

**COMMITTEE FOR THE ENVIRONMENT**

**Report on Goods Vehicles (Licensing of Operators)  
Bill  
(NIA 15/07)**

**TOGETHER WITH THE MINUTES OF PROCEEDINGS, MINUTES  
OF EVIDENCE  
AND WRITTEN SUBMISSIONS RELATING TO THE REPORT**

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## **Membership and Powers**

The Committee for the Environment is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, section 29 of the Northern Ireland Act 1998 and under Standing Order 46.

The Committee has power to:

- Consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- Consider relevant secondary legislation and take the Committee stage of primary legislation;
- Call for persons and papers;
- Initiate inquiries and make reports; and
- Consider and advise on any matters brought to the Committee by the Minister of the Environment

The Committee has 11 members including a Chairperson and Deputy Chairperson and a quorum of 5.

The membership of the Committee since 9 May 2007 has been as follows:

Mr Patsy McGlone (Chairperson)  
Mr Cathal Boylan (Deputy Chairperson)  
Mr Billy Armstrong\*\*\*  
Mr Trevor Clarke  
Mr David Ford  
Mr Tommy Gallagher  
Mr Samuel Gardiner\*\*  
Mr Alex Maskey\*  
Mr Ian McCrea  
Mr Daithí McKay  
Mr Peter Weir

\* With effect from January 21 2008, Alastair Ross replaced Alex Maskey on the Committee for the Environment.

\*\* With effect from 15 September 2008 Mr Roy Beggs replaced Mr Samuel Gardiner.

\*\*\* With effect from 29 September 2008 Mr David McClarty replaced Mr Billy Armstrong

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## **Executive Summary**

### **Purpose**

1. This report sets out the Committee for the Environment's consideration of the Goods Vehicles (Licensing of Operators) Bill.

### **Key Issues**

2. The introduction of the Goods Vehicles (Licensing of Operators) Bill was welcomed by the Committee. The Committee considered that the key issues relating to the Bill were:

- Own-account sector not currently regulated
- Financial impact of proposed new arrangements for operators
- Definition of 'operating centre'
- Organised crime
- Poor reputation of Northern Ireland's haulage system
- Cross border issues
- Exemptions
- Planning
- Enforcement
- Secondary legislation raising powers

3. Members sought a balanced range of views as part of their deliberations on the Goods Vehicles (Licensing of Operators) Bill and requested evidence from interested organisations and individuals as well as officials from the DOE.

### **Own-account sector not currently regulated**

4. The Committee heard that the road-freight industry in Northern Ireland comprises approximately 35,000 vehicles, each of which weighs more than three and a half tonnes. Only a quarter of the industry is regulated. The Bill is an attempt to widen the industry's regulations in order to make them all-inclusive. The Committee was supportive of a level playing field for all those in the industry and is supportive of the Bill encompassing the whole of the industry.

### **Financial impact of proposed new arrangements for operators**

5. Many stakeholders expressed concern about the cost implications of the Bill. In addition to the licencing process itself additional costs would be associated with extra paperwork, insurance implications, obtaining professional competence and more time off the road for maintenance. The Department acknowledged that the Bill will place additional responsibilities on some businesses but stressed that most operators already comply with the licencing requirements and industry feedback suggests that fees required for operator licencing would not impact on the viability of businesses. The own-account sector will be able to undertake their own inspections and maintenance work provided they have adequate facilities and procedures. The Committee

supported the Department's proposal to incorporate secondary powers for grants to be made available in connection with complying with the Bill.

## **Definition of 'operating centre'**

6. The Committee was concerned that the definition 'operating centre' would have implications for planning. The Department indicated it would be unable to change the term 'operating centre' because it was the term used in GB and widely across Europe. The Department offered to redefine 'operating centre' to clarify the dual nature of the term but the Committee did not feel this addressed their concerns and sought an alternative solution – see Planning.

## **Organised crime**

7. Several submissions to the Committee indicated the potential of this Bill to reduce levels of organised crime. The Department noted that a key aim of the Bill is to create fair competition and reduce organised crime through the use of goods vehicles and stressed that the introduction of this Bill will ensure that illegal operators will no longer be able to base their operations in Northern Ireland. The Department also added that by requiring all vehicles to be linked to an operator there is greater opportunity for tracing illegal operators and dealing with them.

## **Poor reputation of Northern Ireland's haulage system**

8. GB roadside checks have consistently resulted in Northern Ireland operators having one of the worst records for non-compliance within the EU and a poor operational road record in terms of road safety. The Department indicated that a key aim of the Bill is to increase the level of vehicle maintenance compliance and the benefit will be an improvement in the image of the Northern Ireland road freight sector.

## **Cross border issues**

9. Several stakeholders expressed concerns that the Bill would distort operating conditions and competitiveness across the border and businesses would be under pressure to relocate their operating centre. There was also concern about the growing number of vehicles registered in the Republic and being used in Northern Ireland and the effect the introduction of operating licences would have on this trend. The Department told the Committee that the Bill will require all vehicles that are specified on an operator's licence to be registered in the UK. They also told the Committee that the risk of the Bill increasing the tendency for businesses to move their businesses across the border was not considered to be a major concern within the industry when asked during the consultation process.

## **Exemptions**

10. The Committee received a briefing on the principles on which exemptions would be applied along with a summary of the exemptions currently in place in GB. It was noted that the underlying principle of exemptions would be on the basis of the use of a vehicle rather than its type. The Committee also felt it was important that the highest level of Assembly scrutiny was applied to the power under which exemptions would be made and it recommended to the Department that exemptions should be subject to draft affirmative procedure. The Department agreed to make this amendment.

## **Planning**

11. The Committee had reservations about the potential impact of the introduction of this Bill on planning processes. In particular members were worried about its impact on operators who operated more than one vehicle from home. The Department stressed that there is no read-across from the Bill to planning procedures and existing operators will be phased into the licencing system via a transition process rather than being subject to the Bill as soon as it comes into operation. After much debate the Committee agreed to recommend that the Minister makes a statement during Clause 9 at Consideration Stage of the Bill indicating that having responsibility for both this Bill and Planning, he can give an assurance that the designation of property as an operating centre will in itself not have any read-across to planning action.

