



Northern Ireland  
Assembly

Committee for Regional Development

# OFFICIAL REPORT (Hansard)

Public Passenger Transport (Service  
Agreements and Service Permits)  
Regulations (Northern Ireland) 2015:  
Department for Regional Development

22 April 2015

# NORTHERN IRELAND ASSEMBLY

## Committee for Regional Development

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**Members present for all or part of the proceedings:**

Mr Trevor Clarke (Chairperson)  
Mr Seán Lynch (Deputy Chairperson)  
Mr John Dallat  
Mr Declan McAleer  
Mr Cathal Ó hOisín

**Witnesses:**

Mr Ciaran Doran	Department for Regional Development
Mr Sean Johnston	Department for Regional Development
Mr Garry McKenna	Department for Regional Development

**The Chairperson (Mr Clarke):** I welcome the officials from the Department for Regional Development (DRD): Ciaran Doran, Sean Johnston and Garry McKenna. Ciaran, are you starting off?

**Mr Ciaran Doran (Department for Regional Development):** I will make an introduction and then let the other guys do the talking. We were before the Committee last July on the same issue. We believe that we provided a lot of follow-up information after that session. Garry will go through specific proposals for a consultation on legislation that is in process. From the Department's point of view, I make the point that some of the proposals reflect opinions that have been expressed by the Committee in past sessions. That is all I have to say.

**Mr Garry McKenna (Department for Regional Development):** Thanks, Ciaran, and thank you, Chairman. We are here today at the invitation of the Committee. We reissued the regulations for re-consultation at the start of April. At that stage, as is always the case, we invited Alan Doherty, on behalf of the Department, to write to the Committee to provide it with a copy of the consultation document and to indicate that formal evidence would be given at the end of the consultation period under the SL1, but advising the Committee that, if it wished to hear any evidence in the meantime, we would be pleased to provide it. On that basis, we were invited to give evidence today.

I will speak about the regulations primarily. The regulations are important in order to complete the implementation of the Transport Act (Northern Ireland) 2011, which was introduced under the previous Assembly. It provided for detailed arrangements for the reform of public transport. In particular, it provided arrangements for the operation of service agreements and for a new approach to service permits. The other key issue in the Transport Act, when it is fully implemented, is that the Department will take responsibility for the provision for the allocation of public transport. At present, all that is dealt with under the Transport Act (Northern Ireland) 1967, whereby the Northern Ireland Transport Holding Company holds responsibility for public transport arrangements.

The key eight parts of the regulations are to provide for the introduction of a new service agreement and service permit system. As Ciaran mentioned, the Department provided the Committee with a previous version of draft regulations in a briefing on 2 July 2014. At that stage, the Committee declined to support the policy objective of the regulations and, indeed, raised issues thereafter with the Department, to which the Department responded through a departmental Assembly liaison officer (DALO) letter dated 11 August 2014.

The Transport Act 2011 provides the basic framework within which public transport is to be taken forward. It also takes into account the requirements of EC regulation 1370/2007, which deals with the conditions under which authorities are to intervene in the delivery of public and passenger transport services. When the regulations seek to be made, two further commencement orders will be necessary. Commencement order number two will activate those parts of the Transport Act 2011 that are necessary to allow the Public Passenger Transport (Service Agreements and Service Permits) Regulations to be made. As soon as the date is agreed for those regulations to come into effect, commencement order number three will be introduced. It will commence all the remaining provisions in the Transport Act 2011.

Since the regulations were last before the Committee, a number of changes have been made to them. We have been in discussions with the Departmental Solicitor's Office (DSO) on a number of issues, and some things came to effect. Regulation 5 allows for a longer period for the payment of a service permit fee, because consultation indicated that that would be helpful. Schedule 2 dealt with the review of decisions. When we were introducing the regulation, schedule 2 dealt with the appeals against the review of decisions made under a direct award contract, which is what the Department intended to do. The Departmental Solicitor's Office pointed out that the 1370 regulation also provided for alternative forms of contract, which could be a competed or directly awarded contract. The DSO recommended the introduction of a second form of appeal mechanism, even though it is not relevant immediately. The Department's view is that that is a sensible thing to do, so the regulations now take into account both forms of appeal mechanism.

