

**CRITICAL OVERVIEW AND EVALUATION OF THE OUTLINE BUSINESS CASE FOR
PUBLIC TRANSPORT REFORM, THE DETAILED POLICY PROPOSALS AND
ACCOMPANYING IMPACT ASSESSMENTS**

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Summary

- There are gaps in the data for comparative efficiency analysis of Translink operations.
- Significant assumptions have been made in respect of costs due to these gaps.
- Analysis of efficiency savings of Metro should be considered a “starting point for further analysis”.
- Ulsterbus would significantly lag behind comparators even if potential savings were realised.
- Comparative efficiency of NIR restricted due to lack of available data (commercially sensitive data that operators would not share).
- A performance-based contracting regime with controlled competition is advocated.
- OBC team recommend a further detailed operational review of Translink before it is subject to regulated competition.
- Both monetary and non-monetary costs and benefits depend largely on the leverage that a new agency would be able to exert on operators via performance-based contracts.
- Almost 80% of the estimated realisable savings for Metro, Ulsterbus and NIR from either an agency-based approach or enhanced NITHC/Translink Model are attributable to Ulsterbus.
- Assumptions that the OBC team were required to make due to lack of robust data are likely to contribute to the wide range of estimated realisable savings.
- Dual membership Boards involved in governance of the proposed three-tier structure may call into question its independence.
- Concern that the switch from capital funding to revenue funding could result in fewer buses than is desirable and in the quality of those buses.

1. Background

The Outline Business Case for Public Transport Reform is the latest stage in a process of reform dating back to 2002. The Regional Transport Strategy (RTS) was approved by the Assembly just prior to the Department of Regional Development's consultation document '*A New Start for Public Transport in Northern Ireland*' in 2002. This document set out proposals for the governance, planning and delivery of public transport.

The New Start document aimed to deliver the RTS vision "*to have a modern, sustainable, safe transportation system which benefits society, the economy and the environment and which actively contributes to social inclusion and everyone's quality of life*". New Start identified the need to encourage more competition through greater involvement of the private sector and the establishment of a Public Transport Regulatory Body to overcome current institutional arrangements which were viewed as an obstacle to this.

Following discussion with stakeholders it was concluded that there was a need for long-term structural change and that this could be best delivered through a three-tier structure. Figure 1 indicates the anticipated broad responsibilities of each tier.

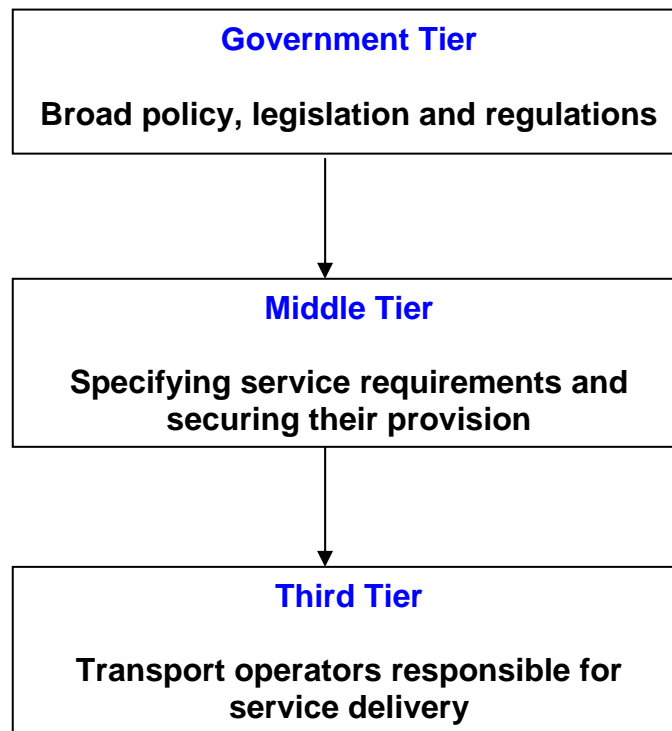


Figure 1 The proposed three-tier structure for organisational reform

In 2006, the then Minister for Regional Development, David Cairns, announced that this structure would be used to develop the public bus and rail services. However, following the RPA local government review and the decision *not* to devolve mainstream local road functions to Councils the Executive decided that the RD Minister should reconsider future arrangements for public transport.

Public transport reform was given fresh impetus following restoration of the Assembly in 2007, and in 2008 DRD completed a Strategic Business Case (SBC) for the reform programme. This reviewed and assessed a long list of organisational options and

shortlisted three organisational models for further consideration. The SBC has already been considered by the Regional Development Committee (RDC).

In August 2008 the DRD commissioned an Outline Business Case (OBC) to examine these three remaining options for the reform of public transport in Northern Ireland.

1.1 EU Regulations

One of the key drivers to reform is a new EU Regulation (1370/2007) on public transport by rail and road which is due to come into force by late 2009. There will be a 10 year transitional period during which progress towards full implementation will have to be demonstrated. The overall aim of this regulation is to ensure as much regulated competition as possible within public transport delivery. This has implications for the current system in Northern Ireland. It will require public authorities who award exclusive right or provide funding to an operator to do so within the framework of a public service contract that must be strictly controlled and adhere to a performance-based contractual regime.

