



Northern Ireland
Assembly

Committee for Regional Development

OFFICIAL REPORT (Hansard)

Public Transport Contract:
Department for Regional Development

2 July 2014

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)
Mr Seán Lynch (Deputy Chairperson)
Mrs Brenda Hale
Mr Ross Hussey
Mr Declan McAleer
Mr Kieran McCarthy
Mr Cathal Ó hOisín

Witnesses:

Mr Kyle Crutchley	Department for Regional Development
Mr Ciaran Doran	Department for Regional Development
Mr Garry McKenna	Department for Regional Development
Mr David Strain	Department for Regional Development

The Chairperson: I welcome from DRD Garry McKenna, head of transport legislation branch; David Strain, transport projects; Kyle Crutchley, transport projects; and Ciaran Doran. You are all very welcome and are no strangers to the Committee. I have not seen you for a while, Kyle. I do not know what we did on you the last time we took you away, but it is good to see you. I ask you to make a short presentation and then leave yourself open for questions.

Mr Garry McKenna (Department for Regional Development): Thank you very much, Chairman, for the welcome and for the opportunity to give evidence today. The main purpose of my part of the presentation is to deal with the SL1 on the Public Passenger Transport (Service Agreements and Service Permits) Regulations, which were sent to the Committee in the middle of June. We are grateful to the Committee for the opportunity to give evidence on those regulations.

The regulations are an integral part of the introduction and the outworkings of the Transport Act (Northern Ireland) 2011, which was passed by the previous Assembly and dealt with the reform of public transport in Northern Ireland. The particular regulations that the SL1 deals with enable the Department to enter into the directly awarded service agreement in connection with the provision of public transport services and to provide for the introduction of a new service permit system, which will allow other operators to provide public transport services that will be complementary to the network.

The regulations are made, as I mentioned, under the Transport Act and provide detail on the operation of the agreement and the permit systems introduced under the Act. The arrangements also provide for the transfer of the route element of bus licensing to this Department from the Department of the Environment, as legislated for, again, in the Transport Act. The Committee, at its meeting on 18 June, noted two commencement orders, which are germane to this particular activity. The second

commencement order activates the powers the Department needs to make the particular set of regulations. The third commencement order brings into effect the remaining parts of the Transport Act and completes the picture, so to speak.

It is the third commencement order that deals with the ancillary activities of the transfer of the bus licence requirement from DOE to the Department. The critical aspect of that is that the third commencement order needs to come in at the exact same date as these regulations, because, once the third commencement order is operational, the only available way of dealing with public transport in Northern Ireland will be through the service agreement.

Consultation on the regulations commenced in January 2014 and ended at the end of March 2014. The SL1 provided to the Committee information on the summary of consultation responses. The consultation responses were primarily positive, in that they welcomed the legislation, the policy intent of the legislation and the direction of travel, if you will pardon the expression. A number of issues were raised by individual respondents, all of which the Department has addressed directly with those respondents. On the basis of the comments received from consultees, there was no requirement to make any further adjustments to the regulations. The regulations, as consulted on, therefore stand.

I am now happy to take any questions whatsoever on the SL1 or related issues.

The Chairperson: OK. Thanks for that. One of the issues we have and have had with this is that it is a 10-year service level agreement or contract — call it what you will; we have already had those arguments. That is the lifetime of two Assembly mandates. Do you think that that is good practice?

Mr Ciaran Doran (Department for Regional Development): Chair, if you want, I can try to address that and ask people to come in on the issue. From the Department's point of view, given that we are dealing with public transport, and given the nature of capital investment in public transport, particularly on railways, it requires a considerable period of time to see an adequate return. Ten years does not seem unreasonable in that light. Without quoting reports out there on the issue, we understand that it is quite normal practice in this sort of contract on public transport for 10 years to be a standard arrangement. In fact, the guidance from the EU talks about 10 years for bus and up to 15 years for rail. So, from our perspective, we believe that the reference to 10 years is certainly in line with general recommended practice in Europe.

The other point is that there is a contract variation process in the draft agreement, which will allow for adjustments on a regular basis.

The Chairperson: In the last one, how many adjustments took place throughout the year or years?

Mr Doran: There is a reference in the service agreement to the fact that, each year, the Department will negotiate with Translink on a corporate plan following on from the previous session, which is primarily focused on the amount of funding that the Department has, the issue of fare increases and the schedule of services to be provided. That will happen on a regular basis over the 10-year period. It is actually referred to in the draft service agreement. In other words, the contract is a document that will be referred to annually, essentially in negotiations with Translink.