The effect of the draft regulations is to allow the Department to enter into service agreements and service permits. Part 1 of the regulations deals with service agreements. Regulation 3 sets out the requirements, additional to the mandatory requirements of article 4 of the EC regulation, and stipulates that a service agreement may also apply to subsidiaries. There are further details of the actual regulation.

Part 2 deals with the requirements for the implementation of a service permit system. The biggest effect of the change in the service permit is that it replaces the existing 10B-type permit that is issued by the Department of the Environment at present. One of the key things that the regulations will do when they are fully implemented is to bring all the responsibility for the function into one area in the Department that will deal with the service agreement and service permit requirements.

Initial public consultation on the first set of regulations took place between January and March 2014 and would have been the subject of an SL1 to the Committee in advance of the meeting on 2 July. The second public consultation on the revised draft regulations commenced on 1 April and will end on 27 May this year. At that stage, the Committee will, of course, receive an SL1, and further evidence will be given if the Committee considers that to be necessary.

I will conclude my comments at this stage, Chair, unless there are any issues that you wish me to address again.

**The Chairperson (Mr Clarke):** Thank you. This is relatively new to me because it happened before my time as Chair. Other members will have experience of your previous evidence session. I want to make a couple of points, and I will then open the meeting to questions.

**Mr McKenna:** There is something else, Chair, that I forgot to mention but ought to mention. When the Committee, under the previous Chair, considered these regulations on 2 July 2014, the biggest area of concern was the length of the proposed contract. Indeed, arising from that, the Committee corresponded with the Department. The Department and the Minister took that into account. In the proposed regulations, a range of options is now available, none of which adds up to a 10-year contract.

**The Chairperson (Mr Clarke):** I appreciate that, Garry. I will leave it to the members, because they were here when that was discussed. I want to make two points. We are talking about the length of a

contract for an organisation that seems to be going through a difficult patch. The chief executive of the organisation said that its liquidity could be in question in the next couple of years. What is the wisdom in the Department entering any long contract with any organisation that has a difficulty with liquidity? Is that for you, Ciaran?

**Mr Doran:** Possibly, Chair. Under the current arrangements in the wording of the contract, it will be subject to agreement or review almost annually. As the financial position of Translink changes or develops, that can be adjusted for within the terms of the contract. The contract itself does not change those financial realities for Translink. The level of funding is currently driving that position for Translink. We will have to work to a level of funding. I do not think that we want to give the Committee the impression that, because we enter into a service agreement or a contract, that will resolve the financial issue with Translink. I do not think that Translink sees it that way. The advantage of this is that it represents a formal commitment to Translink for a period of years, so, when it comes to its accounts, the term "going concern" could be used. If Translink can state to its auditors that there is a formal commitment from the Department in a contract, that is helpful. I think that Translink would also say that.

**The Chairperson (Mr Clarke):** I appreciate that, Ciaran. I want to put this on public record, because I have never done it before. My preference is for Translink to exist into the future, but certainly not at the expense of everyone else in the public sector. My personal opinion — not my political opinion — is that I do not see that the privatisation of that type of transport system in Northern Ireland would necessarily work. As you will remember, Ciaran, we have previously had a long conversation about rural areas. I do not necessarily believe that private operators would be particularly interested in that on its own. However, one thing that worries me about contracts is that it seems that we are under some form of moral obligation to prop someone up. At the same time, I do not believe that, because we have given someone a reasonably long contract, we should be held over a barrel, with a moral obligation on the Executive to prop up an organisation that has not been working effectively.

Since I joined this Committee, one thing that has disturbed me is hearing references to other schemes, even the Dungannon pilot. We are in difficult times — I know that I am digressing — but we still have the health service and schools operating with half-empty buses. We have community transport, Translink and private operators. I would really love to know, Ciaran, when you and some of your senior colleagues will get your heads together to crack that nut. In the education sector alone, £75 million is spent on transporting children across Northern Ireland, but buses are not being used in the most cost-effective manner. Sean, maybe you will tell me this: when you are going to crack that nut?

**Mr Sean Johnston (Department for Regional Development):** We are still working on that because we are still waiting for some information from the education and library boards or the new Education Authority. Once that comes, we hope that we will bring it to a conclusion pretty quickly. I think that they got caught up with the merger and the disruption.