1.2 Terms of reference for the Outline Business Case

- Key objective – examine the 3 shortlisted options in order to assess which would best deliver the policy objectives.
- Detailed analysis of the costs, risks and benefits of introducing reforms to the institutional arrangements leading to a recommendation of a preferred model for future delivery of public transport in Northern Ireland.
- Examination of the opportunities for customer service improvements and for achieving efficiency savings under the revised arrangements.

1.3 Options for Reform

The SBC recommended that two options be taken forward to OBC for a more detailed review against the 'do nothing' policy. Therefore the OBC report considers the 'revised NITHC/Translink' option and the 'Agency' option for reform, specifically the potential monetary and non-monetary costs and benefits, and the risk associated with each option. The 3 options – including the 'do nothing' policy are:

Option 1 – Do Nothing: current structures, roles and responsibilities within public transport would remain the same;

Option 2 – Enhanced Northern Ireland Transport Holding Company (NITHC) Model: the NITHC would have a new and extended remit to both design and deliver an integrated public transport network and procure the delivery of services through Translink and independent operators; and

Option 3 – Agency Model: a single departmental agency would assume responsibility for a range of functions currently carried out by DoE, DRD, NITHC and Translink.

The remainder of this section considers how the options for reform were evaluated and presents, where possible, a critique of this evaluation. The report therefore begins with chapter 6 of the Outline Business Case (OBC)

2. Evaluation and Critical Overview

2.1 Chapter 6 – Comparative Efficiency of Translink Operations

Benchmarking the financial and operational performance of the three Translink companies against best practice measures in the transport industry outside of Northern Ireland was an important aspect of the OBC. This would allow practices to be identified or adapted that could lead to improvement. However, as pointed out in chapter 6 of the OBC, this process relies on receiving comparable data from other operators. The OBC team acknowledge that benchmarking performance was extremely challenging principally because of the availability of data from identified comparators – largely private companies in other parts of the UKⁱ – and from Translink. For example, Translink could not provide sufficiently robust and detailed information on the costs associated with ‘head office/authority functions’ such as:

- Identifying public transport service requirements;
- Network planning and scheduling;
- Operation of passenger facilities;
- Maintenance of some bus shelters and bus stops; and
- Maintenance of railway track and infrastructure.

The OBC team therefore had to amass an evidence base from publicly available data on which to base assumptions in order to proceed with the benchmarking including making number of assumptions in respect of costs of these Translink functions. As pointed out on p.70 of the report, “*by their nature all assumptions assume a degree of uncertainty*”. The authors go on to say that a ‘sensitivity’ analysis has been carried out on key variables in the analysis to ensure the analysis is “*as robust as reasonably possible*”. It is therefore reasonable to question the robustness of the figures given in the tables of chapter 6

2.2 Chapter 7 – Comparative Efficiency of Metro

The OBC team have used a range of comparators and sources of information in order to produce a robust comparison of financial and operating data. There were however some gaps. For example, there was no comparative data to establish potential efficiency savings that Metro could generate by reducing its cost per kilometre.

In addition, the authors have compared Metro 2007-08 data and deflated these back to 2005-06 prices in line with the CPT Index (Confederation of Passenger Transport)

ⁱ Only two of the 20 private operators approached by the team provided the relevant data.

in order to make a comparison with the most recent industry available data. The authors contend that this makes a more robust comparison than simply using Translink's performance data for 2005-06 since this would not take into account any improvements in performance since then.

Also, it is worth noting that the authors state that the potential efficiency savings estimated by them for the Translink bus companies should be viewed as "*a starting point for further analysis rather than specific performance targets at this stage*"¹. Given the acknowledged limitations of some of the available data as indicated in section 2 above it is unclear upon what basis this "further analysis" could be taken forward.

2.3 Chapter 8 – Comparative Efficiency of Ulsterbus and Translink Bus Operations

Because of the lack of robust data relating to 'head office/authority' functions outlined in section 2 of this report the OBC team has had to estimate these costs. As a result of this the OBC team have stripped out around 9% of these costs to give a reasonable cost comparison. This is presented specifically under *Cost per Passenger* in chapter 8.

As per the team's approach to establishing comparative data for the Metro service with other operators the team also adjusted the 2007-08 data from Translink for Ulsterbus back to 2005-06. This was to take account of any improvements in performance since 2005-06.

An extensive analysis of a range of issues is presented which goes into considerable detail to establish a comprehensive examination of costs. It clearly describes that even with potential efficiency savings Ulsterbus would still lag behind its comparator operators on a range of the factors investigated.

The OBC team found difficulty in sourcing comparative data on passenger kilometres (the total distance travelled by passengers) and acknowledge that this limited their analysis on operational load factors for the Translink companies (section 8.6.4).

Analysis in section 8.7.1 of the report considers vehicle kilometres per bus. The results of this analysis are impacted by the home-to-school transport services but this impact could not be quantified due to the data provided by Translink to the OBC team not being sufficiently reliable.

2.4 Chapter 9 – Comparative Efficiency of NIR

The performance of NIR compared with other suburban and interurban train operators in Ireland and Britain required that these operators provided non-published information on their performance. None of the operators agreed to this therefore the analysis of NIR described in chapter 9 is based on a high-level review of publicly available information. This is a severely restricted analysis whose difficulties are compounded by the fact that there is no direct equivalent of NIR in Britain because of how rail is organised there. The OBC authors acknowledge that Iarnród Éireann as well as some regional train operating companies have been used to benchmark financial and operational performance of NIR "wherever possible"². Perhaps a general indication of the lack of information on this analysis is reflected in the number

of pages in this chapter (7), compared to the Metro analysis (15), and the Ulsterbus analysis (31).