## **Enforcement**

12. Although not on the face of the Bill, the Committee considered its enforcement at length and agreed unanimously to make a recommendation that the Department should separate the regulatory and enforcement roles when implementing the Goods Vehicles (Licensing of Operators) Bill in Northern Ireland. In addition the Committee considered the appointment of a traffic commissioner for Northern Ireland and some members expressed a desire to see this Bill used to introduce legislation to bring about the appointment of a Northern Ireland Traffic Commissioner. The Department indicated that at this stage it had no evidence that GB's traffic commissioner model was the most appropriate for Northern Ireland and also expressed an opinion that it would be outside the scope of this bill. The Committee agreed to recommend that the Department pursued its investigation of the potential of a traffic commissioner for Northern Ireland to cover a wide range of responsibilities including, but not exclusively, goods vehicles.

## **Secondary legislation raising powers**

13. The Bill contains a number of secondary legislation raising powers and the Committee sought clarity on why the Department had made some powers subject to negative resolution and others required to go through draft affirmative procedure. The Committee subsequently recommended that the Department amended the powers for making exemptions to licencing and the possible future requirement for evidence of professional competence for restricted licences to increase the level of Assembly scrutiny afforded. The Department agreed to amend the clause which sets these powers accordingly.

# **Recommendations**

## **Separation of Roles**

1. The Committee received several letters from stakeholders stressing the need for enforcement of the Bill to be separated from its regulation. How the Department delivers enforcement and regulatory functions is not on the face of the bill and cannot be addressed through amendments. The Committee therefore agreed to make a recommendation that the Department of the Environment should separate the regulatory and enforcement roles when implementing the Goods Vehicles (Licensing of Operators) Bill in Northern Ireland.

## **Traffic Commissioner**

2. Separation of enforcement and regulation is achieved in GB by the appointment of traffic commissioners who work with but are separate from the enforcement agency Vehicle and Operator Services Agency (VOSA), equivalent of the Driver and Vehicle Agency, (DVA) in Northern Ireland. Some members of the Committee suggested the Goods Vehicles (Licensing of Operators) Bill should be used to introduce legislation to bring about the appointment of a

Northern Ireland Traffic Commissioner and the Committee received several letters from stakeholders supporting this approach. The Department indicated that at this stage it had no evidence that the GB system is the most appropriate for Northern Ireland and also expressed an opinion that it would be outside the scope of this Bill. The Department told the Committee that it intended to investigate the potential of a traffic commissioner for Northern Ireland to cover a wide range of responsibilities including, but not confined to goods vehicles, and reassured members that should legislation be introduced in the future, it would not require this Bill to be redrafted. The Committee agreed to make a recommendation that the Department of the Environment pursues the feasibility of the appointment of a traffic commissioner for Northern Ireland, to have statutory responsibility for among other things, Goods Vehicles Operator Licensing.

3. For amendments moved to this recommendation and not agreed see Minutes of Proceedings on 20 November.

## **Operating Centres – Planning Concerns**

4. The Committee agreed the best way to minimise the risk of this Bill having a detrimental impact on planning issues was to recommend that the Minister makes the following statement during Clause 9 at Consideration Stage of the Bill:

5. 'Following a designation by the Department of a place as an 'Operating Centre' under the Goods Vehicles (Licensing of Operators) Bill, the issue of read-across into interest or action by Planning Service may be of concern to some. As Minister of the Department that includes the Driver and Vehicle Agency, Road Safety Division and Planning Service, I want to give you an assurance that the designation of a property as an Operating Centre will not in itself have any read-across to Planning action; nor will it be used by, or influence any action by Planning Service as to the use of the property.'

6. For amendments moved to this recommendation and not agreed see Minutes of Proceedings on 20 November.

## **Introduction**

7. The Goods Vehicles (Licensing of Operators) Bill was referred to the Committee for the Environment for consideration in accordance with Standing Order 33(1) on completion of the Second Stage of the Bill on 20 May 2008.

8. The Minister of the Environment (the Minister) made the following statement under section 9 of the Northern Ireland Act 1998:

**9. 'In my view the Goods Vehicles (Licensing of Operators) Bill would be within the legislative competence of the Northern Ireland Assembly.'**

10. The Bill proposes to change the licensing system in Northern Ireland particularly in regards to own-account licensing and will bring the system largely, but not wholly, into line with the system currently in place in Great Britain.

11. During the period covered by this Report, the Committee considered the Bill and related issues at meetings – on 24 January, 7 February, 3 April, 24 April, 5 June, 11 September, 25 September, 2 October, 9 October, 16 October, 23 October, 6 November, 11 November, 13

November, 20 November, 27 November, 2 December, 4 December. The relevant extracts from the Minutes of Proceedings for these meetings are included at Appendix 1.

12. The Committee had before it the Goods Vehicles Bill (Licensing of Operators) Bill (NIA 15/07) and the Explanatory and Financial Memorandum that accompanied the Bill.

13. On referral of the Bill to the Committee after Second Stage, the Committee inserted advertisements on 30 May 2008 in the Belfast Telegraph, Belfast Telegraph North West edition, Irish News and News Letter seeking written evidence on the Bill.

14. A total of 3 organisations/individuals responded to the request for written evidence and a copy of the submissions received by the Committee is included at Appendix 3.

15. The Committee was first briefed by officials about the consultation stages and policy development of the Goods Vehicles (Licensing of Operators) Bill on 24 January and 7 February 2008 and took evidence on the Bill from Departmental officials on 24 April, 5 June, 16 October; Freight Transport Association on 3 April; Road Haulage Association on 24 April; Ulster Farmers' Union on 25 September; Horticulture Forum for Northern Ireland on 2 October; Driver and Vehicle Agency Enforcement officials on 2 October; DOE Planning Service on 2 October. The Minutes of Evidence are included at Appendix 2.

16. The Committee began its clause by clause scrutiny of the Bill on 6 November and concluded this on 2 December – see Appendix 2.

## **Extension of Committee stage of the Bill**

17. On 10 June 2008, the Assembly agreed to extend the Committee Stage of the Bill to 12 December 2008.

## **Report on the Goods Vehicles (Licensing of Operators) Bill**

18. At its meeting on 4 December 2008 the Committee agreed its report on the Bill and agreed that it should be printed.

## **Consideration of the Bill by the Committee**

19. The Bill has 19 Parts and 6 Schedules as follows:

- Part 1 on operators' licences which includes the requirement for good vehicles operators to be licenced, the type of licence and exemptions.
- Part 2 on vehicles authorised to be used under a licence and the maximum number of vehicles.
- Part 3 on operating centres to be specified in operators' licences and the definition of an operating centre.
- Part 4 on vehicles that are authorised or permitted to be used under an operator's licence.
- Part 5 on the issue and duration of operators' licences, the determination of applications for licences and determination where objections are made.