**The Chairperson (Mr Clarke):** People have approached me, I suppose because I am now the Chair of this Committee, but I have had conversations with people who represent the private sector who do not believe that they have got a fair crack of the whip in relation to your pilot. I do not mean any slight on Dungannon, but it does not necessarily represent all of Northern Ireland in its demographics or location. We have other parts on up that are closer to the coast and parts that are closer to the southern end of Northern Ireland. So, geographically —

**Mr Johnston:** I do not think that we should get hung up on Dungannon. The proposals —

**The Chairperson (Mr Clarke):** No, I certainly would not.

**Mr Johnston:** We have involved all the stakeholders — community transport, Translink and the private operators — throughout the process, and all the various groups within the Department. The Federation of Passenger Transport has engaged with us in this as much as anybody else, including Translink, the community transport people and the health service.

The bottom line is that we will come forward with proposals as soon as we get agreement. It is a bit difficult to get agreement among so many groups, but hopefully we will.

**The Chairperson (Mr Clarke):** The funny thing about it, Sean, is that all the groups that you are talking about are in the public sector, and it is public money. We have just listened to people from the voluntary sector, and there are volunteers in those groups. If the heads of the departments told them that their public funding had been cut, it would maybe focus their minds a bit more. We have just heard how Ciaran has savagely cut 33% from community transport. I see that you are looking exhausted with that one, Ciaran.

**Mr Doran:** No, Chair, I am not.

**The Chairperson (Mr Clarke):** That is the reality: 33% has been taken from the community sector, yet we still have £75 million going to the education sector, where buses are used in the mornings and afternoons and probably sit relatively empty for the rest of the day. The fleet in the public sector is not used. My only concern — this is why I am putting it on the record — is that we are entering into long-term contracts when we have not sorted out the problem in Northern Ireland geographically and otherwise in relation to all these buses that belong to Northern Ireland plc and that are paid for with public money. I think that you said earlier, Ciaran, that we do not want to waste taxpayers' money, but you are happy to waste it on buses that belong to Executive Departments. It is time that you really got this one sorted.

**Mr Johnston:** That is an issue, but it does not really affect our ability to enter into a contract. As I said, the contract with the Translink will be subject to change. As Ciaran said, it will be changed every year. If we make major changes to the joining up of services, it will be radically changed in that event.

**The Chairperson (Mr Clarke):** This is not personal, Sean, but I want to quote from the Audit Office report that came out yesterday. It states:

*"there is a paucity of professional public transport skills available within the DRD. In our view, the lack of adequately skilled transport planning professionals limits the Department's ability to guide and drive best practice in public transport services and to act as an informed customer capable of effectively holding NITHC/Translink to account."*

How can you assure this Committee that this contract will do the opposite of what the Audit Office has said?

**Mr Johnston:** Well, I think that we do not want to get into that. We would be pre-empting another discussion that will be had on that PAC report, and we do not want to have that.

**The Chairperson (Mr Clarke):** I can have that conversation twice. I do not mind.

**Mr Johnston:** In fairness to the Department for Regional Development, we, as well as the Committee and its predecessors, have been pressing for this to happen. We were the ones who chased after this, are still chasing after it, and will continue to chase after it. Whatever you might say about our skills —

**The Chairperson (Mr Clarke):** Sorry. I am not saying it; the Comptroller and Auditor General is saying it. He is the man who has oversight of the spending of every Department. I think that I met you before, Sean, and you told us about the Dungannon plan, and I recognise that DRD is driving that, but —

**Mr Johnston:** It is not going to be easy. I would not like you just to assume that it is going to be an overnight —

**The Chairperson (Mr Clarke):** It is easy to take it off the voluntary sector, so I think —

**Mr Doran:** Chair, I think all that we would say is that we believe that the mechanisms in the legislation are flexible enough to adjust for any tangible changes that come out of the pilot, whether it is in Dungannon or anywhere else. Ultimately, it comes down to where the money is. You have big chunks of funding for public transport — "transport" is maybe a better term — in different Departments. Trying to find a way of making the best use of that funding is something that our Department is very keen to explore; definitely.

**The Chairperson (Mr Clarke):** I think that we all are. Can I just press you on that, Ciaran? Can you give me an assurance that the contract will not prevent us from doing that?