2.5 Chapter 10 – Costs and Benefits of Increased Competition

The OBC team considered a range of models of competition for introducing a degree of competition to the public transport sector in Northern Ireland. Drawing on the MARETROPEⁱⁱ report the team concluded that competitive tendering has a positive influence on efficiency but added that its’ *“contribution cannot be quantified”*. It also suggests that the increase in efficiency is due to some extent to a reduction in employee numbers and that the social cost of unemployment has not been factored into these efficiency costs.

The authors review a range of international evidence in this chapter relating to competitive tendering within public transport, which they conclude is mixed. They also conclude that it is likely that Translink will maintain a very strong market position in the future. These two issues have led to the authors recommending a performance-based contracting regime with controlled competition.

However, despite the extensive analysis of comparative efficiency of the Translink operating companies contained in chapters 6 to 9 the authors recommend a further detailed operational review of Translink before it becomes subject to any regulated competition *“to ensure the companies are adequately prepared for the new environment”* (p.140).

It should also be noted that the authors cite commercial confidential information that has not been included in the report to assert that serious interest from external operators would only be forthcoming at the local network level e.g. comprising a depot and several hundred buses.

2.6 Chapter 11 – Monetary Costs and Benefits

The authors acknowledge that a number of assumptions have been made in order to determine operational efficiency of the potential organisational models and that these are significant (p.144). Primarily, they have assumed that an independent agency could drive increased efficiency more effectively than an enhanced NITHC. They therefore assume that the revised NITHC model could drive the Translink companies towards achieving their intermediate targets for cost saving produced by their analysis; whereas the Agency model would have the potential to incentivise the Translink companies to achieve the more challenging targets set out in their benchmarking analysis.

The future monetary benefits of each option are also based on their previous operator-level comparisons, comprised of a range of different key financial and staffing metrics which yielded different estimates. The authors have refined these into a single estimate of potential net monetary benefits – though there is no indication of how this was achieved. Again the benefits are assumed to be higher under the Agency model than the enhanced NITHC for the reason given above.

ⁱⁱ Managing and Assessing Regulatory Evolution in local public Transport Operations in Europe, 2000

The authors also acknowledge that the “*number of significant assumptions*” they were required to make as a result of the lack of robust information obtainable from Translink meant that only an incremental costing approach for the analysis in this section. The authors have also not taken the potential capital costs and benefits of organisational changes and delivery of services into consideration since it is “*extremely difficult to estimate these*” (p. 145).

Because of the “challenges” faced by the authors in respect of data availability they recommend that this area be revisited in greater detail as part of the planned review of the OBC in 12 to 18 months’ time.

In chapter 11 the authors compare the estimated realisable savings for Metro, Ulsterbus and NIR for each of the options under consideration. For the NITHC/Translink option the total savings is £7.6m with, as the report states “*the vast majority*” of this (£6m – or 79% of the total savings) coming from Ulsterbus. Under the Agency option Ulsterbus is also identified as the major contributor to savings. However, the authors use the term “*a large proportion*” to describe the savings ascribed to Ulsterbus (as opposed to “*vast majority*”) despite contributing £10m of the estimated £12.8m of estimated efficiency savings (or 78%). In both cases therefore, proportionally Ulsterbus contributes roughly the same estimated savings under the NITHC/Translink model (79%) as it does under the Agency model (78%).

In addition the authors have used the midpoint of potential annual savings as a reference point for estimating Ulsterbus savings under each model. However, for the Agency model it would appear that this has not been estimated correctly. For example under the Agency model the £10m estimated savings is described as “*just below the midpoint of the range identified*” but the potential annual savings range is £5.1m to £20m which gives a midpoint of £12.55m. Therefore it is perhaps inappropriate to describe the £10m savings as “*just below the midpoint of the range identified*” when in fact it is £2.55m below the midpoint. If the *actual* midpoint was taken as the reference point – as it was in the estimates under the NITHC/Translink model – it would mean that the estimated savings under the Agency model would increase to £14.9m but Ulsterbus alone would account for 84% of the savings.

It is worthwhile making the general point that the assumptions made by the authors have been necessary in order to base their comparisons and calculations but this has undoubtedly contributed to the wide range of estimated savings particularly for Ulsterbus.

2.7 Chapter 12 – Risk and Optimism Bias

This chapter deals only with *non-monetary* risk. The non-monetary risks relate to:

- Skills risk – planning
- Skills risk – contracting
- Management risk
- Legal risk
- Organisational risk

Each of the options presents the same probability of occurrence and potential impact apart for two elements of risk. The legal risk is seen as “medium” for the enhanced NITHC option due to compliance with relevant laws and regulations and specifically the EU Regulation 1370/2007; whereas, this is seen as a “low” risk under the Agency option. In both cases the potential impact is described as “high”. Under the enhanced NITHC option ‘organisational risk’ is seen as “low” whereas it is seen as “medium” under the Agency option. In both cases the ‘potential impact’ is described as “medium”. With each potential risk mitigation strategies are presented.