The Chairperson: For instance, the rapid transit was not a variation; it was a significant contract. The definition of "variation" in the 'Concise Oxford English Dictionary' is:

"a change or slight difference in condition, amount, or level."

How does the automatic award of Belfast rapid transport fall into that definition?

Mr Doran: I am not sure whether I am best placed to answer that question, but I think that it has been explained in the past that the Department went through a process to take interest from the general market, and it was at that stage that the decision was taken to appoint Translink as the lead operator of Belfast rapid transit.

The Chairperson: You raised the issue of variation just a short time ago, Ciaran. The bottom line is this: the rapid transit is a very significant variation to the contract, as I said. How do you get around that? Maybe you are disputing the Oxford dictionary in relation to it.

Mr Doran: No, we are not. Our point is that, if we draw up a contract at this point prior to the introduction of Belfast rapid transit, the schedule that defines the network of services cannot take account specifically of Belfast rapid transit, but there is a mechanism in the contract for that schedule to be adjusted as we go forward. So, as Belfast rapid transit comes into play — I think that 2017 is the date — there will obviously be an adjustment to the contract.

Mr Lynch: In simple terms, explain the purpose of this legislation, what it means for operators other than Translink and how it will specifically target the likes of community transport.

Mr McKenna: The legislation seeks to give voice the requirements of the Transport Act 2011, and the key aspect of that Act was the establishment of the service agreement, which, to all intents and purposes, deals with what was known as "stage carriage services" under previous definitions. Those are effectively public transport services, and the service agreement will be the methodology by which that is governed going forward. The second aspect deals with service permits. The service permits cover those operations by other organisations that have identified particular services that they can offer that are complementary to the network. Services like Eamonn Rooney and Chambers run specific services that are different from those stage services. Mr Crutchley will cover the role of the —

Mr Kyle Crutchley (Department for Regional Development): On the community transport side, they operate under the 10B permit licensing arrangements. The 10B permit is not to be confused with our new bus permit. The 10B permit is an exemption to operator licensing. So, the community transport side would not form part of it; that is the commercial side of transport. As you are well aware, DOE is renewing its operator licensing. So, we cannot prejudge the outcome of that. In the future, it may be that community transport needs an operator's licence and, in that respect, it would come under the permit system. There is a demand-responsive category in our permit system to cater for the services that they provide, but, as it stands at the minute, they are outside the bus permit system.

Mr Lynch: I know that they have concerns.

Mr Doran: This legislation does not directly impact on that. That is a DOE issue. I can give the member assurances that there are no plans in the Department for Regional Development to change the way in which we are funding rural community transport partnerships. This would have no impact on that.

The Chairperson: The Act states that most of the public transport provision will be provided by the Northern Ireland Transport Holding Company (NITHCo), whereas the proposed contract in front of us today states that, as of a certain date, the contract awards NITHCo the exclusive right to provide public transport services. Explain to me how that is compliant with the primary legislation.

Mr David Strain (Department for Regional Development): Effectively, when the Act came into place, there was an indication that most public passenger transport services would be provided by the holding company. In preparation for the service agreement, the Department has looked at the network of services being provided by Translink, and significant work was put into preparing schedules and mapping out the network. At present, on the basis of the model that is in place for the provision of public transport in Northern Ireland, the majority of public transport services are being provided by the holding company. The term "most" can be interpreted in —

The Chairperson: It does not say "the majority", David; it says "exclusive rights". That is for 10 years.

Mr Doran: When it talks about exclusive rights, it is referring specifically to what is known as public service obligations or funding that is provided to Translink in those areas, and that relates essentially to the funding that is provided by the Department for, for example, capital or a rail subsidy. It is referring to those specific areas. If you look at it in overall terms in Northern Ireland, that is the vast majority of public transport services. At this point, that is the position that the Department wants to put into effect in the service agreement that we propose to put forward with Translink.

Mr Strain: It falls into the way that the whole system will operate. We will have a network of contracted services and then the services that are being provided by other operators under permit. So, we have maintained a regulated system here. In order to regulate the market, someone looking to provide a new or innovative service in and around the contracted network would be provided with a permit to operate those services, as long as they were complementary to the network. So, the exclusive aspect can also refer to the part of the network that is regulated.

Mr Doran: Maybe the best example is railways. That is an exclusive contract for Translink, because Northern Ireland Railways is the only operator. In bus, it is slightly more complicated, because there is the option for other operators to come in and put forward proposals for additional routes.

Mr Ó hOisín: If you look in the dictionary, you might see that "exclusive rights" are actually described as a monopoly. You mentioned the trains, Ciaran. How would that incentivise Translink to make any change?