- Part 6 on the variation of operators' licences, the publication of notices and objections and refusals.
- Part 7 on the conditions of licences.
- Part 8 on interim operators' licences and interim variations.
- Part 9 on revocation, suspension, curtailment and disqualification of operators' licences.
- Part 10 on periods of review for operating centres and the powers to remove operating centres on review or attach condition on review.
- Part 11 on the transfer of operating centres.
- Part 12 on determinations as to environmental matters.
- Part 13 on the powers of the Department to hold inquiries and appoint assessors.
- Part 14 on the review of decisions and the rights of appeal in connections with operators' licences.
- Part 15 on the forgery of documents and false statements.
- Part 16 on enforcement including powers of entry, powers to seize documents, obtaining of information, obstruction of authorized persons, prosecutions, detention of vehicles used without an operators' licence, evidence by certificate and the exercise of enforcement powers.
- Part 17 on miscellaneous issues including fees, the disclosure of information, method of calculating weight of vehicles, large goods vehicles, certificates of qualification and operators' licences not to be transferable.
- Part 18 on the application of the act to holding companies and subsidiaries, partnerships, the Crown and harbours.
- Part 19 on supplementary provision, regulations, general interpretation, amendments and repeals, commencement and the short title
- Schedule 1 on the meaning of 'small goods vehicle'.
- Schedule 2 on the transfer of operating centres.
- Schedule 3 on the detention of vehicles used without an operators' licence.
- Schedule 4 on large goods vehicles.
- Schedule 5 on amendments.
- Schedule 6 on repeals.

## **Evidence from the Department of the Environment on 24 January 2008**

20. On 24 January 2008 the Committee took pre-legislative evidence from Departmental officials on the proposals for the Bill – see Appendix 2. The Committee was advised that the Department had carried out consultations in 1998 and 2003. The Department stated that there are four reasons for wanting to introduce the changes. The first, and overriding reason, is road safety. The second is the problem of illegal operation. The third is to aid the combating of organised crime. The fourth reason is environmental pressure to ensure that the road-haulage industry plays its part in making sure that its operating centres and vehicles are as environmentally suitable as possible. Members also asked officials about enforcement; fees; illegal operations; operating centres; licensing of drivers; similar legislation in the Republic of Ireland and road safety.



## **Evidence from the Department of the Environment on 7 February 2008**

21. On 7 February 2008, the Committee took further pre-legislative evidence from the Department on the current situation and the requirements that it is seeking to place on operators – see Appendix 2. The main requirements of the Bill on operators are for all operators of goods vehicles over three and a half tonnes to have an operator's licence; all operators to satisfy standards of fitness, repute, financial standing, and professional competence in order to obtain certain groups of licences; all operators to be required to have a designated operating centre in Northern Ireland; all applicants to advertise in the local press their desire for a licence and operators to be required to give certain undertakings as part of their licence granting. Members also asked officials about the financial impact of licensing; comparative legislation in Great Britain and the Republic of Ireland; displacement of businesses; enforcement; farm vehicles; exemptions and unaffiliated operators.

## **Evidence from the Department of the Environment on 24 April and 5 June 2008**

22. There were further evidence sessions with Departmental officials on 24 April and 5 June 2008 (see Appendix 2), the latter session following the Second Stage of the Bill on 20 May 2008. The Committee was briefed on the public consultation sessions held by DOE with the industry, enforcement, displacement of businesses, fees, planning issues around operating centres, the philosophy behind the Bill, the operator's licence, disciplinary powers and exemptions.

## **Evidence from the Freight Transport Association on 3 April 2008**

23. On 3 April 2008 the Committee took evidence from the Freight Transport Association (FTA) – see Appendix 2. The FTA stated that there was an immediate need to raise the image of the road freight transport sector through education and better regulation, and there should be no further delay in introducing the legislative process. The FTA felt that the Bill would improve road safety and operational standards and ensure fair competition. They noted the need to reduce criminality also and were of the opinion that the introduction of this Bill would help to apprehend those involved. They told the Committee that Northern Ireland vehicles are being targeted in mainland Britain due to their poor compliance record and this Bill will help to raise standards. The FTA felt that similar legislation is needed in the Republic of Ireland.

## **Evidence from Road Haulage Association on 24 April 2008**

24. The Committee took evidence from the Road Haulage Association (RHA) on 24 April 2008 – see Appendix 2. The RHA has supported the Bill from the outset. They felt there is a great deal of concern in the haulage industry in Northern Ireland about some of the issues that the Bill addresses, and hauliers are keen to see the Bill become legislation as soon as possible. The RHA stated that, from a wider road-safety perspective, more enforcement will lead to better vehicles on the roads. Statistics show that Northern Ireland is the third worst area in Europe for compliance with the rules and the RHA felt the compliance level should be raised. The RHA was very concerned that similar legislation is not likely to be introduced any time soon in the Republic of Ireland where the RHA feels there is no compliance at all. The RHA noted that in their opinion 'flagging out', i.e. the transfer of haulage companies from Northern Ireland to the Republic of Ireland, is not a big issue but that a greater problem for them is the fact that non-compliant vehicles will enter from a country that shares a land border.

## **Evidence from Ulster Farmers' Union on 25 September 2008**

25. The Committee took evidence from the Ulster Farmers' Union (UFU) at its meeting on 25 September 2008 – see Appendix 2. The UFU was concerned that, as the legislation stands, there is the potential for many agricultural vehicles to get caught up in the legislation. The agricultural industry felt that there is no competition with hauliers and was concerned that the proposals, in their current form, would increase bureaucracy and red tape. Transport for hire and reward must be treated differently from transport of necessity and occasional use. Generally, farmers haul their own products; they do not use transport for hire and reward. Agricultural vehicles are not on the road for 12 months in a year and all such vehicles would require exemptions. The UFU acknowledged that large numbers of hauliers are unfit to be on the road, and the Bill must tighten existing regulations. However, the farming industry does not contribute to many road accidents and would like exemptions for agricultural vehicles in the legislation.

### **Evidence from Horticulture Forum Northern Ireland on 2 October 2008**

26. The Committee took evidence from the Horticulture Forum Northern Ireland (the Forum) on 2 October 2008 – see Appendix 2. The Horticulture Forum NI emphasised that their members are not hauliers and shouldn't be treated as such. The Forum felt a lack of manpower on the ground to catch offenders is the problem, not the lack of legislation. The administration costs associated with the Bill will add to the overheads under which the horticulture industry is already straining and the horticulture industry felt that there should be exemptions for them.