2.8 Chapter 13 Non-Monetary Costs and Benefits

The outcome of this chapter, in terms of the best option based on non-monetary costs and benefits, depends on the score applied by the consultants to each of the selected criteria and the weightings given to each criterion. However, the basic scores for the enhanced NITHC Model given by the consultants are either the same or lower than the Agency Model scores. Therefore, regardless of the weightings, the Agency Model would always score higher than the NITHC Model. The question therefore arises as to whether the scores are right in the first place.

The reasons³ for scoring the Agency option higher under the selected criteria do however appear sound. For example, the clearest boundaries for policy, ownership etc would be the Agency model and this therefore scores higher than the enhanced NITHC Model. It also seem logical that scoring the criterion *‘Facilitating controlled private sector involvement in the market where this is appropriate’* would be influenced by the role of the NITHC in this. Given its role as the main operating group and the significant role it would play in determining the level of private sector involvement, the suggestion that this might send a negative signal to potential entrants into the market and therefore impact on future competition is perhaps a reasonable one to make. It is therefore scored lower than the Agency Model again.

The difference in score between the enhanced NITHC Model and the Agency Model on the criterion *‘Establishing effective levers to incentivise and influence performance and outcomes, maximising value for money and efficiency’* rests on the new independent ‘middle tier’ – under the Agency option – establishing contractual arrangements between it and all operators (including Translink). These would need to be *“sufficiently robust”* to allow it to establish *“effective system-wide contractual levers over the performance of all operators”*. The assumption that the authors make is that these *would* be sufficiently robust and why they allocate a score of 8 out of 10.

2.9 Chapter 14 Net Present Values and Sensitivities

The difference in the efficiency savings between the two ‘do-something’ options is due solely to *operational* savings. This is based on the assumption that an independent Agency would have *“more effective levers”* than an enhanced NITHC over the performance of all operators including Translink. The sensitivity analysis conducted by the authors confirms that the Agency Model emerges as the option with the highest Net Present Value (NPV).

2.10 Chapter 15 Identification of Preferred Option

This chapter merely brings together the outcome of the monetary and non-monetary costs and benefits of each of the options and the analysis of the risks for each of the

options. On this basis it recommends the Agency option as the preferred option. The reasons are:

- It has the most potential to generate financial efficiency savings;
- Potential to deliver higher level of qualitative benefits than other options e.g. separation of service specification and operational delivery and establishing levers to influence operators to improve their performance; and
- Risk profile is no more adverse than the NITHC Model.

It should be remembered that the assumptions made by the consultants in respect of leverage that could be applied under the Agency Model ensure the higher level of qualitative benefits referred to; and that this greater leverage is also largely responsible for the greater efficiency savings identified.

2.11 Chapter 16 Financing, Management, Monitoring and Evaluation

This chapter considers the above issues solely in relation to the preferred option – the Agency Model. Table 16.1 gives a detailed breakdown of the resources required for the middle-tier under the preferred option. It also considers in detail the management structure for the new agency.

While it is estimated that an additional £1.5m in Public Expenditure is required to fund the functions transferred into the public sector from NITHC/Translink the authors believe that this could be found from systems-wide efficiency savings in relation to delivering middle-tier functions in Northern Ireland and from within DRD's existing budgetary allocations (provided that the resources available for the 2010 -11 financial year are baselined for the next spending round).

It seems that the key relationship in the proposed management structure would be between the Chief Executive of the Agency and the *Fraser Figure* or Sponsor of the Agency.

The *Fraser Figure* concept is described in general terms as “a neutral and often external figure”⁴. The report asserts that the nature of the relationship between the Chief Executive and the Sponsor will determine whether the Sponsor can also act as the Fraser Figure or whether another external member should be brought on to the Ownership Board. However in relation to the specific role for the Agency the report concludes that it would “most likely be a senior individual from the Department”. This could be construed as being neither neutral nor external.

The Sponsor is also envisaged as the link between the Agency and the Minister and would report to the Minister on how well the Agency and the Chief Executive are doing. The Sponsor would also be responsible for “giving directions to the Chief Executive, agreeing key targets and Corporate and Business plans before they are submitted to the Minister”⁵.

It is also envisaged that the Ownership Board will be responsible in effect for the strategic direction of the Agency and will be chaired by the Sponsor. It will consist of relevant officials from DRD (including the policy lead) and, it is proposed, two non-executive directors. The Chief Executive of the Agency would not be a member of this Committee.

It appears that the role of the Agency Management Board is to run the Agency's day-to-day operations. However, it is suggested that the Chief Executive might invite the Chair of the Ownership Board and the Departmental lead to also sit on this Board.

The department would have very significant influence on the middle tier under the arrangements outlined above. There may be questions however over its independence – the term 'independent' middle tier is used throughout the report – given the envisaged significant policy and strategic role for the Ownership Board and the potential overlap in Board members between this Board and the Agency Management Board.

There is also reference to a Departmental Management Board but no detail on its function although given the Minister would be the Departmental Owner of the Agency one might presume he/she would chair this Board.

There are also proposals to appoint two non-executive directors to the Ownership Board of whom one could also sit on the Agency Management Board.

Standard recommendations are also made in respect of Agency audit and risk and the Departmental and Agency Accounting Officers.