**Mr Johnston:** Yes.

**The Chairperson (Mr Clarke):** I would like to hear from Ciaran as well.

**Mr Johnston:** If we enter into a contract — for the sake of argument, let us say that it is five or six years, with some flexibility for extending it — whatever services and money are in it will be reviewed every year. If we have to substantially change —

**The Chairperson (Mr Clarke):** Sean, without trying to put you down, I think that Ciaran is the man with rank here.

**Mr Doran:** It will not be lasting too long, Chair. *[Laughter.]*

**The Chairperson (Mr Clarke):** I would love to tie you down on this one, Ciaran.

**Mr Doran:** Right.

**The Chairperson (Mr Clarke):** I would like you to give us an assurance that, whatever this contract does, it will not prevent us from going into some visionary ideas for transport for the rest of the public sector, as well as the community sector and the private sector.

**Mr Doran:** No; absolutely not. This contract is about essentially putting in place or formalising arrangements to meet EU requirements in respect of what is already in place with Translink. I want to make one point: obviously, you need to look at the efficiency of other transport operators, whether it is for schools or whatever, but a very important point for the long term — this is particularly important for the private sector — is that this framework creates an opportunity, and one that is already in place. If there can be growth in the public sector, it is much easier to have this discussion instead of saying, "We are taking this away from you to give it to them." If we are growing the overall public transport sector, all areas, including community transport and the private sector, can benefit from that. We genuinely believe that this mechanism, this legislation, is the way to do that in the future.

**The Chairperson (Mr Clarke):** So it is not going to prevent anything.

**Mr Doran:** No.

**The Chairperson (Mr Clarke):** Thank you.

**Mr Lynch:** To follow on from that, best practice says that contracts should be for seven years at most. I see some figures that state that Barcelona is as low as two years and Brussels is four years. Why have you chosen eight years?

**Mr McKenna:** The model contract length within the European model for buses is 10 years and for rail it is 15 years. Obviously, if a decision were taken to offer one contract for all provision of transport services, the sensible thing to do for a direct-award contract would be to look at the 10-year figure. However, the Committee had genuine concerns about how that would impact on oversight of the contract in particular. Maybe not enough evidence was given at the last hearing on how the oversight of the contract would continue on a yearly basis from the point of view of reviews and arrangements that would not prevent that contract from being altered. The reason for going for 10 years in the first instance was because that was the average length of contract in public transport for buses, as opposed to 15 years for rail.

**Mr Ó hOisín:** The Deputy Chair and I are probably the two longest-serving members of the Committee in this mandate, and we have seen a lot of this stuff before. There is a sense of déjà vu, particularly with the Dungannon pilot project. As you have brought it up, I would like to suggest an update on that. I know that the Minister alluded to it in the Chamber recently. I would not say that he was gushing, but he was certainly more complimentary than I would have been. I am more sceptical, but I would like to get an update on that.

As for the contracts, the Department for Transport (DfT) document 'Tendering road passenger transport contracts: best practice guidance' states that directly awarded contracts cannot exceed five years. Does this not fall into that category?

**Mr McKenna:** That, I suspect, deals with the deregulated transport system that applies in Great Britain, as opposed to the regulated transport system that applies in Northern Ireland.

**Mr Ó hOisín:** It is DfT, yes.

**Mr McKenna:** Yes. The point is that the model that we are following is the one laid out in EC regulation 1370, which talks about direct-award contracts. That provides for the average of 10 or 15 years. The reason for that is because there is a fair degree of investment required on the part of the companies that are receiving those contracts. There is an element of certainty, which I think is what Ciaran was alluding to earlier on. Both parties in this need a degree of certainty.

**Mr Ó hOisín:** I get that, Garry, and that was the concern that the Committee had last July, as you rightly say. It is an issue that we will have to keep an eye on. As you say, there is some sort of negotiable movement, year on year, anyway.

**Mr Doran:** Absolutely. I can give the member complete assurance that this would be subject to adjustment for no reason other than matters relating to the budgets that are available and also the performance measures that we expect at Translink. That changes year on year, effectively, and will continue.

**Mr Dallat:** One of the problems in the past was the failure of Translink to properly inform its funders, ourselves in the Assembly, of critical decisions that it was making. Is there anything in the future contract to ensure that, when Translink is putting up fares, at least the Committee will be told and the Consumer Council will be consulted, as, legally, I think it should be? In other words, will the opportunities to scrutinise what Translink is doing be more clear? Is there any commitment to ensure that those serving on the board of the Northern Ireland Transport Holding Company (NITHCo) are not there because they are in the right social circle but are chosen for their skills in contributing to public transport?