Mr Doran: Within the EU regulations, which we believe allow the arrangement to be put in place — it is certainly not unique to Northern Ireland — there are certain obligations on the Department to ensure that Translink is not overcompensated. That is one of the specific schedules in the contract; I think it is schedule C.

Mr Ó hOisín: How is that compensation worked out?

Mr Doran: I will not try to go through each aspect of it, but a set formula is laid down in the EU regulations. We have followed that formula in calculating what is deemed to be a reasonable profit in relation to public service obligations. I refer you back to the previous conversation you had, with Translink. This year, we are effectively telling Translink that it should run at a loss. That is quite unusual, but it is very important when it comes to understanding that Translink is not making monopoly profits. It is important to say that because one of the primary focuses of the Department is to ensure that fare-paying passengers using public transport are, to a large extent, protected. If Translink's costs escalate, essentially that has to have an impact on the money that the Department pays Translink or on fare-paying passengers. We are putting pressure on Translink to maintain fares at as low a level as possible. That is a long-winded way of saying that there are mechanisms to ensure that Translink has to continuously improve and deliver best value. That means that we have to negotiate with it about costs.

Mr Ó hOisín: Keeping costs down, particularly in fares, limits investment opportunity.

Mr Doran: It is a balancing act. In theory, if we told Translink that it could put its fares up as much as possible, potentially it could generate income for future investment. However, traditionally, capital grants have largely funded capital investment in Translink. So, as funding and financing changes over the next couple of years, we will have to adjust to what is available on the ground.

Mr Ó hOisín: I live on the route of the 212 bus, the most profitable of Translink's services. There is no park-and-ride service at one of the major junctions and no intention of putting one there any time soon. I had a meeting with Roads Service about it last week. That balancing act is critical.

Mr Doran: We accept that. The only other point I will make without over-egging it is that the Northern Ireland Transport Holding Company group is a complex process of subsidies between different areas. To some extent, the bus company subsidises the rail company, and parts of the bus company's profitable routes are subsidising loss-making routes. From our point of view, that has advantages in delivering best value for customers.

Mr Ó hOisín: In the meantime, you cannot get to the health centre, church or wherever you are going.

Mr Doran: We feel that that is best addressed, as, I think we have demonstrated over the last 12 months, by using the rural community transport partnerships and using Translink in subsidised routes and to actively look at the provision of services, particularly to hospitals. We have actively promoted those. That is something that we can build on. There is nothing within the contract to say that that cannot be built on in the future.

Mr McAleer: I apologise for missing the start of your presentation. Your briefing notes state that you will introduce a service permit system that will allow other operators to provide public transport services. I would like some reassurance from you on what impact that might have on other complementary operators. I am thinking of myself and other MLAs who are from isolated rural areas, where community transport operators work in areas that are some of the hardest to reach.

Mr McKenna: Mr Crutchley mentioned how the community-based transport systems were, effectively, separate from this. They will continue. Mr Doran also said that the funding arrangements that the Department has in place to assist those will remain. Those community services will continue to be

licensed by the Department of the Environment. To all intents and purposes, these proposals will have absolutely no impact on those services. The service permit that you have alluded to, and which Mr Strain referred to, is for those services that other providers have identified. Those services are complementary to what will be classified as the service agreement services, so people, such as the Chambers and the Eamon Rooneys of this world, who have identified niche markets, will be able to continue to operate under the permit system.

Mr McAleer: You are saying that it will not have a detrimental impact.

Mr McKenna: It will have no detrimental effect.

Mr Crutchley: Currently, around 110 or 120 routes are operated by about 30 operators under the current DOE licensing system. We will take over control of that system through the permit scheme. The permit system comprises a three-year permit. At the minute, the operators have to apply to DOE for the annual renewal of their licence. This three-year permit will give longevity to their services.

Mr Strain: The routes that those operators currently operate, and which will operate with the new permit after the system comes into place, will be equally protected in respect of anybody else who comes in and wants to run services in and around their routes. We say that these permit services should be complementary to the contracted network but they should also be complementary to services that are already being provided by operators other than Translink. So, the regulated system protects the contracted network and those operators who are already providing very important services that operate in and around the Translink network.

The Chairperson: There are another couple of points, and we need to clarify other issues as well. Schedule B deals —

Mr Hussey: I want to follow up on the previous question.

The Chairperson: I will bring you in first.

Mr Hussey: You mentioned the permit. How much is it? Where does the money go to?