2.12 Chapter 17 Funding and EU Regulations

This chapter provides a very detailed consideration of the issues relating to compliance with a series of EU regulations, Directives, rules on state aid and the Treaty Establishing the European Community itself. However the key issues for consideration by the department are:

- Care must be taken to ensure that compensation paid for undertaking the delivery of Services in the General Economic Interest (SGEI) and Public Service Obligations (PSOs) must not constitute State Aidⁱⁱⁱ.
- Public Service Contracts for DRD must adhere to the requirements of the new regulation 1370/2007 otherwise they may be in breach of the State Aid rules in terms of Article 87 of the EC Treaty.

In relation to the funding arrangements and Translink's systems the authors believe that Translink would be considered an 'internal operator' and DRD would therefore be able to make a direct award on the Public Service Contract to Translink without formal tendering. However in doing so it would have to take steps to ensure that any costs incurred in discharging the Public Service Obligation does not incur over-compensation (and therefore be in breach of the Regulation).

2.13 Chapter 18 Review of Translink Financial Systems

The key conclusion reached by the authors is that because PSO (Public Service Obligations) contracts are not yet available and because Translink continues to develop a new route costing system it is not possible to determine whether Translink's systems will be able to meet the requirements of reporting against PSOs.

ⁱⁱⁱ This refers to the judgement in the Altmark case which laid down for conditions to ensure that there would be no State Aid. These are found on page 219 of the OBC.

2.14 Chapter 19 Resource Accounting and Budgeting Implications

In relation to public transport reform the key principle is the move towards DRD providing revenue support to operators for the maintenance of service levels or routes and away from capital funding. This has implications for the purchase of new and replacement buses. For example rather than purchasing buses from capital funding operators would have to purchase buses from operating surpluses.

As the authors point out this could have the result that spare capacity is reduced to levels observed elsewhere in the UK and Ireland and the impact on Translink and other operators is that they use their existing fleets more efficiently. However, a greater worry would be that operators do not use the revenue funding to update their fleets with the result that the quality of the buses decline and there is a greater reduction in the number of buses than what may be desirable.

3. Detailed Policy Proposals

Summary

- Proposed Agency Model with regulated competition is the preferred way forward.
- Under the Agency Model Translink would be awarded most of the contracts but DRD would set the fares and have significant control over the agency via the three-tier structure and governance arrangements.
- Agency would have responsibility to develop local transport plans in consultation with other organisations and users.
- Non-Translink operators and users would be given access to Translink passenger facilities e.g. bus stations/stops, rail stations subject to access restrictions and fees.
- The Consumer Council (CC) would retain its existing statutory roles in respect of protecting the interests of consumers and investigating consumer complaints.
- NIR would continue to be responsible for the delivery of rail services for the foreseeable future.
- The Agency would become a statutory consultee in land use planning decisions in order to contribute to Development Plans and major planning applications at an early stage.

3.1 Introduction

The detailed policy proposals are contained in the department's consultation document^{iv}. Any criticisms of these proposals relate to the issues raised in consideration of the Outline Business Case described above e.g. assumptions made in the absence of robust comparative data. The key change is organisational i.e. Translink would continue to be the main supplier for bus and rail services albeit with performance-based contracts but it would operate within a three-tiered structure each with distinct functions^v. There are operational issues stemming from this of course. These and other issues that the Committee may wish to consider and these are highlighted below.

3.2 Retaining a Regulated Public Transport System

It is proposed to regulate the public transport system rather than open it up to privatisation. It is expected that most of the DRD public transport contracts will be awarded directly to Translink in accordance with EU Regulation 1370/2007. The experience of London, were a regulated system was retained, is used to highlight the success of this approach to stimulate competition. Where the market outside London was opened up to full competition subsequent mergers have ensured that in most cities in Britain bus services are provided by only one or two companies. Indeed a recent report⁶ from the Office of Fair Trading has also indicated that this limited competition may be leading to higher fares for customers.

Besides citing these examples in Britain sound reasons are also given for retaining a regulated public transport system. These include:

- **Social Need** – where cross-subsidy between profitable and non-profitable bus routes can maintain services in areas where routes are not profitable. As the document suggests these services could be specified in a group of contracts so that the operator cannot cherry-pick only the most profitable routes.
- **Focus on the needs of end users and the benefits to society** – specifying service requirements in contracts including quality standards can address the need of existing and potential users e.g. wider coverage, greater frequency.
- **An integrated public transport system** – Again the document suggests that retaining the power to specify requirements for and the quality of those services will ensure that this takes places. However, the caveat is that this will be a long term process requiring considerable co-ordination between the contracting authority and the transport operators.
- **Achieving best value for money** – this is essentially a re-iteration of bullet-point 1 i.e. there is the possibility that unregulated competition would lead to a reduction in the number of operators and ultimately a reduction in services that are non-profitable but of social benefit.

^{iv} *Public Transport Reform Consultation – Detailed Policy Proposals*. Department for Regional Development

^v See Figure 2 Proposed Three-Tier Model for Public Transport in *Detailed Policy Proposals*

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- **Continuity of service** – Again this refers to packaging contracts to ensure that certain areas e.g. socially disadvantaged or rural areas do not suffer from withdrawal of services.

It is also anticipated that DRD will introduce an innovative permit system for stage carriers and express services not part of the contracted network of services.