**Mr Doran:** I will try to answer that. There is a specific section on the Consumer Council in the Transport Act (Northern Ireland) 2011, which will build on the protocol for communication. Maybe Sean can say more about that. As for keeping the Committee informed, to be fair to Translink, we expect it to do that, but, from our point of view, it should come through the Department. I am not trying to say that there is no obligation on Translink, but that is for the Department to do as opposed to it being a contractual issue. On appointments to the board of NITHCo, my understanding is that an appointment process for, essentially, all the non-executive board members is to happen before the end of this year. Some of the points that you referred to about skills are actually written into the legislation, so that will be a factor in the appointment process.

**Mr Dallat:** I certainly welcome that. If that is good practice, hopefully it will be emulated in other places, because it was thoroughly distressing to discover that the Commissioner for Public Appointments just decided to throw in the towel because he was fed up.

**The Chairperson (Mr Clarke):** Ciaran, you talk about protocol and good practice. However, you had protocols with the Consumer Council previously that you ignored. What assurance is there that this protocol is going to be any better?

**Mr Doran:** Chair, without going back over this, we are actively —

**The Chairperson (Mr Clarke):** No, I do not want to go back over it. I am just saying that you are giving us an assurance today that there are protocols. We can point to protocols that you have ignored in the past. I am trying to get an assurance today. Let us not talk about the past. Let us keep going forward.

**Mr Doran:** What I can say is that we are actively talking to the Consumer Council. I have been at a couple of meetings with the Consumer Council about the process that Translink is undertaking to look at service. We are aware, for example, that, twice a year, Translink does a survey about punctuality known as the Passenger's Charter. There have been recent meetings with the Consumer Council

about that issue as well. That is what I can say. There is a conscious effort on the part of the Department to make sure that the arrangement works better going forward.

**Mr Johnston:** There is a section in the 2011 Act on our relationship and liaison with the Consumer Council.

**Mr Doran:** There is.

**The Chairperson (Mr Clarke):** Sean, you are going to get Ciaran into trouble.

**Mr Johnston:** No.

**Mr Doran:** More trouble than I am already in.

**The Chairperson (Mr Clarke):** You are, Sean, because the protocols were always there. It is just that, in the past, Ciaran and his other officials ignored them.

**Mr Johnston:** It is on page 12.

**The Chairperson (Mr Clarke):** Maybe you could get that framed and give Ciaran and some of the other officials a copy of it.

**Mr Doran:** Does that mean that you are going to agree that it can be commenced?

**The Chairperson (Mr Clarke):** No, I am not agreeing anything.

**Mr Doran:** All right.

**The Chairperson (Mr Clarke):** You did him a good turn there, because there was something else that I wanted to get at him about, but I have forgotten what it was.

**Mr McKenna:** The only other point that I would make, Chair, is that the Committee will also receive an SL1 on these regulations at the end of the consultation period, which is due to end on 27 May. As soon as possible thereafter, officials will be pleased to give further evidence at the Committee's request.

**The Chairperson (Mr Clarke):** OK, we will consider that. I know what it was now, Ciaran. Thanks, Garry.

**Mr McKenna:** My pleasure.

**Mr Doran:** I do not want to hold you back, Chair.

**The Chairperson (Mr Clarke):** I am surprised that John let you off with this. He talked about the social circles of some of your board members. Can you give any rationale for why they extended the length of those members' term on the current board? They should have been replaced around June.

**Mr Dallat:** Exactly.

**Mr Doran:** The extension was simply to facilitate a re-advertisement and a competition —

**The Chairperson (Mr Clarke):** Sorry, Ciaran. Whenever they are appointed, they are appointed for a term.

**Mr Doran:** Yes, but —

**The Chairperson (Mr Clarke):** Let me just get this right. Are you telling me that someone in the Department forgot to alert the Minister to start the process? They knew when those people were appointed that the end of their term would come at a certain time.

**Mr Doran:** With respect, Chair, the current Minister has made a decision that there will be no automatic reappointment of board members.

**The Chairperson (Mr Clarke):** He has done that as such, because he has extended the terms of those who are currently employed.

**Mr Doran:** For a period of months, but in the past —

**The Chairperson (Mr Clarke):** How many months?

**Mr Doran:** I think that it is up to six months. In the past, appointments to the NITHCo board have automatically run for two periods of three years. That is actually what happened.

**The Chairperson (Mr Clarke):** OK. Thank you.