



**Bill Research Paper 14/02**

**12 April 2002**

# **RAILWAY SAFETY BILL**

The Railway Safety Bill was introduced to the Assembly on 18 February 2002. This Bill Paper examines the background to the Bill, considers its nine clauses and two schedules individually, and comments on two key aspects of the Bill.

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## SUMMARY OF KEY POINTS

1 The Railway Safety Bill was introduced to the Assembly on 18 February 2002. DRD states that the principal policy aim of the Bill is to provide a legislative basis for modern, safe travel by railway.

2 Although railways in Northern Ireland have a good safety record, legislation governing the railways is outdated. Responsibility for ensuring rail safety falls to NIR *'almost at its own discretion'*. A recent comprehensive report on railway safety concluded that, with some exceptions, NIR operated at *'safety risk levels which are not unreasonable.'* However, it stated that action was needed in order to strengthen safety in certain specific areas and highlighted the need for new railway safety legislation.

3 The A D Little report also highlighted the need to invest in safety. It estimated that investment of approximately £183 million was required in order to implement its recommendations.

4 The Bill has nine clauses and 2 schedules:

- Clause 1 has the effect of allowing DRD to make regulations in respect of railway safety. DRD's stated intention is to make regulations requiring safety cases to be made.
- Clause 2 provides DRD power to make regulations giving it a veto over certain types of railway development.
- Clause 3 gives DRD power to make regulations requiring and governing the reporting to it of certain accidents, or situations involving risk of accident.
- Clause 4 empowers DRD to give a direction to a railway operator, imposing maximum speeds and maximum weights.
- Clause 5 (with Schedule 1) makes provision for the placing of signs and barriers on or near a private road or path which crosses a railway.
- Clauses 6-9 deal with interpretation, amendments and repeals, commencement, and the short title.
- Schedule 1 contains the detailed provision provision for the placing of signs and barriers and is given force by clause 5.
- Schedule 2 contains repeals of existing legislation.

5 The Bill is enabling rather than prescriptive legislation. Detailed safety provisions will follow by regulations made under powers provided by the Bill. This approach has been criticised.

6 DRD intends – but is not required – to use its powers under the Bill to establish a 'safety case' model of railway safety. A safety case is a formal, written document prepared by a rail operator and approved by a supervising authority. It should include information about the operator's activities, organisation, and safety systems.

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## 1. INTRODUCTION

1.1 The Railway Safety Bill ('the Bill') was introduced to the Assembly on 18 February 2002. This Bill Paper, prepared by Research and Library Services, is intended to assist the Assembly in considering the Bill.

1.2 It does so by:

- examining the background to the Bill;
- examining its clauses and schedules individually; and
- commenting on two key aspects of the Bill (its legislative model, and the organisational model which the Bill will be used to implement in Northern Ireland).

1.3 Annex 1, prepared by Roisin Kelly and Lucia Wilson, examines the public finance implications of the Bill. Annex 2, prepared by Tim Moore, comments on the equality screening performed on the Bill.

## 2. BACKGROUND

2.1 This section examines some useful background information. It considers:

- the need to update safety legislation
- a recent review of railway safety in Northern Ireland
- the connection between investment and safety; and
- DRD's consultation on a draft Bill.

### OUTDATED SAFETY LEGISLATION

2.2 Although railways in Northern Ireland have a good safety record, legislation governing the railways has for some time been recognised as outdated.<sup>1</sup> The Northern Ireland Transport Holding Company\* ('NITHC') has pointed out that responsibility for ensuring rail safety falls to Northern Ireland Railways ('NIR') '*almost at its own discretion*'.<sup>2</sup> A more critical view is that the existing legislation is '*quite inadequate*'.<sup>3</sup>

2.3 Following three minor incidents in 1998, NITHC commissioned a report on rail safety. The report of the Strategic Safety Review of Northern Ireland Railways – known as the A D Little report<sup>4</sup> – was delivered to Translink in March 2000.

2.4 Although the network is not being operated unsafely, there are some risks to public safety, and therefore to the survival of the railways: an unsafe railway network may be forced to close on the grounds of public safety, inefficiency, and ineffectiveness. Mr J Byrne MLA suggested during an Assembly debate that '*there is a risk to public safety... The reality is that our railways are safe, but only because trains move quite slowly.*'<sup>5</sup>

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\* Northern Ireland Transport Holding Company ('NITHC') is the statutory body responsible for public transport in Northern Ireland. Translink is the brand name of the integrated public transport operation of Northern Ireland Railways, Citybus and Ulsterbus, three subsidiaries of NITHC.

## **THE A D LITTLE REPORT**

2.5 Following three minor incidents in 1998, NITHC commissioned a report on rail safety. The report of the Strategic Safety Review of Northern Ireland Railways – known as the A D Little report<sup>6</sup> – was delivered to Translink in March 2000.

2.6 The A D Little report concluded that, with a few exceptions, NIR operated at ‘safety risk levels which are not unreasonable.’<sup>7</sup>

2.7 The report recognized that generally there were *strengths in certain elements of safety management, notably in accident investigation and emergency planning. At the workplace level there is a high sense of responsibility for safety of self and others, and low tolerance for risk-taking behaviour. At the senior management level, there is evidence of high commitment to safety improvement.*<sup>8</sup>

2.8 However, it stated that action was needed in order to strengthen safety in certain specific areas, including:

- safety management (including ‘the lack of railway-specific safety legislation’, governance arrangements, safety planning, auditing, and resources for standards development); and
- level crossings (including high risk levels at some crossings).<sup>9</sup>

## **A D LITTLE REPORT RECOMMENDATIONS**

2.9 The report’s first recommendation was that NITHC should ‘actively lobby the government for modernisation of Northern Ireland’s railway-specific legislation’. DRD has now brought forward the Railway Safety Bill.

2.10 However, in light of DRD’s decision to bring forward an enabling Bill rather than comprehensive or prescriptive safety legislation\* – which will result in a delay before a complete legislative safety regime is in place – Members may wish to consider what other safety recommendations DRD and NITHC have acted on. For example, the report recommended:

- improving governance of safety by establishing a Safety Committee at NITHC Board level;
- giving a particular NITHC Board member the duty to challenge on safety issues;
- renewing train radio systems and provide monitoring equipment for safety-related communications;
- relaying 123 miles of track; and
- renewing station footbridges at Antrim, Ballymoney and Coleraine.<sup>10</sup>

## **INVESTMENT REQUIRED TO MEET A D LITTLE REPORT RECOMMENDATIONS**

2.11 Investment is directly related to safety. The A D Little report highlighted the need to secure adequate resources to ensure safety, concluding that ‘a long history of limited availability of funds for renewals and upgrades has contributed significantly to many of the inadequacies identified, particularly those relating to infrastructure and

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\* This issue is considered below

*rolling stock condition*'.<sup>11</sup> It estimated that investment of approximately £183 million was required in order to implement its recommendations.

2.12 NITHC recognises that '*under-investment has put rail safety and hence the future of the railways in jeopardy*'.<sup>12</sup> The Railways Task Force<sup>13</sup> described the consequences of failing to make that investment in safety and the railways generally, and the needs of a long-term solution:

*Unless this investment takes place, progressive closure is inevitable... It is clear that the long-term solution will require a significant input from the private sector and other sources.*<sup>14</sup>

2.13 The general public appears to see devolution as an opportunity to make local decisions about whether that investment in safety and the railway generally should be made. During the Railways Task Force's public consultation,

*a range of views on how ... investment should be secured was presented and there was unanimous support for the argument that the Assembly should give the lead. In this context many implored the Assembly to demonstrate its faith in the region's future by investing in an enhanced railway network which, it was argued, is needed to support social and economic growth in the years ahead.*<sup>15</sup>

2.14 The Minister for Regional Development, Mr P Robinson MP MLA, has indicated that in preparation of the Regional Transportation Strategy he has '*a presumption towards rail*'.<sup>16</sup> However this would require considerable levels of investment. The Minister has highlighted this fact, and clearly laid out the relationship between investment, safety and the continued existence of railway services, and also the Assembly's role in deciding the issue:

*The stark reality is that if we do not succeed in obtaining more resources for the railways in the spending review, then a large proportion of the railway network will close down in a piecemeal fashion. Northern Ireland Railways has repeatedly said that it will not run trains unless it is satisfied that it is safe to do so. It has my full support on that.*

*Unless more resources are allocated to improve the infrastructure of the railways, it will become unsafe to run trains on many lines. Unless Northern Ireland Railways can purchase new trains the level of service will deteriorate as old trains repeatedly break down and are taken out of service permanently...*

*The Assembly will decide to have either a modern and positively subsidised rail service that we can all be proud of, or we will, de facto, end up dramatically curtailing that network. The days of indecision are over. The A D Little review simply confirmed what we have known for years. It is time to put up, or close up.*<sup>17</sup>

## **CONSULTATION ON THE DRAFT BILL**

2.15 DRD published a draft Bill for consultation in July 2001. With the exception of one new clause (and a related schedule)<sup>18</sup> relating to signs and barriers where railways cross private land (inserted at the request of NIR),<sup>19</sup> the Bill before the Assembly does not differ from the draft Bill in any substantial respect.