3.3 Regulating public Transport Fares

In order to comply with EU Regulation 1370/2007 DRD would have to have the power to regulate public transport fare levels and fare structures as part of the process for awarding public transport contracts. This would also necessitate the inclusion of how revenue generated from fares is to be used. Therefore the proposal to give DRD these powers is essential.

However, it should be noted that those services subject to innovative permit services (e.g. university services, bingo runs etc) will not have fares regulated.

3.4 Introduction of Contracts for Public Transport

Key to drawing up the details of the contracts it will be necessary to consult on the service requirements for an area. The document does state that consultation will take place with consumer representatives, local authorities and bus operators⁷ therefore a *wider* consultation with users does not appear to be anticipated.

Following a decision(s) on service requirements the operator(s) would design the schedules and timetables which would be the basis for performance-based contractual arrangements with the agency. Because the proposed agency model is the preferred option the contracts would mainly be awarded directly to Translink which is also in keeping with the provisions of EU Regulation 1370/2007. Translink would therefore remain the lead supplier of public transport services for both bus and rail. It does suggest that some contracts may be subject to competition but, presumably, until service requirements of areas is established it may not be possible to identify the extent of or location covered by such contracts. Performance would be monitored by the agency annually.

There may be issues for operators who currently provide services outside of the existing network but these may not be renewed if these services come under a future contracted network. The document states that the agency would have to give existing route license-holders “*appropriate*” notice of its intentions, however there is no indication what this notice might be.

There is also a suggestion that “*some form of financial incentive*” would be given to contracted operators (mainly Translink) to grow the public transport market, introduce greater innovation and continue to improve services⁸. However, no detail is given but perhaps as the document indicates this would be decided when the contract is being drawn up.

The current route licensing arrangements operated by DoE will be replaced under the new contract arrangements. There is scope for a non-contracted private operator to apply for an innovative service permit to provide additional services in an area. If the agency determines that it will not grant the permit the document says it will “*consult with those directly affected by the decision*” however there is no indication whom this

will encompass. For example, might this include consumer representatives, local authorities, and bus operators as per paragraph 6.8 of the Detailed Policy Proposals.

3.5 Offences, Fines and Penalties

There is a range of proposals to establish a number of new offences in order to enforce the conditions associated with the new contracting and permit system; these are self-explanatory and the penalties appear commensurate with the offence⁹. While it is proposed that the agency is responsible for regulating this system by imposing penalties, enforcement of the regulations on operator licences would continue to be the responsibility of DoE. However, the responsibility for making and enforcing regulations relating to passenger conduct on buses will transfer from DoE to DRD.

Because there are no provisions regulating the conduct of passengers in bus premises it is suggested that one option is to create a power to allow the owners of the bus stations/premises to make byelaws regulating the conduct of passengers. This would reflect the approach taken currently in NIR where NIR Byelaws regulate passenger conduct on trains and railway premises. However, it is also suggested that the Department may also have to make regulations “*in certain circumstances*” though it is not made clear why or what these circumstances might be.

3.6 Responsibilities for developing local transport plans

Detail still has to be worked out in relation to the development of local transport plans but it appears sensible, as suggested in the document, for this to be the responsibility of the agency in consultation with other organisations and users. It is also suggested that these would form the basis of the proposed performance-based contracts which again seems logical.

3.7 Future Use of Bus Stations and Other Passenger Facilities

The proposals represent a move from almost exclusive use of all bus and rail stations by passengers of Translink services to a situation where users and operators of non-Translink services could access them. The agency would be given powers to designate bus stations, integrated bus and rail stations, and bus stops as “shared facilities” and therefore allow other operators to set down and pick up passengers. Again given the introduction of regulated competition this is a reasonable suggestion. Details about access levels, services to be made available, charges etc would be specified by the agency.

3.8 Future Role of the Consumer Council

It is proposed that the Consumer Council (CC) would retain its existing statutory roles in respect of protecting the interests of consumers and investigating consumer complaints. This would also include complaints about either the departmental agency or any licensed operator.

Both the CC and the agency will have a statutory responsibility to ensure consistent treatment of matters and to co-operate and exchange information and the detail of this will be set out in a Memorandum of Understanding.

Interestingly it is also envisaged that the CC will have a statutory duty to produce a forward work programme which would be sent to the agency in draft form for comment before publication. This may be seen as working in partnership or the agency exercising a degree of unwarranted control.

3.9 Impact on Rail Services

It is proposed that NIR continue to be responsible for the delivery of rail services for the foreseeable future but these services would have to be part of the contract awarded to Translink to satisfy EU Regulation 1370/2007 and for financial and transparency requirements to be satisfied. The performance of NIR would be assessed against the requirements of the contracts.

3.10 Integrated Ticketing

An integrated transport system is envisaged for NI and with it an integrated ticketing system is required to make the system easier for people to travel on more than one route or mode of transport. The agency would require powers to take this forward to ensure that all contracted public transport operators could use the system in order to comply with competition law. Translink would procure, implement and maintain the systems and take into consideration the requirements of other contracted operators.

3.11 Representing Public Transport Interests in the Planning Process

It is suggested that the agency becomes a statutory consultee in land use planning decisions in order to contribute to Development Plans and major planning applications at an early stage.

3.12 Legislation Changes Covering Payments to the Transport Programme for People with Disabilities, the Rural Transport Fund and the Community Transport Association

This simply refers to the department establishing specific legislative arrangements to continue funding the Community Transport Association and to include provision to ensure that payments to community and voluntary transport operators continue.