### **Evidence from Driver and Vehicle Agency Enforcement Officials on 2 October 2008**

27. The Committee took evidence from the Driver and Vehicle Agency (DVA) Enforcement Officials on 2 October 2008 – see Appendix 2. The DVA broadly supported the enhancements and measures that the Bill will introduce and the additional powers it will give them to tackle non-compliance in the industry. The DVA wants to ensure there is a level playing field for all and that operators maintain their vehicles and comply with all the other legal requirements. The DVA felt that Northern Ireland is currently missing an effective licensing regime to back up enforcement at the roadside.

### **Evidence from DOE Planning Service on 2 October 2008**

28. The Committee took evidence from DOE Planning Service on 2 October 2008 – see Appendix 2. The Planning Service stated that if a haulage business is operating with the benefit of planning permission the Bill will have no impact on their procedures.

### **Evidence from Beverley Bell, North West Traffic Commissioner on 9 October 2008**

29. The Committee took evidence from Beverley Bell, North West Traffic Commissioner, on 9 October 2008 – see Appendix 2. The Commissioner felt that being a road operator is about the promotion of road safety and fair competition. Education is also key to regulation. The Commissioner felt that a quality operator-licensing scheme, whether for 'own account' or 'hire and reward', would go a significant way to addressing criminal activity. When GB's VOSA focuses on vehicles from Northern Ireland or the Republic, its hit rate for prohibiting vehicles and drivers is substantially higher than for operators based in the north-west. In GB, there are several exemptions that are related mainly to the use of the vehicle, rather than the type of vehicle, i.e. the type of operation the vehicle carries out. Those vehicles tend to be used for emergency provisions, such as fire brigades and ambulances. There is a general exemption for agricultural

tractors used in certain circumstances but the Commissioner urged Northern Ireland to base exemptions on use of vehicle rather than type as there is tendency to abuse current exemptions in GB.

### **Evidence from the Department of the Environment on 16 October 2008**

30. The Committee took evidence from Departmental officials at the meeting on 16 October – see Appendix 2. Officials briefed the Committee on the secondary legislation raising powers in the Bill. The officials answered members' queries on particular clauses of the Bill, negative and affirmative resolution procedures, operating centres, the 3.5 tonne limit and the possibility of an independent traffic commissioner.

### **Evidence from the Department of the Environment on 6 November 2008**

31. The Committee took evidence from Departmental officials at the meeting on 6 November – see Appendix 2. Officials briefed the Committee on parking, planning, in scope and out of scope vehicles and the definition of an operating centre. The Department gave a brief explanation of clauses 1-12, introduced the amendments that would be moved at consideration stage and answered members' questions. The Committee sought further information on exemptions, the names of the bodies that provide continuous professional development training and certification and examples of how other European countries with land borders address the problems subsection 4(4) is designed to prevent.

### **Evidence from the Department of the Environment on 11 November 2008**

32. The Committee took evidence from Departmental officials at the meeting on 11 November – see Appendix 2. The Department gave a brief explanation of clauses 13 - 61 and answered members' questions. The Committee sought further information on the definition of 'parking', e.g. does it include vehicles leaving in the early hours, ongoing refrigerated units, high associated noise, vibrations or fumes.

### **Evidence from the Department of the Environment on 13 November 2008**

33. The Committee took evidence from Departmental officials at the meeting on 13 November – see Appendix 2. The Committee sought further information from the Department on consignment notes and the threshold weight of their applicability, the Department's views on the Examiner of Statutory Rules paper on the secondary legislation raising power of the Goods Vehicles (Licensing of Operators) Bill, information in relation to how operator licencing legislation applies in other areas of Europe with land borders such as Spain and France and information as to the length of time the role of Traffic Commissioner has been in operation in Great Britain.

### **Evidence from the Department of the Environment on 20 November 2008**

34. The Committee took evidence from Departmental officials at the meeting on 20 November during its formal clause by clause analysis – see Appendix 2. The Committee took legal advice from the Assembly's Legal Services on the relevance and weighting of guidance given by the

Minister when taking the Bill through Consideration Stage. It subsequently agreed to recommend that the Minister clearly stated that the designation of operating centres would have no implications for planning. The Committee also considered enforcement and regulation of the Bill and the scope it provided for the introduction of a traffic commissioner. The Department clarified its position on the level of Assembly scrutiny that should be applied to various clauses. The Department agreed to accept the Committee's recommendations for the secondary legislation raising powers relating to exemptions to operator licencing and the introduction of a professional competence requirement for restricted licences to be subject to draft affirmative resolution.

35. At its meeting on 27 November, when no Departmental Officials were in attendance, the Committee agreed to seek further information on how other European countries implement operator licencing and operating centres across land borders. The Committee also considered the Department's suggestion that clause 50 and schedule 4 be reinstated following the Committee's recommendation they be dropped during the clause by clause analysis. The Committee asked for more information on the reason for this change relating to the definition of larger goods vehicles and the requirement for consignment notes.

## **Evidence from the Department of the Environment on 2 December 2008**

36. The Department advised the Committee of the options available regarding the inclusion of a definition of larger vehicles (Clause 50) and the requirement for consignment notes (Schedule 4). The Department noted that similar legislation had never been enacted in GB and that it might be preferable to leave it out in the Northern Ireland Bill if there was no intention of implementing it. The Committee asked what implications there were should it subsequently be decided, at either national or international level, that consignment notes for larger vehicles would be compulsory. The Department advised the Committee that this would result in the need for new primary legislation but noted that GB would also have to revisit their primary legislation if this circumstance arose. The Committee agreed to adhere to their recommendation to drop clause 50 and schedule 4. The Committee also agreed consequential amendments arising from this recommendation and from its recommendation that the Department make exemptions and the requirement for professional competence for restricted licences subject to draft affirmative procedure.

## **Key Issues**

37. Having considered the oral and written evidence from the interested individuals and organisations the Committee identified a number of key issues on which further advice was sought from the Department. These were:

- Own-account sector not currently regulated
- Financial impact of proposed new arrangements for operators
- Definition of 'operating centre'
- Organised crime
- Poor reputation of Northern Ireland's haulage system
- Cross border issues
- Exemptions
- Planning
- Enforcement

- Secondary legislation raising powers

## **Own-account sector not currently regulated**

38. The Committee heard that the road-freight industry in Northern Ireland comprises approximately 35,000 vehicles, each of which weighs more than three and a half tonnes. Only a quarter of the industry is regulated. The Bill is an attempt to widen the industry's regulations in order to make them all-inclusive. The Committee was supportive of a level playing field for all those in the industry and is supportive of the Bill encompassing the whole of the industry.