### 3. THE CLAUSES AND SCHEDULES OF THE BILL

3.1.1 The Bill has nine clauses and two Schedules.

#### CLAUSE 1: SAFETY OF RAILWAYS

3.2.1 The Explanatory and Financial Memorandum published with the Bill ('the EFM') states that

*This clause provides for existing legislation relevant to rail safety to be made "existing statutory provisions" under the terms of Part II of the Health & Safety at Work (Northern Ireland) Order 1978 (NI 9). The legislation in question is listed in subsection (4) of the clause. This will allow the Department to make regulations using the broader range of general powers available in that Order. The intention is to use these powers to make regulations under Article 17 of that Order requiring safety cases to be made. Access to these general powers will also allow the Department to implement relevant European legislation in the Railway Safety field. These powers are modelled on section 117 of the Railways Act 1993 (c. 43).*

3.2.2 This clause has the effect of allowing DRD to make regulations in respect of railway safety under the Health and Safety at Work (Northern Ireland) Order 1978 ('the HSW Order').<sup>20</sup>

3.2.3 DRD's stated intention is then to use a particular power under the HSW Order to make regulations requiring 'safety cases' to be made.<sup>21</sup> A safety case is a formal, document prepared by a rail operator and approved by a supervising authority, that includes information about its and safety measures. The safety case model is considered below.

3.2.4 DRD does not explain in the EFM why the Bill employs this approach. An alternative, as discussed below, would be to draft relevant provisions into the Bill. NITHC found the DRD approach unusual. It commented in its response to the draft Bill that its legal adviser

*questions the logic and necessity of incorporating a number of circa 19th century rail safety provisions (some of which may not even be consistent with the current Northern Ireland system) into the Health & Safety Order, only for these to be then repealed and replaced by the various pieces of subordinate legislation. The Bill goes so far as to amend section 7 of the Regulation of Railways Act 1871 (relating to inquiries into accidents) which will, in any case, have to be repealed in due course and replaced by up-to-date provisions governing this area. This circuitous route could be bypassed by simply including the subordinate legislation in the Bill.<sup>22</sup>*

3.2.5 Clause 1 allows for – but does not **require** – the making of regulations in relation to safety cases. As suggested above, **Members may wish to consider** whether the Bill should contain an explicit statutory duty on every operator, requiring it to prepare a safety case – even if further detail is to be left to regulation.

3.2.6 It is interesting to note that the safety case model proposed by DRD may not directly cover all accidents or aspects of safety on the railways. The Minister referred during Second Stage debate to the accidental death of a construction worker on track at the Tillysburn Bridge construction site. He noted that at the time of the accident, a

construction company had, by contract, accepted responsibility of the track from NIR, and stated that

*The accident remains under investigation, and we must await the outcome before drawing any conclusions. The investigation will focus on the cause of the accident and how it was not prevented by the safety plan that was put forward by the firm. The system is similar to that which will operate under the safety case regime. However, the Northern Ireland Railways safety case, when it is brought into operation, will not cover this type of situation directly. When external contractors are employed, it is their responsibility to operate a safety plan.*

3.2.7 Transport 2000 raised this issue in its submission to DRD, stating that the consultation on the draft Bill

*does not explain how safety cases are to be applied to contractors, third parties etc. The contractor, sub-contractor and sub-sub-contractor culture on GB railways has been a constant source of delay, accident and personal injuries.*

3.2.8 **Members may wish to consider** whether the Bill could be used to ensure that any safety case regime should be made more comprehensive and deal with such incidents directly, especially in light of the possibility of increased private sector involvement in rail operation.

3.2.9 DRD states it will use the same powers to ensure that the NI safety regime is compatible with that adopted in the Republic of Ireland, and also to implement European rail safety legislation. A European directive is under development. The matters it will deal with include:

- interoperability;
- issuing safety certificates, and their recognition in other Member States; and
- accident investigation.<sup>23</sup>

3.2.10 Finally, Members may note that regulations in relation to clause 1 are to be made by negative resolution. That appears to be because clause 1 does not in itself provide the regulation-making power – instead DRD will use powers given by the HSW Order, which provides for negative resolution. **Members may wish to consider** whether this is appropriate, or whether the HSW Order should be amended so as to provide for railway safety regulations to be subject to the confirmatory resolution procedure, giving the Assembly greater opportunity to scrutinise them.

## **CLAUSE 2: APPROVAL OF RAILWAY WORKS, PLANT AND EQUIPMENT**

3.3.1 The EFM states in relation to clause 2 that

*Existing legislation provides power to approve new railway infrastructure works and substantial remedial works. This clause provides powers to make regulations requiring prior departmental approval for such works. It will also provide powers to make similar regulations in respect of plant and equipment, including rolling stock. Prior approval is an important part of the safety regime. These powers are modelled on section 41 of the Transport and Works Act 1992 (c. 42), which does not extend to Northern Ireland. Once the secondary legislation has been introduced the powers in the old legislation to approve new works will be repealed.*



3.3.2 This clause gives DRD the power to veto certain types of railway development. Clause 2 (1) gives a power<sup>24</sup> to make regulations requiring that DRD approval be obtained before:

- (a) works, plant or equipment are first brought into use; or
- (b) works, plant or equipment are brought back into use after alterations have been made to them.

3.3.3 Clause 2 (3) provides that the regulations may allow DRD to:

- (a) dispense with compliance with regulations; or to
- (b) require compliance with regulations that would not otherwise apply.

3.3.4 There are no express controls on the exercise of this clause 2 (3) power to apply or waive regulations.<sup>25</sup> **Members may wish to consider** what criteria DRD may apply in the exercise of the power.

3.3.5 It is interesting to note that clause 2 (2) (c) provides that the regulations **may** prohibit the giving of false information to DRD.<sup>26</sup> **Members may wish to consider** whether the Bill should provide DRD with this discretion. As an alternative, the Bill could contain a prohibition, rather than the power to make a prohibition.

3.3.6 Furthermore, clause 2 (4) provides that regulations under clause 2 **may** make it an offence to contravene those regulations. It will be for DRD to decide whether it wishes to create such an offence. If it does not do so, it would not be an offence under the Bill for a person to deliberately provide false information in order to obtain prior approval for works, plant or equipment which are unsafe. **Members may wish to consider** whether the Bill should expressly create an offence of providing false information to DRD or other contraventions of regulations under clause 2.

3.3.7 It is also interesting to note that clause 2 (6) provides that the maximum penalty for any such offence would in any case not exceed level 5 on the standard scale (currently £5000). **Members may wish to consider** whether such an amount would act as either a sufficient deterrent or penalty, especially in a corporate context.

3.3.8 Regulations made under clause 2 will be made by negative resolution.<sup>27</sup> Amendment of the HSW Order would not appear to be required to alter this, as – unlike clause 1 – clause 2 gives DRD the power to make the relevant regulations. **Members may wish to consider** whether negative resolution is appropriate.