3.13 Provision of Services and Information in Languages Other than English

There is no indication that this will happen but rather that representations have been made to DRD about this issue.

4. Integrated Impact Assessment Overview

Summary

- Six policies have been identified as requiring further consideration in relation to the impact of the reforms including economic appraisal and economic impact assessment.
- Potential efficiency savings identified in the Outline Business Case have been based on assumptions due to lack of robust data therefore this may impact on further economic considerations.
- Social Inclusion has been screened out as the department expects the proposals to have only a positive impact but this may require further clarification.
- The rural impact is also considered to be positive and this is possible given the proposed approach to development of local transport plans.

4.1 Introduction

The Integrated Impact Assessment Overview is essentially comprised of two strands:

- It conducts a 'screening' of policies which may or may not be impacted by the transport policy reform proposals; and
- It provides a more detailed rural impact assessment on the reform proposals.

The following sections go into more detail on these.

4.2 Screening

An impact assessment tool has been used by various departments to determine whether policies for which they are responsible are impacted by the reform proposals. Some policies are 'screened out' i.e. require no further consideration as they are not impacted while others are 'screened in' for further analysis.

Table 1 Outcome of Screening Exercise

Policies Screened Out	Policies Screened In
Community Safety and Victims	Equality
Health	Rural
Human Rights	Economic Appraisal
Social Inclusion	Economic Impact Assessment
Environmental	Regulatory
Strategic Environmental	State Aid

Of the 6 policies considered to require further consideration 3 have been addressed in the Outline Business Case (Economic Appraisal, Economic Impact Assessment and State Aid). However, in relation to the efficiency savings projected by the authors in the OBC it is worthwhile re-iterating that these are, in general, based on incomplete data and therefore assumptions have been made by the authors to produce these economic assessments. The OBC also states that the potential efficiency savings estimated by them for the Translink bus companies should be viewed as “a starting point for further analysis rather than specific performance targets at this stage”¹⁰. Therefore it should be asked whether further analysis in respect of economic appraisal will be conducted by the department.

It is also not immediately clear what the difference is between “environmental” and “strategic environmental” and why these have been considered separately for impacts. Therefore perhaps this should be clarified.

4.3 Rural Impact

The rural impact of the reforms is considered in more detail in Appendix 2 of the Impact Assessment Overview. It should be remembered that the department intends to consolidate specific approaches to transport in rural areas by establishing new legislative arrangements to continue funding the Community Transport Association, and to include provision to ensure that payments to community and voluntary transport operators continue. It should also be remembered that the reform proposals do not constitute a *rural* transport strategy.

Perhaps the greatest opportunity for the rural community to influence service provision will be in the development of local transport plans between the agency and local councils. As the impact assessment states this should mean that the services will be organised in the interests of the consumer. Paragraph 5.3 of the Impact Assessment Overview lists the “potentially *“positive impacts for the rural community arising from Public Transport Reform policy”* and the word *potentially* is really key here. Should the proposals develop into concrete and successful organisational and operational reform as envisaged the effects of the policy should indeed be positive as suggested in the assessment. However, this will not be known until the reforms are implemented and even then it will likely be over the longer term that the *actual* impacts can be assessed. This is not a criticism *per se* but rather it highlights the limitations of a paper exercise in projecting the potential impacts.

4.4 Social Inclusion

Although the department expects the proposals to have a positive impact, a question about why Social Inclusion has been screened out from further analysis may be advisable. The reason given in the assessment is that it is expected that any impacts arising from the reform proposals are likely to be positive. However, given that the vision for the Regional Transportation Strategy (RTS) specifically refers to social inclusion

‘..to have a modern, sustainable, safe transportation system which benefits society, the economy and the environment and which *actively contributes to social inclusion* and everyone’s quality of life...’

and DRD's Public Service Agreement (PSA) 13 (Improving the Transport Infrastructure) refers to delivering a transportation system '*that facilitates economic growth and social inclusion across the region*' it might be advisable to analyse the department's reasoning for not considering the impact on Social Inclusion further.

The equality impact is considered in the next section and a partial regulatory impact assessment is also considered.

5. Partial Regulatory Impact Assessment and Equality Impact Assessments

Summary

- In relation to compliance costs there may be significant costs to small operators for accessing Translink passenger facilities which in turn could adversely affect the degree of competition.
- Given that women and young people are more likely to use public transport it is suggested that these two groups are more likely to benefit from the reform proposals.
- Not all buses are fully accessible therefore the claim that there will be benefits to carers of older people, people with disabilities and parents of pre-school children are perhaps over-stated.
- There is a lack of data on NITHC staff relating to a number of Section 75 categories but DRD has used comparable data to draw reasonable conclusions about impacts on these categories of its workforce.
- It is suggested that all Section 75 groups of the general public will benefit from the proposed reforms however much depends on the whether or not the outcomes anticipated in the Outline Business Case come to fruition.
- A very small number of the NITHC workforce is expected to transfer to the proposed agency i.e. around 40 from a workforce of over 4000.
- The staff of NITHC/Translink is overwhelmingly male (88%) and it is envisaged that approximately 40 people will be transferred to the agency therefore it is reasonable to expect that this transfer will impact more males than females.
- It is also anticipated that staff transferred to the agency will have their terms and conditions protected by TUPE and therefore there will be no detriment.

