) 2010”.

The 1967 Act

3. In section 4 (grant of road service licences), in subsection (3) for “road service” substitute “bus operator’s”.
- 4.—(1) Amend section 5 (particulars to be provided by applicants) as follows.
 - (2) In subsection (1) for “road service” substitute “bus operator’s”.
 - (3) In subsection (2) for “road service” substitute “bus operator’s”.
 - (4) In subsection (3) for “road service” substitute “bus operator’s”.
 - (5) In subsection (4) for “road service” substitute “bus operator’s”.

Transport

5.—(1) In section 6 (functions as to grant of licences), amend subsection (1) as follows.

(2) For “road service” in the first place where it occurs substitute “bus operator’s”.

(3) In paragraph (d) for “road service” in each place where it occurs substitute “bus operator’s”.

(4) In paragraph (f) for “road service” substitute “bus operator’s”.

(5) In paragraph (g) for “road service” in each place where it occurs substitute “bus operator’s”.

6.—(1) Amend section 6A (refusal of licence in certain cases) as follows.

(2) In subsection (1) for “road service” substitute “bus operator’s”.

(3) In subsection (4) for “road service” substitute “bus operator’s”.

7.—(1) Amend section 7 (conditions) as follows.

(2) In subsection (1) for “road service” substitute “bus operator’s”.

(3) In subsection (1A) for “road service” substitute “bus operator’s”.

(4) In subsection (1B) for “road service” substitute “bus operator’s”.

(5) In subsection (2) for “road service” substitute “bus operator’s”.

(6) In subsection (2A) for “road service” substitute “bus operator’s”.

(7) In subsection (3) for “road service” substitute “bus operator’s”.

8. In section 7A (conditions as to matters required to be notified), in subsection (1) for “road service” substitute “bus operator’s”.

9.—(1) Amend section 8 (duration of licences) as follows.

(2) In subsection (1) for “road service” substitute “bus operator’s”.

(3) In subsection (2) for “road service” in each place where it occurs substitute “bus operator’s”.

(4) In subsection (2A) for “road service” in both places where it occurs substitute “bus operator’s”.

(5) Omit subsection (3).

(6) In subsection (4) for “road service” substitute “bus operator’s”.

10.—(1) Amend section 9 (fees) as follows.

(2) In subsection (1)(a) for “road service” substitute “bus operator’s”.

(3) In subsection (2) for “road service” substitute “bus operator’s”.

11.—(1) Amend section 10 (revocation and suspension) as follows.

(2) In subsection (1) for “road service” substitute “bus operator’s”.

(3) In subsection (2) for “road service” substitute “bus operator’s”.

(4) In subsection (3) for “road service” in each place where it occurs substitute “bus operator’s”.

(5) In subsection (3A) for “road service” substitute “bus operator’s”.

Transport

- (6) In subsection (4) for “road service” substitute “bus operator’s”.
- (7) In subsection (5) for “road service” substitute “bus operator’s”.
12. In section 10A (exemption from licensing requirements of certain motor vehicles used under other permits), in subsection (1)—
- (a) for “road service licence) and” substitute “bus operator’s licence);”;
 - (b) after “thereof)” insert “and section 1(7) of the Transport Act (Northern Ireland) 2010 (requirement of service agreement or service permit)”.
13. In section 31 (records of licences), in subsection (1) for “road service” substitute “bus operator’s”.
14. In section 45 (regulations for purposes of Parts 2 and 4), in paragraph (f) for “road service” substitute “bus operator’s”.
- 15.—(1) Amend section 46C (financial standing of road passenger transport operators) as follows.
- (2) In subsection (1) for “road service” substitute “bus operator’s”.
 - (3) In subsection (2) for “road service” substitute “bus operator’s”.
- 16.—(1) Amend section 46D (professional competence of road passenger transport operators) as follows.
- (2) In subsection (1) for “road service” in both places where it occurs substitute “bus operator’s”.
 - (3) In subsection (2) for “road service licence” substitute “licence under Part 2”.
 - (4) In subsection (3)(a) for “road service licence” substitute “licence under Part 2”.
 - (5) In subsection (5) for “road service” substitute “bus operator’s”.

Section 48.

SCH. 1

SCHEDULE 2

REPEALS [S2]

Short Title	Extent of repeal
The Transport Act (Northern Ireland) 1967 (c. 37)	In section 5(1), paragraphs (b) and (c). In section 6(1), the words from “have regard” in the first place where they occur to “licences, and” in the first place where they occur, the word “shall” in the second place where it occurs, and paragraphs (a), (b), (h) and (i). Section 6(2) and (3).

Transport

Short Title	Extent of repeal
The Transport (Northern Ireland) Order 1977 (NI 10)	Section 8(3). Section 11. Section 75A. In section 81(1), the definition of “road service licence”. Article 6.
The General Consumer Council (Northern Ireland) Order 1984 (NI 12)	In Part 1 of Schedule 2, in the second paragraph, “6(2) and (3)”.
The Transport (Amendment) (Northern Ireland) Order 1990 (NI 7)	Article 6.
The Taxis Act (Northern Ireland) 2008 (c. 4)	In section 8, paragraph (a). Sections 9 to 11. Section 54(3).