### **CLAUSE 3: ACCIDENTS**

3.4.1 The EFM states in relation to clause 3 that

*Existing legislation provides powers to carry out investigations following accidents. This clause provides powers to make regulations requiring accidents to be reported to the Department. The clause is similar to section 43 of the Transport and Works Act 1992 (c. 42) and will enable accident reporting and follow-up action, to include investigations where appropriate, to be brought into line with modern practice.*

3.4.2 Clause 3 (1) and (2) give DRD power to make regulations requiring and governing the reporting to it of:

- (a) accidents involving death or injury; and
- (b) circumstances involving a danger of death or injury.

3.4.3 Clause 3 (3) gives DRD a wide power to waive or impose the regulations (similar to the power given by clause 2(3)), by:

- (a) dispensing with compliance with the regulations; or
- (b) requiring compliance with regulations that would not otherwise apply.

3.4.4 There are no express controls on the exercise of this power to apply or waive regulations.<sup>28</sup> **Members may wish to consider** what criteria DRD may apply in the exercise of the power.

3.4.5 Clause 3 (4) provides that it is an offence to fail to make a report as required by regulations. It is interesting to compare the express creation of this offence with the discretion to create an offence given by clause 2.

3.4.6 The maximum penalty for failing to make a report would not exceed level 2 on the standard scale (currently £500).<sup>29</sup> It is interesting to compare this with the maximum penalty for the offence committed by a car driver who fails to report a road traffic accident causing injury when required to do so by law: level 5 (currently £5000) and/or up to six months imprisonment, and 5-10 penalty points on the driving licence.<sup>30</sup> **Members may wish to consider** whether £500 would act as either a sufficient deterrent or penalty.

3.4.7 Regulations made under this clause will be made by negative resolution. Members may wish to consider whether this is appropriate.

#### **CLAUSE 4: DIRECTIONS LIMITING SPEED AND LOADS**

3.5.1 The EFM states in relation to this clause that

*Currently there is no Northern Ireland legislation giving the Department power to give directions limiting speeds and loads. This clause, mirroring section 45 of the Transport and Works Act 1992 (c. 42), provides such powers, which are required for the safe regulation of all railways. However they are likely to be especially useful for the appropriate regulation of heritage railways. It may be possible to exempt heritage operators from the burden of producing a full safety case where their risk assessment indicates that they are content to operate light trains at relatively low speeds.*

3.5.2 This clause empowers DRD to give a direction to a railway operator, imposing maximum speeds and maximum weights.

3.5.3 Failure to observe a direction is an offence punishable by a fine not exceeding level 5 on the standard scale (currently £5000). **Members may wish to consider** whether £5000 would act as either a sufficient deterrent or penalty.

3.5.4 **Members may also wish to consider** what authority will supervise such directions, and how it will ensure that the operator observes them.

**CLAUSE 5: SIGNS AND BARRIERS AT PRIVATE CROSSINGS**

3.6.1 The EFM states that

*This clause makes provision for the placing of signs and barriers on or near a private road or path which crosses a railway. Contravention of this clause will, on summary conviction, attract a fine not exceeding level 3 on the standard scale. These powers are modelled on sections 52 to 56 of the Transport and Works Act 1992 (c. 42).*

3.6.2 This short explanation does not describe the extensive powers granted by clause 5. Nor does it mention some obvious intrusions into the right to enjoy property: the clause allows DRD to enter onto private land against the wishes of the owner, or to authorise a rail operator to do so. Compensation is not automatically payable to the owner. The EFM states however that ‘No human rights implications have been identified’.<sup>31</sup>

**ERECTION OF SIGNS AND BARRIERS**

3.6.3 Clause 5 gives effect to Schedule 1. Schedule 1 para 1 (1) provides that a railway operator may enter onto any privately owned land crossed by the railway and erect such crossing signs or barriers as are:

- (a) prescribed by regulations made by DRD, or
- (b) authorised by DRD.

3.6.4 Schedule 1 para 1 (2) provides that DRD may also direct an operator to erect signs or barriers.

3.6.5 Regulations made under Schedule 1 para 1 will be subject to negative resolution.<sup>32</sup> Members may wish to consider whether this is appropriate.

**RIGHT TO ENJOY PROPERTY**

3.6.6 There is a recognised human right to the peaceful enjoyment of property.<sup>33</sup> The Assembly has no legislative competence to enact any provision that is incompatible with that right, unless the public interest in protecting that right should be overridden by some competing public interest – such as public safety.<sup>34</sup> The Minister has made the following statement (as required by the Northern Ireland Act 1998): ‘In my view the Railway Safety Bill would be within the legislative competence of the Northern Ireland Assembly.’<sup>35</sup>

3.6.7 In the absence of a statutory or common law power, entry onto private land without the consent of the owner may be in breach of this right, and amount to a trespass. Schedule 1 goes on to provide various statutory powers to enter land to both railway operators and DRD.

3.6.8 **Members may wish to consider** whether the public interest in safe operation of the railways should outweigh the public interest of protecting the rights of an individual to enjoy property.

POWERS UNDER THE BILL TO ENTER ONTO LAND

3.6.9 Schedule 1 para 2 (2) and (4) provide that where the owner of private land\* does not consent to an operator entering onto the land for the purposes of erecting signs or barriers, DRD may authorise the operator to enter onto the land. In deciding whether to authorise, DRD must consider written representations made by the owner within a period six weeks of the operator's application to enter.<sup>36</sup> If DRD does authorise the operator to enter and erect, then it may, under Schedule 1 para 2 (5), require the operator to pay compensation to the owner.<sup>37</sup>

3.6.10 Schedule 1 para 2 (7) provides that an operator may enter onto land without consent in order to:

- (a) comply with a direction under Schedule 1 para 1 (2), or
- (b) maintain any lawfully erected sign or barrier.

3.6.11 As this power does not require authorisation under Schedule 1 para 2 (4), there appears to be no provision for compensation in such a circumstance. **Members may wish to consider** whether it is appropriate, and consistent with the right to enjoy property, that compensation can be ordered:

- when an owner withholds consent but is overruled by DRD (which then gives an operator authorisation to enter under Schedule 1 para 2 (4)),
- but not when DRD directs an operator to enter under Schedule 1 para 1 (2).

DEFAULT POWER TO ENTER

3.6.12 If the operator fails to erect a sign or barrier, as directed by DRD, or fails to maintain a lawfully erected sign or barrier, Schedule 1 para 2 (8) and para 3 (1) allow DRD itself to enter onto private land and perform the necessary works.<sup>38</sup>

3.6.13 Although DRD is then entitled to recover its expenses from the operator, it is not required to pay compensation to the owner, as an operator might be under Schedule 1 para 2 (5). **Members may wish to consider** whether it is appropriate, and consistent with the right to enjoy property, that compensation can be ordered:

- when an owner withholds consent but is overruled by DRD which gives an operator authorisation to enter under Schedule 1 para 2 (4),
- but not when DRD itself enters under Schedule 1 para 2 (8) and Schedule 1 para 3 (1).

3.6.14 It is also interesting to note that Schedule 1 para 3 does not appear to require DRD to consider any representations from the landowner before deciding to enter under Schedule 1 para 3 (1). **Members may wish to consider** whether this is appropriate, and consistent with the right to enjoy property.

CRIMINAL OFFENCE

3.6.15 Finally, Schedule 1 para 4 makes it an offence for any person to fail to comply with any requirement conveyed by a lawfully placed crossing sign, punishable by a fine not exceeding level 3 on the standard scale (currently £1000). **Members may wish to consider** whether £1000 would act as either a sufficient deterrent or penalty.

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\* Schedule 1 para 2 (9) provides a specific definition of owner. It includes most owners, including many tenants: *'In this paragraph "owner" means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple (whether in possession or reversion) and includes also a person holding, or entitled to the rents and profits of, the land under a tenancy, other than a tenancy for a month or any period less than a month.'*

3.6.16 However, the Bill does not make it a criminal offence for an operator to fail to erect a sign or barrier which is prescribed by regulations or directed by DRD.

**Members may wish to consider** whether such a failure should be an offence, or whether the default power of DRD to erect signs and barriers is sufficient protection of safety.