## **Financial impact of proposed new arrangements for operators**

39. The Committee heard concerns about the cost implications of the Bill from a wide range of stakeholders. Not only was the cost of the licencing process itself an issue, particularly for smaller scale operators, but also costs associated with additional paperwork, insurance implications, obtaining professional competence and extra time off the road for maintenance. The Department addressed these concerns with the Committee and acknowledged that the Bill will place additional responsibilities on some businesses but that most already comply with the licencing requirements keeping their vehicles in a roadworthy condition and ensuring their drivers operate within the law. The Department also referred to feedback they had received during wide consultation of the industry which suggested that fees required for operator licencing were not sufficient to impact on the viability of a business. The Department also noted that although the 'hire or reward' sector is required to have professionally competent people responsible for maintenance of transport operations this will not extend to the 'own-account' sector. The own-account sector will be able to undertake their own inspections and maintenance work but they must ensure that the facilities and procedures for carrying out inspections are adequate and documented. As a result of the inspection and maintenance requirements of the Bill the Department suggested that the number of break-downs would be reduced. They pointed out that it is already a legal requirement for vehicles to be in a roadworthy condition and that this Bill is not adding any further burden on operators. The Committee was also advised that the Department propose to introduce an amendment to the Bill that would enable secondary powers to be raised for payment of grants to such persons or bodies as it considers appropriate in connection with any provision of, or the purposes of, the Bill.

## **Definition of 'operating centre'**

40. The Committee was concerned that the definition 'operating centre' would imply much more than just overnight parking and as a consequence would have implications for planning. The Department indicated it would be unable to change the term because it was used in GB and widely across Europe. The Department offered to redefine 'operating centre' to demonstrate that it covered both where a vehicle was parked at night and/or was a place from which goods vehicles were operated. The Department also showed the Committee an example of the public notice that would be issued when an application was made. This will differentiate from the outset between operators who are just parking and those that are using the centre to operate their business from on a larger scale.

41. The Committee did not feel a redefinition of the term or the public notice sufficiently overcame their concerns and a different solution directly relating to planning was sought – see Planning.

## **Organised crime**

42. Several written and oral submissions to the Committee indicated the potential of this Bill to reduce levels of organised crime. Everyone being required to operate to the same standards would create fairer competition and reduce the opportunity for criminal organisations to use the road freight sector for their illegal activities. Stakeholders also noted that the illegal trading in fuel oil is at epidemic proportions and is a huge loss to the Northern Ireland economy. The Department responded by noting that a key aim of the Bill is to create fair competition and reduce organised crime through the use of goods vehicles and stressed that the introduction of this Bill will ensure that illegal operators will no longer be able to base their operations in Northern Ireland. The Department also added that organised crime cannot function without the ability to move goods around whether this is smuggled fuel or other contraband. Movement requires vehicles, especially goods vehicles, and as most goods vehicles in Northern Ireland are not required to be linked to an operator they can be used in organised crime. By requiring all vehicles to be linked to an operator there is greater opportunity for tracing illegal operators and dealing with them.

### **Poor reputation of Northern Ireland's haulage system**

43. The Road Haulage Association told the Committee that in GB roadside checks have consistently resulted in Northern Ireland operators having one of the worst records for non-compliance within the EU. The Freight Transport Association similarly stressed to the Committee the need to address the poor operational road record of Northern Ireland's operators in terms of road safety. The Department indicated that a key aim of the Bill is to increase the level of vehicle maintenance compliance and the benefit will be an improvement in the image of the Northern Ireland road freight sector.

### **Cross border issues**

44. Several stakeholders expressed concerns about the impact of the border in terms of implementing the Bill and the risk of distorting operating conditions and competitiveness between the two jurisdictions. There was concern about the growing number of vehicles registered in the Republic and being used in Northern Ireland and the affect the introduction of operating licences would have on this trend. The Department told the Committee that the Bill will require all vehicles that are specified on an operator's licence to be registered in the UK. They also told the Committee that the risk of the Bill increasing the tendency for businesses to 'flagging out', i.e. move their businesses across the border, was not considered to be a major concern within the industry when asked during the consultation process. The Department noted that the inclusion of Clause 4(4) spells out on the face of the Bill the requirement for operators to have an operating centre and that centre must be in Northern Ireland. They stressed that even if the Bill did not spell this out, as is the case with the GB equivalent legislation, the requirement would still exist.

### **Exemptions**

45. The Committee heard evidence from both the agricultural and horticultural sectors making a case for the vehicles involved in these industries to be exempt from licencing. The Committee received a briefing from the Department on the principles on which it would consider exemptions along with a summary of the exemptions currently applied in GB. It was noted that the underlying principle would be one of use of the vehicle rather than its type. The Department drew the Committee's attention to the fact that GB is currently reviewing their exemptions and have identified 60 per cent of current exemptions for removal from their list. The Department will take this into consideration when preparing the list of vehicles that will be exempt from operator licences in Northern Ireland. Exemptions come under Clause 1 which was presented to the Committee by the Department as being subject to negative resolution. It was agreed by the

Committee that a higher level of scrutiny would be appropriate for this important area and the Department agreed to make exemptions subject to draft affirmative procedure, the highest level of Assembly scrutiny, by amending Clause 57.

## **Planning**

46. From the outset of its scrutiny, the Committee had reservations about the potential impact of the introduction of this Bill on planning processes. In particular members were worried about its impact on operators who had more than one vehicle but still operated from home. Both the Department and Planning Service confirmed that there was no read-across from this Bill to planning procedures. The Department also indicated that the Bill in the format being considered by the Committee would be applying to new applications and that current operators would be brought into the licencing system via a transition process. Details of how the Department would deal with the transition were not available to the Committee as they could not be drawn up until the Bill is in place.

47. The Committee asked the Department if the Minister, who has responsibility for both road safety and planning, could make a statement from the floor of the House at Consideration Stage of the Bill that specified that there would be no direct implications on planning as a result of the introduction of the Bill. The Committee sought legal guidance on the weighting of such a statement and consequently agreed to recommend that the Minister makes the following statement during Clause 9 at Consideration Stage of the Bill:

48. 'Following a designation by the Department of a place as an 'Operating Centre' under the Goods Vehicles (Licensing of Operators) Bill, the issue of read-across into interest or action by Planning Service may be of concern to some. As Minister of the Department that includes the Driver and Vehicle Agency, Road Safety Division and Planning Service, I want to give you an assurance that the designation of a property as an Operating Centre will not in itself have any read-across to Planning action; nor will it be used by, or influence any action by Planning Service as to the use of the property.'