Mr Crutchley: It is £45 per application. If the applicant is successful, it is £195 for the actual permit. That works out at £240 over the three-year period, which is a cost of £80 a year to the operator. That money goes to cover the cost of operating the system.

The Chairperson: Schedule B deals with performance obligations. What, precisely, are those performance obligations in respect of value for money?

Mr Doran: There is a list of them. It may be best talked about as a combination of things. The first one is a financial target for Translink, which, currently, is to break even. The second one is a specific target to grow the number of passenger journeys; that will be set annually. The third one relates to a specific target to grow the number of people who pay on public transport — who we generally refer to as fare-paying passengers. We believe that that is a particularly important one in ensuring value for money.

There is then a series of measures, which are referred to as passenger charter targets on punctuality, reliability of services and customer satisfaction. There are obligations around safety, which NITHCo, as an organisation, will be required to do, and around sustainability and accessibility. There is a series of key performance indicators that we will continue to monitor in relation to Translink. Cost per passenger journey, for example, will be a standard indicator that we will monitor monthly. When you combine all those things, we believe that there are adequate controls or incentives to ensure value for money.

The Chairperson: There is none of that stuff in the contract, is there?

Mr Doran: The performance obligations in schedule C have been set out in terms of what the high-level figures will be. They will be negotiated with Translink annually. The main driver for that negotiation will be the corporate planning process — in other words, the targets for passenger

journeys and its cost for the 12-month period. We will set a specific target for that 12-month period, and that will happen right the way through the contract process.

The Chairperson: Schedule C is just about compensation; it is not about value for money. Where is the value for money for the taxpayer and the public purse?

Mr Doran: The Department has referred previously to the fact that we will be obligated to do efficiency reviews in relation to Translink. There is a requirement for us to put in place a service agreement with Translink. We have to be in a position to demonstrate that Translink is efficient in comparison with comparable operators and to ensure that we are not overcompensating it in funding. When you combine those two, we think that there are sufficient safeguards in that arrangement.

The Chairperson: You think, but it is not in writing.

Mr Doran: It is in writing, Chair, with —

The Chairperson: It is not in the contract.

Mr Doran: Schedule C —

The Chairperson: Cianan, with all due respect, you are bridging in the other issues: passenger journeys, passenger charter standards, safety measures and all the rest of it. Quite frankly, there is nothing in it about value for money, and that is a failing on your part.

Mr Doran: Chair, what I am basically trying to say is that there are key performance indicators that are referred to in schedule C, which is being referred to the Committee. Cost per passenger journey and cost per kilometre of use will be agreed annually with Translink. We are happy to share that information with the Committee. It may be that it is not in the pack of material that has been shared with yourselves to date, but it will be —

The Chairperson: It is not in the contract. Why have you not shared that information with us if you want us to make a decision today?

Mr Doran: We were summarising schedule C, which has a whole range of performance indicators attached to it. We are happy to share the full detail of that. Some of these performance indicators are already in place. They have been in place for quite a few years. That was part of the discussion on Translink's annual report and accounts, for example, where Translink reports on some of those value for money indicators.

The Chairperson: On the bus company's financial and operational efficiency, tell me where the critical value for money (VFM) indicator is in the contract.

Mr Doran: The first one is the target to break even. That is, effectively, saying to Translink that it cannot make excess profits. So, that, to some extent, protects fare-paying passengers. Secondly, the target to grow the number of passenger journeys will generate greater efficiency, because the most important indicator of efficiency is the cost per passenger journey. If you are growing the number of passenger journeys annually and costs are negotiated as part of the corporate planning process, that indicator will be reducing over time.

The Chairperson: Quite frankly, nothing that you have told me in the last five minutes has convinced on any of the questions that I asked you. I really think that we need to be convinced. We are being asked to do things at reasonably short notice. I have already told you what the consensus has been. You have used European stuff as a smokescreen in relation to the 10-year contract, but the previous Finance Minister is on record as saying on the Floor of the House that he was not in favour of a 10-year contract. I do not know where the present Finance Minister stands. One of the things that we are now concerned with is openness and transparency. If it cannot be brought back to the Assembly in the lifetime of two Assemblies, there is something very seriously wrong.

Mr Doran: I cannot comment on —

The Chairperson: How can you convince me that we should make a decision today to support what you are asking us to do?

Mr Doran: What we are trying to say, Chair, is that the Department is obligated to ensure the efficiency of Translink. We have taken measures to assess that, and that will be an ongoing process.