#### **CLAUSE 6: INTERPRETATION**

3.7.1 The EFM states that

*This clause provides for definitions of "the Department", "operator", "railway" and railway "vehicle" for the purposes of this Bill.*

3.7.2 Clause 6 defines 'operator', in relation to a railway, as  
*a person carrying on an undertaking which includes that system of transport, or the provision of transport services on that system.*

3.7.3 NIR is currently the only NI rail operator.<sup>39</sup> However, the Bill does not specifically refer to NIR, but instead refers to 'operators' throughout. It would therefore appear to be drafted so as to apply to any operator – public or private sector – that might in future be established. This may be important in relation to securing the necessary investment to ensure safety. **Members may wish to consider** this issue. Transport 2000 believes that privatisation in GB has impacted negatively on safety:

*We believe that the experience of privatisation in Britain and the concerns over safety raised with regard to the proposed PPP for the London Underground demonstrate that it is difficult if not impossible to create a regulatory regime that ensures that safety is not compromised in any way under privatisation or a PPP.<sup>40</sup>*

3.7.4 Clause 6 defines 'railway' as

*a system of transport employing parallel rails which:*

- (a) provide support and guidance for vehicles carried on flanged wheels;*
- and*
- (b) form a track which is of a gauge [sic] of at least 350 millimetres.*

3.7.5 This definition appears to include a light rail transit system, but not a monorail or guided bus route. Although a monorail is perhaps an unlikely development at present, Translink has considered the use of guided bus routes in Belfast.<sup>41</sup>

**Members may wish to consider** whether the Bill should extend to such services.

#### **CLAUSE 7: CONSEQUENTIAL AMENDMENTS AND REPEALS**

3.8.1 The EFM states that

*This clause provides for amendments to the Regulation of Railways Act 1871 (c.78). Clause 1(4)(b) makes the Regulation of Railways Act (1871) "existing statutory provision" (see commentary on clause 1). This clause amends that Act to refer to regulations made under this Bill. The definition of an accident is also extended. This clause also provides for the legislation listed in Schedule 2 to be repealed.*

3.8.2 DRD does not explain in the EFM the full effects of these amendments. They appear to relate to clauses 2 and 3, and have the effect of allowing the establishment

of inquiries or investigations into the causes of any accident. Such accidents may be required to be reported under regulations made under clause 3.

#### **CLAUSE 8: COMMENCEMENT**

##### 3.9.1 The EFM states that

*This clause provides for most of the Bill to come into operation two months after the date it receives Royal Assent. However, clauses 2 and 3 provide powers for the Department to make regulations that will replace existing legislation. Clause 7 and Schedule 2 are connected to clauses 2 and 3. This clause provides for clauses 2, 3 and 7 and Schedule 2 to come into operation later than the rest of the Bill. The intention is to bring these provisions into operation at the same time as the new regulations come into operation. This mechanism will ensure that the old legislation remains in force until it is superseded by the new legislation in the regulations.*

3.9.2 Although the EFM states that ‘most of the Bill’ will come into operation two months after Royal Assent, this amounts to only three of the five substantive clauses:

- clause 1 – power to regulate for safety cases
- clause 4 – power to direct maximum loads and speeds
- clause 5 – relating to the erection of signs and barriers on private land.

3.9.3 Clause 2 (relating to prior approval) and clause 3 (relating to accident reporting) will not come into operation until DRD so decides.

3.9.4 **Members may therefore wish to consider** what timetable DRD might provide in relation to preparing and laying all regulations under the Bill, and bringing clauses 2 and 3 into force. In a response to Translink, DRD indicated that it anticipated six main sets of regulations – but could not provide a timetable for their preparation or implementation.<sup>42</sup> The Minister provided some information in response to a question raised by the Chairperson of the Regional Development Committee during the Second Stage debate, by saying that

*Most subordinate legislation will follow almost immediately [on Royal Assent], subject to public consultation and consultation with the Assembly Committee. [Safety case regulations] will follow as soon as possible, allowing Northern Ireland Railways time to finalise its safety case and have it thoroughly examined.*

##### 3.9.5 The Minister stated that he intends

*to introduce most of those regulations following public consultation as soon as possible after the Bill becomes law. However, the safety case Regulations will require railway operators to prepare, and obtain acceptance of, a detailed safety case before being allowed to operate, or, in most cases, to continue to operate.*

*The timing of the introduction of the Regulations must be agreed with Northern Ireland Railways (NIR). It will have a great deal of work to do on the preparation of audited safety cases of all its activities and operations. I assure Members that the Department will continue to urge NIR to complete that work as quickly as is necessary, to deal with the serious issues.<sup>43</sup>*

3.9.6 **Members may wish to consider** how long the process of preparation, consultation and introduction might take.

#### **CLAUSE 9: SHORT TITLE**

3.10.1 This clause provides for the Bill to be called the Railway Safety Act (Northern Ireland) 2002.

#### **SCHEDULE 1**

3.11.1 This contains the provisions for the placing of signs and barriers at private crossings, given effect by clause 5, and is considered above.

#### **SCHEDULE 2**

3.12.1 This lists repeals of existing legislation considered by DRD to be no longer necessary due to new powers provided by the Bill.

### **4. TWO KEY ASPECTS OF THE BILL**

- 4.1 This section examines and comments on two key aspects of the Bill:
- its legislative model – the Bill is enabling rather than prescriptive, i.e. rather than provided detailed statutory provisions governing safety, it provides a power to DRD to do so by subordinate legislation; and
  - the organisational model which DRD intends to introduce under the Bill.

#### **THE LEGISLATIVE MODEL OF THE BILL: ENABLING RATHER THAN PRESCRIPTIVE**

4.2 As indicated above, the Bill does not contain detailed provisions, but instead empowers DRD to do so by subordinate legislation. This approach has been criticised as less satisfactory than introducing a comprehensive and detailed Bill.

#### **THE PRINCIPAL POLICY AIM OF THE BILL, AND THE LEGISLATIVE MODEL CHOSEN TO ACHIEVE IT**

4.2.1 DRD states that the principal policy aim of the Bill is to provide a '*legislative basis for modern, safe, travel by railway*'.<sup>44</sup> This would appear to accord with the AD Little report's recommendation of new safety legislation. However, rather than containing detailed safety provisions, the Bill instead only empowers DRD to lay down such detail by subordinate legislation. The Bill is therefore 'enabling' rather than 'prescriptive'.

4.2.2 It is interesting to consider DRD's statement that '*the introduction of updated legislation is the only possible means of achieving the required aim*'.<sup>45</sup> This statement does not indicate whether DRD considered the possibility of a comprehensive or prescriptive Bill.

4.2.3 NITHC, however, informed DRD during consultation on the draft Bill that '*NITHC/Translink believes that **comprehensive** rail safety legislation should be put in place as soon as possible*' (emphasis added).<sup>46</sup>

#### COMPARISON WITH GREAT BRITAIN

4.2.4 In fact the Bill employs an approach similar to that taken in Great Britain in the early 1990s:

*the Bill ... closely follows the much earlier GB model, i.e. by enabling subordinate legislation to be made, and allows amendment of existing legislation through provisions in the Health and Safety at Work (NI) Order 1978. The Bill is a short piece of framework rather than substantive legislation and closely follows relevant provisions of the English Railways Act 1993 and the Transport of Works Act 1992.*<sup>47</sup>

4.2.5 In the decade since those acts were passed, many regulations have been drafted and made in Great Britain. The detail of safety regulation of Great Britain's railways is contained in those regulations, rather than the acts.<sup>48</sup> NITHC stressed therefore that its

*overall view is that DRD is missing an ideal opportunity to put in place substantive legislation governing rail safety in Northern Ireland, taking into account the Regulations passed in GB over the last 8 years.*

4.2.6 NITHC went so far as to suggest that the very model of the draft Bill should be reconsidered, that it should be made prescriptive rather than enabling, and that regulations applying in Great Britain should be adapted and included as clauses of the Bill:

*In view of the substantial experience already gained in GB we suggest the best course to take would be to mirror the Regulations that have been passed in Britain, to ensure that as much substantive legislation as possible is introduced by this Act.*