49. Note: The Committee was divided on this issue: Ayes 5, Noes 1

### **AYES NOES**

Roy Beggs Trevor Clarke  
Cathal Boylan  
Ian McCrea  
Alastair Ross  
Peter Weir

## **Enforcement**

50. The Committee received several letters from stakeholders stressing the need for enforcement of the Bill to be separated from its regulation. How the Department delivers the enforcement and regulatory functions is not on the face of the Bill so the Committee agreed to make a recommendation that the Department of the Environment should separate the regulatory and enforcement roles when implementing the Goods Vehicles (Licensing of Operators) Bill in Northern Ireland.

51. Enforcement of the Bill also raised questions about the appointment of a traffic commissioner for Northern Ireland on a par with the model of enforcement used in GB. Some members of the Committee suggested the Goods Vehicles (Licensing of Operators) Bill should be used to introduce legislation to bring about the appointment of a Northern Ireland Traffic Commissioner

and the Committee received several supporting letters from stakeholders for this approach. The Department indicated that at this stage it had no evidence that GB's traffic commissioner model was the most appropriate for Northern Ireland and also expressed an opinion that it would be outside the scope of this Bill. The Department told the Committee that it intended to investigate the potential of a traffic commissioner to cover a wider range of responsibilities than just goods vehicles and reassured members that should legislation be introduced in the future, it would not require this Bill to be redrafted. The Committee agreed to make a recommendation that the Department pursues the feasibility of the appointment of a traffic commissioner for Northern Ireland, to have statutory responsibility for among other things, Goods Vehicles Operator Licensing.

52. Note: The Committee was divided on this issue: Ayes 6, Noes 1

AYES NOES  
Roy Beggs David Ford  
Cathal Boylan  
Trevor Clarke  
Ian McCrea  
Alastair Ross  
Peter Weir

## **Secondary legislation raising powers**

53. The Bill contains a number of secondary legislation raising powers. With guidance from the Examiner of Statutory Rules members sought clarity on why some powers would be subject to negative resolution and others required to go through draft affirmative procedure. Members suggested to the Department that some of the powers subject to negative resolution should be changed to enable wider scrutiny on the floor of the House. The Department maintained that in general the scrutiny afforded to negative resolution can be as rigorous as that applied to affirmative procedures but indicated that in principle, where the power involved a change in policy it would consider requiring the regulations to be subject to draft affirmative procedure.

54. Thus when the Committee asked the Department to change the powers for exemptions in Clause 1(2)(d) and the possible future requirement for Certificates of Professional Competence for Restricted Licences in Clause 12(12), the Department agreed to amend Clause 57(9) which sets the power accordingly.

## **Clause by Clause Consideration of the Bill**

55. The Committee began its clause by clause scrutiny of the Bill on 6 November and completed this on 2 December– see Minutes of Evidence in Appendix 2. The Committee recommended a number of amendments which are outlined below. The wording of the amendments is attached at Appendix 5.

### **Clause 1 – Operators' licences**

56. Agreed: That the Committee is agreed with clause 1 as amended by the Department.

57. The Committee recommended a further amendment in relation to this clause so that the power to exempt vehicles, Clause 1(2)(d), becomes subject to draft affirmative procedure. The



Department agreed to do this by making the necessary amendment to Clause 57(9) within which the power lies.

### **Clause 2 – ‘Standard’ and ‘restricted’ licences**

58. Agreed: That the Committee agreed to clause 2 as drafted.

### **Clause 3 – Temporary exemptions**

59. Agreed: That the Committee agreed to clause 3 as drafted.

### **Clause 4 – Vehicles authorised to be used under operators’ licence**

60. Agreed: That the Committee is content with clause 4 as amended by the Department.

### **Clause 5 – Maximum numbers of vehicles**

61. Agreed: That the Committee agreed to clause 5 as drafted.

### **Clause 6 – Operating centres to be specified in operators’ licences**

62. The Committee divided: Ayes 5, Noes 1

AYES NOES

Cathal Boylan Trevor Clarke

Peter Weir

Ian McCrea

Roy Beggs

Alastair Ross

63. Agreed: That the Committee is content with clause 6 as drafted.

### **Clause 7 – Application for operators licences**

64. Agreed: That the Committee agreed to clause 7 as drafted.

### **Clause 8 – Notification of events subsequent to the making of an application**

65. Agreed: That the Committee agreed to clause 8 as drafted.

### **Clause 9 – Publication by Department of notice of application for licence**

66. Agreed: That the Committee agreed to clause 9 as drafted.

67. The Committee recommends to the Department that at this clause the Minister allays fears about the implications of this Bill on planning issues by making a statement about the read-across of this Bill to planning – see key issues and recommendations.

## **Clause 10 – Publication in locality affected of notice of application for licence**

68. Agreed: That the Committee agreed to clause 10 as drafted.

## **Clause 11 – Objections to, and representations against, issue of operators' licences**

69. Agreed: That the Committee agreed to clause 11 as drafted.

## **Clause 12 – Determination of applications for operators' licences**

70. Agreed: That the Committee agreed to clause 12 as drafted.

71. The Committee recommended an amendment in relation to this clause so that powers to introduce a requirement for certificates of professional competence for restricted licences will be subject to greater Assembly scrutiny. The Department agreed to do this by making the necessary amendment to Clause 57(9) within which the power lies.