The Chairperson: Our job is to scrutinise the Department on that. My view, and that of other members in the past, is that, to do that efficiently, the Assembly and Members of the Assembly should have an opportunity. For instance, if the rapid transit system goes off here and does very well, it may well encourage further investment in other cities and towns throughout the Province. Really, it beggars belief that you are asking for a 10-year contract. Nobody else asked for that.

Mr Doran: All that I can say is —

The Chairperson: It is a monopoly. If somebody else who has an interest in doing some, or all, of it comes along, there will be no opportunity for 10 years, and they will move on to some other place. How do you get around that?

Mr Doran: A couple of things. Without reiterating the point that we made previously, we believe that you need to allow sufficient time to see a return on investment in public transport, particularly capital investment. My understanding is that even operators that are interested in coming into a market would be keen to see a long-term contract put in place. There is also cost for the Department in undertaking those sort of procurements, which we have to take into account. If you combine all those things, we believe that a 10-year arrangement provides a degree of certainty around the process.

In no way does that mean that the Department will be complacent in ensuring value for money and cost efficiency on the part of Translink. We are in the process of completing efficiency reviews of Translink, which we have referred to previously and will be happy to share with the Committee when they are complete. That gives us an assurance that we are not overcompensating Translink in relative terms compared to the rest of Europe. That is all that I can really say.

The Chairperson: We have had a contract in place since 1967, when it was awarded to NITHCo in the first place. It seems that nothing has been learned since then. We just keep on trundling down the same old road that we have been on since 1967.

Mr Doran: My understanding is that it is policy that the Northern Ireland Transport Holding Company remains a public corporation. So, in effect, it is owned by government. It is the Department's understanding that that position has not changed and that there is no specific plan to change that in the near future.

Mr Strain: One of the key things about the EU regulation was that it was specifically designed to allow contracts of that length — up to 10 years for buses and 15 years for rail — to allow those long-term planning arrangements to be put in place. One of the things that we have tried to do with the service agreement is to make sure that the variation clauses were there to allow change to happen and to make sure that the agreement would be fluid over that period.

The Chairperson: David, how long is a piece of string? It has been going now since 1967. What lessons have we learned?

Mr Strain: I think, through the public transport reform —

The Chairperson: Billions of pounds have been put into the public transport system.

Mr Strain: Through the public transport reform programme we have introduced a situation where the service agreement has to take account of a number of things. It was clearly put down that we had to pay due regard to accessibility, economy, efficiency, safety of operation and sustainability. I think, through all of the consultation that we did on the Transport Act 2011, the service agreement that we have put together will allow the Department to do that over the long term. The performance obligations and key performance indicators that Ciaran has referred to will help in that monitoring process and allow us to take those new arrangements forward.

The Chairperson: Going back to the drawing board after five years still does not stop the Department planning ahead.

Mr Strain: Clearly, in the operating circumstances, the Department's analysis is that the 10-year contract is what we think would best deliver high-quality public transport passenger services in the future.

The Chairperson: It is unlikely that Translink would walk away from the table if you were to go out this afternoon and tell it that it was only five years, not 10 years. I do not know where else it would walk to. I suspect that that would not be an issue.

Mr Doran: Chair, from your point of view, would you be happy to support the SL1 if an adjustment was made to the period of the contract?

The Chairperson: We would have to see what that adjustment would be. Kyle was with us in Arnhem, and I am sure he remembers that in that part of Europe they were operating on no more than a seven-year contract. However, we will park it there, and there will be a short period in closed session.

The Committee went into closed session from 2.28 pm until 2.39 pm.

The Chairperson: OK, members. I thank the officials who have joined us again for their presentation earlier. We need to agree an SL1. I refer members to page 175 of their electronic packs. It is the Public Passenger Transport (Service Agreements and Service Permits) Regulations (Northern Ireland) 2014.

Question put, That the Committee is content with the merits of the policy proposal.

The Committee divided: Ayes 1; Noes 5.

AYES

Mr Hussey.

NOES

Mrs Hale, Mr Lynch, Mr McAleer, Mr Ó hOisín, Mr Spratt.

Question accordingly negatived.

The Chairperson: The majority of the Committee has said that it is not content with the merits of this policy proposal. It is a majority decision; it should be recorded that Mr Hussey said yes. During the conversation with the Department, Mr Doran opened the door to looking at the timescales. The main issue was in relation to the 10 years; I am not satisfied that 10 years is the proper place to be at. I suspect that the Assembly will agree with the Committee if it goes to the Floor of the Assembly. On that basis, we are open to the Department coming back to us in the autumn, in the new session, to make some suggestions about times. I am sorry that it has been negative for the Department today, but that is how the cookie crumbles.