4.2.7 However it is also important to note that Translink, while seeing the Bill as a missed opportunity, would now prefer it were to proceed, as long as the regulations 'follow quickly'.<sup>49</sup>

#### COMPARISON WITH THE REPUBLIC OF IRELAND

4.2.8 It is also interesting to compare the DRD approach with that adopted in the Republic of Ireland. Its Department of Public Enterprise introduced a Railway Safety Bill to Dáil Éireann last year ('the Irish Bill'). The Irish Bill is far more comprehensive than the Bill before the Assembly, and puts in place a strategic framework for the regulation of railway safety.<sup>50</sup> Much of the 19th century legislation that applies here – and is not repealed under the Bill – also applies in the Republic, but is to be repealed by the Irish Bill.<sup>51</sup> NITHC noted that the Irish Bill is designed to repeal

*much of the outdated 19th century legislation governing railway safety, and put in place a comprehensive regulatory code for railway safety ... In our view the approach taken by the Irish Bill is highly preferable. The current railway safety review process in Northern Ireland represents an ideal opportunity to implement a complete overhaul of railway safety legislation and put in place a complete code, as the Irish Government are seeking to do with the Irish Bill.*<sup>52</sup>



- 4.2.9 The Irish Bill, for example, contains substantive provisions including:
- the establishment of an independent Railway Safety Commission with wide-ranging powers of inspection, investigation and enforcement;<sup>53</sup>
  - a general duty on all railway undertakings to ensure, in so far as is reasonably practicable, the safety of persons in the operation of their railways;<sup>54</sup>
  - a general duty on the staff of railway undertakings and on other persons that in carrying out an activity they do not pose a danger to persons using the railway;<sup>55</sup>
  - an express statutory requirement on railway operators to prepare a safety case and implementing a safety management system;<sup>56</sup> and
  - a detailed description of the objective and subject matter of a safety case.<sup>57</sup>

4.2.10 NITHC has suggested that some provisions of the Irish Bill might be '*of useful application in the Northern Ireland Bill*'.<sup>58</sup> Moreover, during Second Stage debate, the Chairman of the Regional Development Committee, Mr A Maginness MLA, also raised the question of whether '*consideration [had been] given to drafting a single prescriptive Bill*', and suggested that the Irish approach might be a helpful model.<sup>59</sup>

#### COMMENTS ON DRD'S APPROACH

4.2.11 Mr J Byrne MLA said during the debate that

*the Railway Safety Bill does not address many of the safety issues. At this stage it cannot be regarded as a comprehensive piece of legislation that will safeguard passengers and Northern Ireland Railways staff with the necessary statutory safety mechanisms.*<sup>60</sup>

4.2.12 The Minister for Regional Development Mr P Robinson MLA MP responded in the debate to this issue by stating that '*it is a long-standing practice that such matters are dealt with in subordinate legislation.*'

4.2.13 He also stated that delays caused by preparation and consultation on the Bill were a '*particular reason*' why the Bill should not be prescriptive:

*Primary legislation is a time-consuming process, and I would not like changes in the legislation that had the potential to improve railway safety to be delayed for the 18 months or so that primary legislation could take.*

4.2.14 **Members may wish to consider** whether the Bill adopts the most appropriate legislative approach in all the circumstances.

### **THE ORGANISATIONAL MODEL ALLOWED FOR BY THE BILL: SAFETY CASES**

4.3 The DRD intends to use the Bill to establish a safety regime based on the 'safety case'. This approach was adopted in Great Britain in the early 1990s, but has been criticised. The Bill, however, does not expressly require DRD to establish such a regime, but leaves it with a wide discretion.

#### **THE 'SAFETY CASE' ORGANISATIONAL MODEL**

4.3.1 The basis of the organisational model which DRD intends to establish using the powers provided by the Bill is the use of the 'safety case'. All operators will be obliged to produce a safety case. An operator cannot carry on railway operations unless its safety case has been approved by a supervising authority.

4.3.2 A safety case is a formal, written document prepared by a rail operator and approved by a supervising authority, that includes information about its:

- activities;
- organisation;
- safety management systems; and
- safety measures.

4.3.2 DRD states that safety cases serve two main purposes:

- *to give confidence that the operator has the ability, commitment and resources to properly assess and effectively control risks to the health and safety of staff and the general public; and*
- *to provide comprehensive working documents to provide evidence that the accepted risk control measures and safety management systems have been properly put into place and continue to operate in the way they were intended.*<sup>61</sup>

4.3.3 The development of a safety case is, according to DRD, intended to depend 'heavily' on risk assessment. Risk assessment will also form the basis for any exemptions that may be granted, for example to operators of heritage railways, on the basis of a clear statement of the risks they face and how they will deal with them.<sup>62</sup>

#### **COMPARISON WITH GREAT BRITAIN**

4.3.4 The introduction of the safety case organisational model would, like the legislative model, also follow the GB approach. When GB rail operations were privatised in the early 1990s,

*there was a complete overhaul of the legislation governing rail safety legislation ... The focus of their legislation changed from being licence-based to being safety-focused, and a critical change was to bring rail operations within the ambit of Health & Safety legislation by making new regulations under the Health & Safety at Work Act 1974.*<sup>63</sup>

4.3.5 Transport 2000\* is concerned at DRD's adoption of the GB model. In its submission to DRD during consultation on the draft Bill, it included the opinion of Mr Peter Rayner, an adviser to the House of Commons Transport Select Committee and

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\* Transport 2000 describes itself as 'an independent national body concerned with sustainable transport ... an umbrella group, comprising over 40 affiliated organisations, including environmental and transport bodies... Its funders include local authorities, charitable trusts, transport operators, unions and individuals': see <http://www.transport2000.org.uk/>

former senior manager with British Rail.<sup>64</sup> His opinion was that the GB model is seriously flawed:

*I am very concerned that the Department intends to follow the British example in this regard. The British model is seriously flawed and was not thought through with sufficient care when it was drawn up. The weaknesses in the British model were one of the main factors behind a number of railway accidents – at Watford, Southall, Paddington and Hatfield – in which over 40 people lost their lives. These are particularly relevant examples of fragmented organisations failing to manage safety. Evidence given in court arising from those accidents and at the subsequent costly public inquiries demonstrated that the split of infrastructure from train operations is a potential disaster area.*

*Safety case regimes in themselves do nothing to improve safety of operation. They merely provide pieces of paper which, after litigation, can sometimes apportion blame. In essence, the destruction of the vertical chain of command structure within a geographically logical organisation caused the British failures. To state, therefore, that it is the intention to follow the British model is quite unacceptable and I strongly caution against such action.*<sup>65</sup>

**4.3.6 Members may wish to consider** whether the safety case model should be introduced in Northern Ireland.

**4.3.7** It is also interesting to note that the Bill does not expressly require DRD to use its new powers to establish a safety case model. DRD is given a wide discretion, and the Bill would not prevent it from instead deciding to adopt some other model – for example, a strictly defined duty and an investigative enforcement agency – and use powers under the Bill to make regulations for that new model. NITHC indicated to DRD that

*while the Department have stated that a safety case system of some sort will be introduced, the Bill does not set out that aim or provide explicitly for the passing of Regulations to require railway operators to formulate safety management systems or carry out risk assessments or produce safety standards (such as the “group standards” produced by Railway Safety Limited in Britain). In our view DRD should now take this opportunity to implement legislation that is underpinned by a comprehensive and transparent strategy.*<sup>66</sup>

**4.3.8** If a safety case model is thought suitable for Northern Ireland, **Members may then wish to consider** whether the Bill should expressly require DRD to use the powers granted under it to regulate for a safety case model, rather than some other model of railway safety.

**4.3.9 Members may also wish to consider** whether the Bill could, in the words of NITHC, underpin ‘a comprehensive and transparent strategy’ by containing an explicit statutory duty on operators to prepare safety cases – even if further detail of such a model is then left to regulation.