## **Clause 13 – Determination where objections etc are made on environmental grounds**

72. Agreed: That the Committee agreed to clause 13 as drafted.

## **Clause 14 – Issue of operators' licences**

73. Agreed: That the Committee agreed to clause 14 as drafted.

## **Clause 15 – Duration of operators' licences**

74. Agreed: That the Committee agreed to clause 15 as drafted.

## **Clause 16 – Variation of operators' licences**

75. Agreed: That the Committee agreed to clause 16 as drafted.

## **Clause 17 – Publication of notice of applications for variation in any locality affected**

76. Agreed: That the Committee agreed to clause 17 as drafted.

## **Clause 18 – Objection to, and refusal of, applications to vary operators' licences on environmental grounds**

77. Agreed: That the Committee agreed to clause 18 as drafted.

## **Clause 19 – Variation of Licences: further provisions**

78. Agreed: That the Committee agreed to clause 19 as drafted.

## **Clause 20 – Conditions of Licences**

79. Agreed: That the Committee agreed to clause 20 as drafted.

## **Clause 21 – Interim operators' licences**

80. Agreed: That the Committee agreed to clause 21 as drafted.

## **Clause 22 – Interim variations**

81. Agreed: That the Committee agreed to clause 22 as drafted.

## **Clause 23 – Revocation, suspension and curtailment of operators licences**

82. Agreed: That the Committee agreed to clause 23 as drafted.

## **Clause 24 – Revocation of standard licences**

83. Agreed: That the Committee is content with clause 24 as amended by the Department.

## **Clause 25 – Disqualification**

84. Agreed: That the Committee agreed to clause 25 as drafted.

## **Clause 26 – Revocation, disqualification, etc: supplementary provisions**

85. Agreed: That the Committee is content with clause 26 as amended by the Department.

## **Clause 27 – Periods of review for operating centres**

86. The Committee divided: Ayes 5; Noes 1

AYES NOES

Roy Beggs Trevor Clarke

Cathal Boylan

Ian McCrea

Alastair Ross

Peter Weir

87. Agreed: That the Committee is content with clause 27 as drafted.

## **Clause 28 – Power to remove operating centres on review**

88. Agreed: That the Committee agreed to clause 28 as drafted.

## **Clause 29 – Power to attach conditions on review**

89. Agreed: That the Committee agreed to clause 29 as drafted.

### **Clause 30 – Transfer of operating centres**

90. Agreed: That the Committee agreed to clause 30 as drafted.

### **Clause 31 – Determinations as to environmental matters**

91. Agreed: That the Committee agreed to clause 31 as drafted.

### **Clause 32 – Power of Department to hold inquiries**

92. Agreed: That the Committee agreed to clause 32 as drafted.

### **Clause 33 – Power of Department to appoint assessors**

93. Agreed: That the Committee agreed to clause 33 as drafted.

### **Clause 34 – Review of decisions**

94. Agreed: That the Committee agreed to clause 34 as drafted.

### **Clause 35 – Rights of appeal in connection with operators' licences**

95. Agreed: That the Committee agreed to clause 35 as drafted.

### **Clause 36 – Forgery of documents etc**

96. Agreed: That the Committee agreed to clause 36 as drafted.

### **Clause 37 – False statements**

97. Agreed: That the Committee agreed to clause 37 as drafted.

### **Clause 38 – Powers of entry**

98. Agreed: That the Committee agreed to clause 38 as amended by the Department

### **Clause 39 – Power to seize documents etc**

99. Agreed: That the Committee agreed to clause 39 as amended by the Department

### **Clause 40 – Obtaining of information etc by authorized persons**

100. Agreed: That the Committee agreed to clause 40 as drafted.

### **Clause 41 – Obstruction of authorized persons**

101. Agreed: That the Committee agreed to clause 41 as drafted.

## **Clause 42 – Exercise of enforcement powers: authorised persons and constables**

102. Agreed: That the Committee agreed to clause 42 as drafted.

## **Clause 43 – Evidence by certificate**

103. Agreed: That the Committee agreed to clause 43 as drafted.

## **Clause 44 – Detention of vehicle used without operator's licence**

104. Agreed: That the Committee agreed to clause 44 as drafted.

## **Clause 45 – Prosecutions**

105. Agreed: That the Committee agreed to clause 45 as drafted.

## **Clause 46 – Disclosure of information**

106. Agreed: That the Committee agreed to clause 46 as drafted.

## **Clause 47 – Fees**

107. Agreed: That the Committee agreed to clause 47 as drafted.

## **Clause 48 – Operators' licences not to be transferable**

108. Agreed: That the Committee agreed to clause 48 as drafted.

## **Clause 49 – Certificates of qualification**

109. Agreed: That the Committee agreed to clause 49 as drafted.

## **Clause 50 – Large goods vehicles**

110. Agreed: That the Committee agreed to clause 50 being dropped.

111. In response to the Committee's query about the requirement for large goods vehicles to carry consignment notes as referred to in this clause and schedule 4, the Department proposed the removal of this clause. It has never been enacted in GB and the Department was unable to find any policy rationale to underpin its inclusion on the face of the Bill in Northern Ireland.

## **Clause 51 – Method of calculating weight of vehicles**

112. Agreed: That the Committee agreed to clause 51 as amended by the Department.

## **Clause 52 – Application of Act to holding companies and subsidiaries**

113. Agreed: That the Committee agreed to clause 52 as drafted.

## **Clause 53 – Application of Act to partnerships**

114. Agreed: That the Committee agreed to clause 53 as drafted.

## **Clause 54 – Application of Act to the Crown**

115. Agreed: That the Committee agreed to clause 54 as drafted.

116. During Committee stage the Department told members this clause is not included in GB legislation and Crown vehicles are exempt from operator licencing. The Committee accepted its inclusion in the Bill and the extension of licencing to Crown vehicles in Northern Ireland.

## **Clause 55 – Application of Act to harbours**

117. Agreed: That the Committee agreed to clause 55 as amended by the Department.

## **Clause 56 – Supplementary provision**

118. Agreed: That the Committee agreed to clause 56 as drafted.

## **Clause 57 – Regulations**

119. Agreed: That the Committee agreed clause 57 subject to amendments agreed between the Committee and the Department.

120. All secondary legislation raising powers of the Bill were considered by the Committee during its scrutiny phase. The Committee subsequently recommended that powers to introduce exemptions under clause 1(2)(d) and powers to introduce a requirement for certificates of professional competence for restricted licences under clause 12(12) should be subject to draft affirmative procedure. This requires a further amendment to clause 57(9) which the Department agreed to do accordingly.

## **Clause 58 – General interpretation**

121. Agreed: That the Committee agreed to clause 58 as drafted.

## **Clause 59 – Amendments and repeals**

122. Agreed: That the Committee agreed to clause 59 as drafted.

## **Clause 60 – Commencement**

123. Agreed: That the Committee agreed to clause 60 as drafted.

## **Clause 61 – Short title**

124. Agreed: That the Committee agreed to clause 61 as drafted.

## **Schedule 1 – Meaning of ‘small goods vehicle’**

125. Agreed: That the Committee is agreed to Schedule 1 being dropped.

126. The Committee was advised by the Department that removing schedule 1 altogether and inserting a definition of 'small goods vehicles' into clause 1 would allow the definition to be made clear and unambiguous on which vehicles would be deemed in and out of scope of operator licencing.

## **Schedule 2 – Transfer of operating centres**

127. Agreed: That the Committee agreed to schedule 2 as drafted.

## **Schedule 3 – Detention of vehicles used without operator's licence**

128. Agreed: That the Committee agreed to schedule 3 as amended by the Department.

## **Schedule 4 – Large goods vehicles**

129. Agreed: That the Committee agreed to schedule 4 being dropped.

130. The Committee agreed that schedule 4 should be dropped as explained under clause 50. It was noted that the dropping of this schedule required consequential amendments to clauses 38 and 39.