5.1 Partial Regulatory Impact Assessment

The Partial Regulatory Impact Assessment report essentially details the main elements of the reform proposals as outlined in the above sections, particularly in the Detailed Policy Proposals.

Perhaps the only 'new' piece of information is the potential compliance costs for operators. These relate to

- Accessibility costs for the use of bus station facilities operated by Translink;
- The provision and maintenance of vehicle depots; and
- Significant costs for smaller operators who have to bid for contracts.

The last issues may be of interest to the Committee given that competition will depend on operators being willing to compete in the first place. If the costs are significant as suggested this may reduce competition between these operators and Translink and therefore impact on the overall positive benefits which the department has indicated it expects from the reform proposals.

5.2 Equality Impact Assessment

The EQIA looked at two groups:

- The general public
- Staff affected by proposals to initiate organisational changes

5.2.1 General Public

The department has drawn on previous Equality Impact Assessments in the field of public transport and data from Translink customer surveys identifying women and younger people as tending to use public transport more frequently. The conclusion is therefore drawn that the proposed changes would benefit these groups. The use of data lends these claims some credence.

Again drawing on information gathered from a previous study – the Accessible Transport Strategy – the department states that people with disabilities and older people are less likely to have access to a car and therefore benefit from improvements to public transport services/vehicles. A specific point is made about benefits to carers of older people, people with disabilities and pre-school children from using accessible public transport vehicles. This could be accepted if all the buses were accessible but this is not the case. This claim is therefore perhaps overstated.

The department believes that the proposals will bring about greater accessibility and better integration to all areas both rural and urban. It believes that the proposals will contribute, at least in part, to social inclusion by providing access to jobs and services to those on low incomes or in remote areas.

The department believes that benefits arising from the proposed organisational and operational changes will benefit all the Section 75 groups but in particular to women, young people, older people, and people with disabilities and those with dependants. On the face of it this is likely to be true but again much depends on whether or not the outcomes anticipated in the Outline Business Case come to fruition.

5.2.2 Staff

The staff of NITHC/Translink is overwhelmingly male (88%) and it is envisaged that approximately 40 people will be transferred to the agency therefore it is reasonable to expect that this transfer will impact more males than females.

The respective profiles of NITHC/Translink staff are broadly similar in relation to the NICS and NI labour force as a whole for two of the Section 75 categories (between persons of different religious belief; and between persons of different age). The department has therefore concluded that there will not be any differential impacts in either of these two categories following transfer of staff to the agency.

Determination whether there is an impact for some categories under Section 75 is hampered by lack of or gaps in data. For example:

- *Between persons of different marital status* – information on the marital status of NITHC/Translink staff is not available.
- *Between persons of different political opinion* – no data is collected about political opinion of civil servants nor are there any plans to do so.
- *Between persons with dependents and persons without* – DRD has no specific information on people with dependents in relation to staff in the NICS or in Translink.
- *Between persons of different sexual orientation* – there is no data on the sexual orientation of civil servants or staff in the NITHC/Translink or the North's labour force as a whole.

Because of the lack of data in these cases the EQIA uses other benchmarking data to draw conclusions about the potential impact e.g. the age profile for NITHC/Translink is very similar to that of the NICS so it is concluded that the marital profile for NITHC/Translink would also likely be similar to that of the NICS. Therefore DRD has concluded that there is no differential impact in terms of marital status. This approach may lead to conclusions on the impact of the above categories being questioned but DRD has made an attempt to use reasonable available data in order to draw these conclusions; and have also specifically asked for comments in the consultation exercises on those areas where there are gaps in data.

The data held by NITHC/Translink on the category *between persons with a disability and persons without* indicates that 33 staff out of a workforce of over 4000 consider that they have a disability i.e. less than 1%. This is lower than the NICS (5% with disability) but may be due to reluctance to identify themselves as having a disability. DRD has therefore concluded that there is no differential impact on people with a disability.

In relation to the category *between persons of a different race* only a very small number of staff in NITHC/Translink (0.5%) has a minority ethnic background. Again, because of the transfer of a small number of staff DRD has concluded that this will not have a differential impact in terms of Race.

Because the transfer to the new agency involves such a small number of staff and given the appraisal by DRD on data held by it or of comparable data on the NICS and the NI labour market as a whole, the conclusions reached appear to be reasonable.

5.3 Consideration of Alternatives and Mitigation

In terms of the general public no mitigation or alternatives are proposed by DRD as it considers that all potential impacts on Section 75 groupings are positive as described above. Again, this is based on the assumption that the necessary organisational and operational changes bring about enhanced and more accessible services.

It is also anticipated that staff transferred to the agency will have their terms and conditions protected by TUPE and therefore there will be no detriment.

¹ Page 78 of OBC

² Page 117 of OBC

³ Page 191 of OBC

⁴ Page 210, paragraph 16.3.7 of the OBC

⁵ Page 207 of OBC

⁶ Local Bus Services. Report on the market study and proposed decision to make a market investigation reference. Office of Fair Trading, August 2009

⁷ Page 47 paragraph 6.8 of Detailed Policy Proposals

⁸ Page 48 paragraph 6.12 of Detailed Policy Proposals

⁹ Table 7 and 8 of Detailed Policy Proposals

¹⁰ Page 78 of OBC