4.3.10 It is also interesting to note that the Bill does not allocate responsibility for vetting or approving safety cases to any particular agency. It can be argued that the use of safety cases shifts responsibility for safety to the operator,<sup>67</sup> but NITHC's opinion of the draft Bill was that it failed to outline

*a clear strategy for rail safety in Northern Ireland, neither does it clearly allocate the responsibility for and administration of rail safety to the HSA, HMRI or any other relevant bodies.*<sup>68</sup>

4.3.11 In fact, the Minister later announced that HMRI – i.e., Her Majesty's Railway Inspectorate<sup>69</sup> – which has responsibility for accepting safety cases in GB,<sup>70</sup> will approve all NI risk assessments and safety cases, acting as agent of DRD.<sup>71</sup> The Minister also indicated that there will be close cooperation between his officials, counterparts in HMRI, and the Health and Safety Executive for Northern Ireland.<sup>72</sup>

4.3.12 **Members may wish to consider** whether it is appropriate that HMRI fulfil this role as agents of DRD, or whether some local body should approve safety cases in Northern Ireland.

HUGH WIDDIS  
12 APRIL 2002

<sup>1</sup> NIA Deb 26 February 2002, Minister for Regional Development Mr P Robinson MP MLA

<sup>2</sup> NITHC 2001 Response to the consultation on the draft Railway Safety Bill at

<sup>3</sup> Transport 2000 (2001) Response to the consultation on the draft Railway Safety Bill page 2

<sup>4</sup> After the consultants, Arthur D. Little Ltd, who carried out the review: A D Little 2000

Strategic Safety Review of Northern Ireland Railways Main Report at [http://www.railwaytaskforceni.gov.uk/PDF\\_Files/AD\\_Little\\_Report.pdf](http://www.railwaytaskforceni.gov.uk/PDF_Files/AD_Little_Report.pdf)

<sup>5</sup> NIA Deb 27 June 2000

<sup>6</sup> After the consultants, Arthur D. Little Ltd, who carried out the review: A D Little 2000

Strategic Safety Review of Northern Ireland Railways Main Report at [http://www.railwaytaskforceni.gov.uk/PDF\\_Files/AD\\_Little\\_Report.pdf](http://www.railwaytaskforceni.gov.uk/PDF_Files/AD_Little_Report.pdf)

<sup>7</sup> The exceptions related to specific items, including for example: personal trackside safety training; assistance-to-failed-trains procedures; temporary speed restriction arrangements; high levels of risk to regular users of some crossings largely used for agriculture or domestic access. See Strategic Safety Review page 4

<sup>8</sup> Strategic Safety Review page 4

<sup>9</sup> Strategic Safety Review pages 4-5. The report also identified safety deficiencies in six other areas: safety culture; operations; permanent way; structures; signaling and telecommunications; and engineering

<sup>10</sup> Strategic Safety Review pages 6-8

<sup>11</sup> Strategic Safety Review page 5

<sup>12</sup> NITHC Response to the consultation

<sup>13</sup> The Railways Task Force (see <http://www.railwaytaskforceni.gov.uk/>) was established in April 2000 to consider the strategic options for the future of the railway network in Northern

Ireland. It presented its interim report to the Minister for Regional Development and the NITHC in September 2000. The report identified a wide range of scenarios for the future of the railways, analysing four in detail:

- modest enhancement of the existing network;
- consolidation of the existing network based on implementation of A D Little recommendations;
- mothballing lesser used sections of the existing network; and
- retaining the Belfast-Dublin service and mothballing the rest of the network.

<sup>14</sup> Railways Task Force 2000 Overview of the Interim Report of the Railways Task Force on the Future of the Railway Network in Northern Ireland paras 3 and 14at [http://www.railwaytaskforceni.gov.uk/pdf\\_files/railwaysinterim.pdf](http://www.railwaytaskforceni.gov.uk/pdf_files/railwaysinterim.pdf)

<sup>15</sup> Railways Task Force 2000 Rail Debate – Report of Public Consultation Meetings, at [http://www.railwaytaskforceni.gov.uk/pdf\\_files/railwaywrkgrp.pdf](http://www.railwaytaskforceni.gov.uk/pdf_files/railwaywrkgrp.pdf)

<sup>16</sup> NIA Deb 27 June 2000

<sup>17</sup> NIA Deb 27 June 2000

<sup>18</sup> Railway Safety Bill, Clause 5 and Schedule 1, considered below

<sup>19</sup> NIA Deb 26 February 2002, Minister for Regional Development

<sup>20</sup> It does not amend the HSW Order but provide for it to be interpreted in particular ways: for example clause 1 provides that ‘*Part II of the Health and Safety at Work (Northern Ireland) Order 1978 ... shall have effect as if the provisions mentioned in subsection (4) ...were existing statutory provisions, within the meaning of that Part*’.

<sup>21</sup> Under Article 17 of the Health and Safety at Work (Northern Ireland) Order 1978

<sup>22</sup> NITHC Response to the consultation

<sup>23</sup> NITHC Response to the consultation

<sup>24</sup> By contrast with clause 1, it does so directly, rather than by reference to other legislation

<sup>25</sup> However, the exercise would be subject to judicial review, and to other controls such as sections 24, 75, and 76 of the Northern Ireland Act 1998.

<sup>26</sup> Clause 2 (2) (c)

<sup>27</sup> Clause 2 (8)

<sup>28</sup> As with clause 2 (3), the exercise would be subject to judicial review, and to other controls such as sections 24, 75 and 76 of the Northern Ireland Act 1998.

<sup>29</sup> Clause 3 (4) and (5)

<sup>30</sup> Road Traffic (Northern Ireland) Order 1981 (NI 1) Article 175 (2) and Road Traffic Offenders (Northern Ireland) Order 1986 (NI 10) Schedule 1

<sup>31</sup> Explanatory and Financial Memorandum para 14

<sup>32</sup> Schedule 1 para 1 (4)

<sup>33</sup> Protected by the European Convention of Human Rights Article 8 and Article 1 of the First Protocol to the Convention

<sup>34</sup> Northern Ireland Act 1998 c47 section 6

<sup>35</sup> Explanatory and Financial Memorandum para 18

<sup>36</sup> Schedule 1 para 2 (4)

<sup>37</sup> Schedule 1 para 2 (5). In the event of a dispute, the Lands Tribunal shall decide the amount of compensation: Schedule 1 para 2 (6)

<sup>38</sup> Alternatively, it may apply to the High Court to force the operator to comply with a direction, under Schedule 1 para 3 (3)

<sup>39</sup> NITHC Response to the consultation. NIR operates all scheduled rail services in Northern Ireland and is also the infrastructure controller of the rail network.

<sup>40</sup> Transport 2000 Response to the consultation page

<sup>41</sup> Translink 2002 A revolution in public transport at <http://www.translink.co.uk/revolutioninpublictransport.asp>

<sup>42</sup> NITHC Response to the consultation

<sup>43</sup> NIA Deb 26 February 2002

<sup>44</sup> DRD 2002 Explanatory and Financial Memorandum to the Railway Safety Bill para 6

<sup>45</sup> Explanatory and Financial Memorandum para 10

<sup>46</sup> NITHC response. The issue was also during the consultation by raised by the General Consumer Council for Northern Ireland, Mr Colin Holliday, and the local committee of the Heritage railways Association: letter of DRD to CRD 22 November 2001 Annex A

<sup>47</sup> NITHC Response to the consultation

<sup>48</sup> NITHC Response to the consultation

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- <sup>49</sup> Evidence of Mr T Hesketh, Managing Director of Translink, to the Regional Development Committee, 6 March 2002
- <sup>50</sup> The Irish Bill can be seen at <http://www.irlgov.ie/bills28/bills/2001/6701/default.htm>. See also the NITHC [Response to the consultation](#)
- <sup>51</sup> Compare, for example, Schedule 1 of the (RoI) Railway Safety Bill with Schedule 2 of the (NI) Railway Safety Bill
- <sup>52</sup> NITHC [Response to the consultation](#)
- <sup>53</sup> (RoI) Railway Safety Bill Part 2
- <sup>54</sup> (RoI) Railway Safety Bill clause 38
- <sup>55</sup> (RoI) Railway Safety Bill clause 39
- <sup>56</sup> (RoI) Railway Safety Bill clause 41 and Part 4 generally
- <sup>57</sup> (RoI) Railway Safety Bill clause 41 and Part 4 generally. For the importance of safety cases to the Bill, see below
- <sup>58</sup> NITHC [Response to the consultation](#)
- <sup>59</sup> NIA Deb 26 February 2002 Chairman of the Regional Development Committee Mr A Maginness MLA
- <sup>60</sup> NIA Deb 26 February 2002 Mr J Byrne MLA
- <sup>61</sup> [Explanatory and Financial Memorandum](#) para 7
- <sup>62</sup> [Explanatory and Financial Memorandum](#) para 6
- <sup>63</sup> NITHC [Response to the consultation](#)
- <sup>64</sup> Also a Fellow of the Chartered Institute of Transport and Logistics, a Fellow of the Institute of Railway Operators, and Safety Manger for NIR 1981-82
- <sup>65</sup> Transport 2000 [Response to the consultation](#) page 3
- <sup>66</sup> NITHC [Response to the consultation](#)
- <sup>67</sup> Under the GB safety case system, the duty to ensure that risks are controlled so far as is reasonably practicable is considered to rest with the railway operator or other duty holder: see <http://www.hse.gov.uk/railway/manual/chapter1.htm> - P64 3866
- <sup>68</sup> NITHC [Response to the consultation](#)
- <sup>69</sup> A directorate of the Health and Safety Executive for GB: See <http://www.hse.gov.uk/hsedivis.htm>
- <sup>70</sup> Under the Railways (Safety Case) Regulations 2000
- <sup>71</sup> NIA Deb 26 February 2002
- <sup>72</sup> NIA Deb 26 February 2002

**ANNEX 1**

## The Railway Bill: Public Finance Implications

**(1) THE RAILWAY BILL**

Legislation governing the operation of the railways in Northern Ireland, while out of date, was never considered of sufficiently high priority to attract attention or resources. Major accidents in England, and several minor accidents on the Northern Ireland rail network in 1998 prompted a review of rail safety in Northern Ireland (the A. D. Little Review). From this emerged the understanding that rail legislation in Northern Ireland was outdated, and effective rail safety legislation was necessary prior to the introduction of any Public Private Partnership / Private Finance Initiative (PPP/PFI) in rail transport in Northern Ireland. This paper identifies the costs associated with implementing the provisions in the proposed Railway Bill, in the context of the A. D. Little Review and some lessons from Great Britain arising in relation to PPP/PFI.

**(2) THE COST OF SAFETY IN THE RAILWAY BILL**

The proposals contained in the Railway Bill encompass a range of safety issues including: the requirement to make safety cases; facilitating implementation of European Legislation in the area of railway safety; the introduction of departmental approval for new infrastructure works and substantial remedial works including plant, equipment and rolling stock; introduction of a requirement to report accidents to the department, and bringing accident investigations into line with modern practice; legislation limiting railway speed and loads; and provision for placing signs and barriers at private crossings.

Existing services are already subject to safety arrangements, which are the responsibility of Northern Ireland Railways (NIR)<sup>1</sup>. NIR will continue to have responsibility for safety under the proposed Railway Bill, in addition to which it will incur a number of additional expenses, detailed below.

	First Year	Subsequent years (per annum)
NIR Safety Case	£80,000	£20,000
Signage (Schedule 1)	Minimal	Minimal

<sup>1</sup> Railway Safety Bill NIA Bill 3/01 – EFM. Explanatory and Financial Memorandum

Enforcement Costs	£20,000	£10,000
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Source: Compiled from the Railway Safety Bill NIA Bill 3/01 – EFM. Explanatory and Financial Memorandum (page 5)

All the costs outlined above will marginally increase the railway running cost deficit (currently £12.5m per annum), a sum met by the Department for Regional Development. Costs falling on the heritage operators will be of a lesser order<sup>2</sup>.

The costs outlined above can only be taken at face value. It is difficult to make substantive comments on the financial implications of the Bill without a further breakdown of the costs. For instance, are there associated costs, which need to be factored in? Might there be a need for external assistance to implement the proposals in the Bill? Do the above costs include compliance monitoring, standards development or other additional staff costs? Without a more detailed explanation of the costs, a more detailed economic analysis cannot be undertaken.

### (3) THE A. D. LITTLE REVIEW

The investment and resource needs identified in the A. D. Little Review were confined to items required for safety reasons and did not take account of operability, maintainability or other issues<sup>3</sup>. The report made a number of recommendations about Safety Management and Culture, Operations, Signalling and Level Crossings and Track and Structures, Rolling Stock. Estimated expenditure needed to implement these recommendations was at £183m approximately<sup>4</sup>. The amounts used here, generally, do not include for future maintenance requirements. Appendix A attached contains the suggested high-level plan illustrating the timing of implementation over the course of a 10 year period.

Estimated Costs & Resources – Summary			
	Capital Expenditure (£m)	Revenue Expenditure (£m)	Totals (£m)
Safety Management	0	0.6	0.6
Operations	4.7	0.5	5.2
Signalling and Level Crossings	25.5	1.1	26.6
Track and Structures	67.2	0	67.2
Rolling Stock	71.9	0.4	72.3
Programme Management and New Resources	0	10.8	10.8
<b>Totals</b>	<b>169.4</b>	<b>13.4</b>	<b>182.7</b>

Source: A. D. Little, (2000) Strategic Safety Review of Northern Ireland Railways (vol. 1, page 10)

<sup>2</sup> It is anticipated that operators in this sector will wish to avail of an exemption and thus be required to produce a safety statement only.

<sup>3</sup> A. D. Little (2000) Strategic Safety Review of Northern Ireland Railways (vol. 1, page 9)

<sup>4</sup> The Report states that the estimates could be no more than +/- 30% accurate as many of the costs would require further, more detailed investigation, of a type outside the scope of a strategic review (vol. 1, page10).



Direct comparison of financial impacts between the A. D. Little Review and the proposals contained in the Railway Bill are difficult to make as both the documents differ in terms of scope and intent. However, A. D. Little recommends a more thorough and far reaching reorganisation of rail safety in Northern Ireland.

#### **(4) Current Funding of Railway Safety in Northern Ireland**

Investment in transportation in Northern Ireland, especially land-based transportation has been relatively low compared to GB<sup>5</sup>. The most immediate and obvious source of funds for railways expenditure is the Northern Ireland Public Expenditure Block.

In recent years more attention has been given to the Railways in Northern Ireland including the issue of railway safety and the need for increased allocations from the Northern Ireland Bloc. In 2000-01 Budget allocations were increased by £3 million for railway safety. In total the estimated public expenditure contribution to Northern Ireland Railways was £23.8 million in that year<sup>6</sup>.

In recent years attention has also been given to the need for replacement rolling stock. In April 2000, the Northern Ireland Affairs Committee of the House of Commons announced an inquiry into the proposed financial provision for 2000-01 for new passenger rolling stock for Northern Ireland and its operational implications. The decision to initiate the inquiry was however unconnected with the publication of the A. D Little Strategic Safety Review of Northern Ireland Railways which also recommended replacement rolling stock as a rail safety measure.

The subsequent publication of the AD Little Report and the establishment of the Railways Task Force<sup>7</sup> generated substantial public debate on the future of the railways in Northern Ireland. Against this backdrop, the Committee for Regional Development, amongst others, welcomed £48 million set aside in the 2002-03 Budget for the purchase of new train sets<sup>8</sup>. However the Committee were also of the view that given the funding pressures across the Northern Ireland Bloc, the issue of leasing should be revisited in line with practices in GB. If leasing was introduced, it could release funds for investment on other infrastructure improvements. Given the need for substantial funds to improve railway safety and the infrastructure generally, the debate on leasing may continue.

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<sup>5</sup> Comparison of public sector funding between NI and GB rail service has been complicated by the privatisation of British Rail. The ownership of rail assets and responsibility for operation remains within the public sector in NI in contrast to the privatisation of the British rail network.

<sup>6</sup> Railway Task Force Interim Report, 2000

<sup>7</sup> The Railway Task Force was established in April 2000 by the then Minister for Regional Development, Adam Ingram, MP following the review of railway safety by A D Little

<sup>8</sup> Committee for Finance and Personnel, Report on the Draft Budget 2002/03

It should be noted that whilst the Committee welcomed the £48 million, it is still a shortfall in terms of the recommendations made by A.D Little who recommended a notional stock replacement sum of £68.4 million. Little estimated that £71.4 million would be needed to bring rolling stock up to railway safety standards as illustrated in the table above. This included the replacement figure of £68.4 million but also included items such as procedure and process improvements, brake system design and Class 450 Emergency Egress Improvements.

The debate on the replacement stock whilst connected with railway safety is beyond the scope of the Railway Safety Bill but in terms of overall railway safety expenditure it still an important consideration.

It is clear from the A D Little report that there remains a shortfall in funds to address rail safety. As stated previously, it is not possible to compare the funding requirements outlined in the A D Little Report to that outlined in the Rail Safety Bill. Again without a more detailed breakdown of the estimated financial costs in the Bill little more can be said. However if additional funding were required to implement the Railway Safety Bill alternative sources of funding would need to be considered.

## **Spending Review 2002**

The railway running cost deficit already stands at £12.5m per annum, without the small additional costs yet to be incurred under the proposed Railway Bill. In the present situation safety competes with other cost areas for already scarce resources in the DRD budget and across the Northern Ireland Bloc. Current signals from Treasury are that there will be very limited growth in overall Departmental Expenditure Limit baselines (DEL) baselines in the SR 2002 period.

## **Public Private Partnerships**

The UK Government widened the PFI concept to cover all types of Public Private Partnerships (PPPs). A PPP could take a number of forms but a study carried out for the Department of Regional Development<sup>9</sup> recommended a single concession option for all bus and rail services because of the benefits of continuing to have an integrated public transport system in a relatively small area such as Northern Ireland. The study also pointed out that a PPP would not provide a short-term solution to public transport problems in Northern Ireland. Legislation to amend the Transport Act (NI) 1967 would be required. It is therefore unlikely that a PPP could come in to operation before 2005.

In addition to the considerations above, the use of PPPs in the development of the railways has received a degree of negative publicity. The events surrounding some high profile PPPs, for example Railtrack, and the London

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<sup>9</sup> Railways Task Force, Interim Report, 2000

Underground, has led to some loss of confidence in the use of PPP in safety sensitive industries<sup>10</sup>.

One of the factors influencing the introduction of the Railway Bill was a desire to put in place effective rail safety legislation before involving the private sector in the operation of the railways in Northern Ireland (PPP). *'We could not risk the profit motive tempting the private sector to cut corners on safety measures'*<sup>11</sup>. However, the system proposed for adoption in Northern Ireland is based on safety case legislation following the GB model. This system places responsibility for safety on the Safety and Standards Directorate, an arm of Railtrack, and some questions have been raised in relation to potential conflict of interest under the current regime. Any future PPP arrangements will need to be accompanied by consideration of the system of regulation and enforcement of rail safety in Northern Ireland.

## Sale of Assets

According to the Railways Task Force Report, the transport companies have a number of properties that could be sold to help meet short-term need for capital investments. The total value of these is approximately £25 million and yields a current annual rental income of £25 million<sup>12</sup>. Whilst selling these properties could provide a one-off gain (after tax) such sales could reduce the ongoing income of NITHC and in some cases essential funds for public liability cases.

## EU Funding

In recent years funding from the EU Structural Funds has provided significant sums of money for investment in railways in Northern Ireland. This investment enabled significant improvements to certain parts of the network such as the Belfast-Dublin upgrade.

Under the Northern Ireland Structural Funds 2000-2006 strategic infrastructure projects might be considered for support under the criteria for economic renewal. However projects most likely to be funded would be for the development of strategic public transport initiatives. Improved railway safety might be a possible outcome. However it is unlikely to be funded as a separate initiative.

### (5) CONCLUSIONS

**5.1 Financial Effects of the Bill.** The cost of the Bill over a ten year period will be approximately £370,000k. The A.D Little report recommended railway safety costs at approximately £183 million over the same timescale. However direct comparison of financial impacts between the A. D. Little Review and the proposals contained in the Railway Bill, are difficult to make as both

<sup>10</sup> See The Public Debate on Public Private Partnerships, L Wilson (Nov. 2001)

<sup>11</sup> Railway Safety Bill NIA Bill 3/01 – EFM. Explanatory and Financial Memorandum (page 2)

<sup>12</sup> Railways Task Force, Interim Report, 2000

documents differ in terms of scope and intent. However, A. D. Little recommends a more thorough and far reaching reorganisation of rail safety in Northern Ireland.

**5.2 Identified Costs and Resources in Railway Bill.** The railway running cost deficit already stands at £12.5m per annum, without the small additional costs yet to be incurred under the proposed Railway Bill. In the present situation safety competes with other cost areas for already scarce resources in the DRD budget. This itself is an issue of general concern, however, there is some suggestion that following SR2002<sup>13</sup> these resource pressures are likely to continue or deteriorate.

**5.3 Safety Regulation and PPP.** Whilst PPPs have been well documented as a source of alternative funding for the development of the railways, the profit motive should not overshadow railway safety issues. Furthermore PPPs cannot be seen as a quick fix to addressing the infrastructure problems of the Northern Ireland Railways.

**5.4 Spending Review 2002.** Current signals from Treasury are that there will be very limited growth in overall Departmental Expenditure Limit baselines (DEL) baselines in the SR 2002 period. Alternative sources of funding such as PPPs, leasing arrangements, European funding and sale of assets may have to be considered if the wider issue of railway safety is to be properly addressed. Even within the narrow scope of the Railway Safety Bill, it is not clear if this additional money can be found within the Public Expenditure Bloc for Northern Ireland.

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<sup>13</sup> Spending Review 2002

## **ANNEX 2**

### **EQUALITY ISSUES**

The Explanatory and Financial Memorandum which accompanies the Railway Safety Bill states that *'The impact of the Bill on equality of opportunity affecting the groups listed in Section 75 of the Northern Ireland Act has been considered and no adverse or differential aspects were identified. A formal screening out process has been completed as part of the Equality Impact Assessment procedures'*.

The Railway Safety Bill consultation paper contained the results of a screening exercise, which was carried out on the draft bill. For the purposes of this exercise the Bill was broken down into the following four policy areas:

- create an offence to operate a railway without a safety certificate;
- powers to introduce EU regulations when required in the area of railway safety;
- extend existing powers to conduct investigations and approve new works; and
- extend safety case provision to the operators of heritage/private railways.

In line with Equality Commission for Northern Ireland guidelines,<sup>14</sup> these provisions were assessed against the following four screening criteria:

1. Is there any evidence of higher or lower participation or uptake by different groups within nine Section 75 categories?
2. Is there any evidence that different groups have different needs, experiences, issues and priorities?
3. Is there an opportunity to better promote equality of opportunity or good community relations by altering policy or working with others in government or community at large?
4. Have consultations in the past with relevant organisations or individuals indicated that particular policies create problems specific to them?

In relation to the first two questions, the consultation paper stated that *'there was no such evidence'*. The consultation document stated that the third question did not apply, as the policy *'will only effect [sic] the Railway Companies'*. The screening exercise also concluded that the fourth question did not apply, presumably because no consultations on the policy had been undertaken in the past.

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<sup>14</sup> <http://www.equalityni.org/home.htm>

In light of the conclusion reached by DRD on the fourth screening criteria, it should be noted, however, that the DRD Equality Scheme at Annex A indicates that the issue of equality and the Review of Railway Safety was registered by NICVA during a consultation exercise carried on the DRD Equality Scheme between 7<sup>th</sup> April and 5<sup>th</sup> June.<sup>15</sup>

NICVA is listed as one of the '*main consultees*' in the Rail Safety Bill consultation paper. However, no information is provided as to the substance of NICVA's concern regarding the review of railway safety, which was raised during the Equality Scheme Consultation.

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<sup>15</sup> DRD Equality Scheme – Annex A page 30