## **Schedule 5 – Amendments**

131. Agreed: That the Committee agreed to schedule 5 as drafted.

## **Schedule 6 – Repeals**

132. Agreed: That the Committee agreed to schedule 6 as drafted.

## **Long title**

133. Agreed: That the Committee agreed the long title as drafted.

## **Appendix 1**

## **Minutes of Proceedings Relating to the Report**

**Thursday 24 January 2008,  
Room 144, Parliament Buildings**

Present:

Mr Patsy McGlone (Chairperson)

Mr Billy Armstrong

Mr Trevor Clarke

Mr Tommy Gallagher

Mr Samuel Gardiner

Mr Ian McCrea  
Mr Daithi McKay  
Mr Peter Weir  
Mr Alastair Ross

In Attendance:

Ms Patricia Casey (Assembly Clerk)  
Mr William Long (Assistant Assembly Clerk)  
Mr Sean McCann (Clerical Supervisor)  
Mr Philip Maguire (Clerical Officer)

Apologies:

Mr Cathal Boylan (Deputy Chairperson)  
Mr David Ford

The meeting opened at 10.32 a.m. in public session.

#### **4. Departmental briefing on Goods Vehicles (Licensing of Operators) Bill**

Mr Weir rejoined the meeting at 11.26a.m.

Departmental officials briefed the Committee and answered members' questions on Goods Vehicles (Licensing of Operators) Bill.

Agreed: That the Department provides the Committee with details of fees in the Republic of Ireland and Great Britain, details of the number of illegal operators, details of the number of vehicles not up to the required standard and details of the number of people killed or seriously injured

Patsy McGlone

Chairperson, Committee for the Environment  
31 January 2008

[EXTRACT]

## **Thursday 7 February 2008, Room 144, Parliament Buildings**

Present:

Mr Patsy McGlone (Chairperson)  
Mr Billy Armstrong  
Mr Trevor Clarke  
Mr Tommy Gallagher  
Mr Samuel Gardiner  
Mr Ian McCrea  
Mr Cathal Boylan  
Mr Alastair Ross  
Mr David Ford

In Attendance:

Ms Patricia Casey (Assembly Clerk)



Mr William Long (Assistant Assembly Clerk)  
Mr Sean McCann (Clerical Supervisor)  
Mr Philip Maguire (Clerical Officer)

Apologies:  
Mr Daithi McKay  
Mr Peter Weir

The meeting opened at 10.35 a.m. in public session.

#### **4. Departmental briefing on Goods Vehicles (Licensing of Operators) Bill**

Departmental officials briefed the Committee and answered members' questions on the proposed Goods Vehicles (Licensing of Operators) Bill.

Agreed: That a letter is sent to the Department for clarification on exemptions for agricultural vehicles and to obtain the number of vehicles that are not affiliated to road haulage organisations

Agreed: That the committee invite the Road Haulage Association and Freight Transport Association to a future meeting to brief them on the proposed Goods Vehicles (Licensing of Operators) Bill.

Patsy McGlone

Chairperson, Committee for the Environment  
21 February 2008

## **Thursday 3 April 2008, Room 144, Parliament Buildings**

Present:  
Mr Cathal Boylan (Deputy Chairperson)  
Mr Trevor Clarke  
Mr David Ford  
Mr Tommy Gallagher  
Mr Samuel Gardiner  
Mr Ian McCrea  
Mr Daithi McKay  
Mr Alastair Ross  
Mr Peter Weir

In Attendance:  
Ms Patricia Casey (Assembly Clerk)  
Mr William Long (Assistant Assembly Clerk)  
Mr Sean McCann (Clerical Supervisor)  
Mr Chris Corr (Clerical Officer)

Apologies:  
Mr Billy Armstrong  
Mr Patsy McGlone (Chairperson)

The meeting commenced in public session at 10.32 a.m. with Mr Boylan in the Chair.

## **5. Briefing by Freight Transport Association (FTA) on the Goods Vehicles**

### **(Licensing of Operators) Bill**

Representatives from the Freight Transport Association briefed the Committee and answered members' questions on the Goods Vehicles (Licensing of Operators) Bill.

Agreed: That the Committee request clarification from the Department on the position regarding planning consent required for an operating centre and responsibility for administration.

Mr McKay joined the meeting at 11.30am.

Agreed: That the Committee writes to Minister for clarification on North/South co-ordination and on the timescales for legislation.

Agreed: That the Committee request research on the breakdown of small/large operators.

Patsy McGlone

Chairperson, Committee for the Environment  
10 April 2008

[EXTRACT]

## **Thursday 24 April 2008, Room 144, Parliament Buildings**

Present:

Mr Patsy McGlone (Chairperson)

Mr Cathal Boylan

Mr David Ford

Mr Tommy Gallagher

Mr Samuel Gardiner

Mr Ian McCrea

Mr Alastair Ross

Mr Peter Weir

In Attendance:

Ms Patricia Casey (Assembly Clerk)

Mr William Long (Assistant Assembly Clerk)

Mr Sean McCann (Clerical Supervisor)

Mr Chris Corr (Clerical Officer)

Apologies:

Mr Billy Armstrong

Mr Trevor Clarke

The meeting commenced in public session at 10.37 a.m.

## **5. Departmental briefing on the Goods Vehicles (Licensing of Operators) Bill**

Departmental officials briefed the Committee and answered members' questions on the Goods Vehicles (Licensing of Operators) Bill.

Mr Weir rejoined the meeting at 11.17a.m.

Mr McGlone left the meeting at 11.20a.m and Mr Boylan assumed the Chair.

The main areas of discussion were the current level of enforcement in Northern Ireland, the impact on single operators, the possibility of equivalent legislation being introduced in the Republic of Ireland and the fees structure.

Mr McGlone returned to the meeting at 11.29 and resumed the Chair.

Mr Ford left the meeting at 11.32a.m.

Agreed: That the Department forward information in relation to the current enforcement team to the Committee.

Agreed: That the Department forward the answers to questions raised at the stakeholder briefings to the Committee.

Patsy McGlone

Chairperson, Committee for the Environment  
24 April 2008

[EXTRACT]

## **Thursday 5 June 2008, Room 144, Parliament Buildings**

Present:

Mr Patsy McGlone (Chairperson)  
Mr Billy Armstrong  
Mr Cathal Boylan  
Mr Trevor Clarke  
Mr David Ford  
Mr Tommy Gallagher  
Mr Samuel Gardiner  
Mr Ian McCrea  
Mr Alastair Ross

In Attendance:

Ms Patricia Casey (Assembly Clerk)  
Mr William Long (Assistant Clerk)  
Mr Sean McCann (Clerical Supervisor)  
Mr Iain Elliott (Clerical Officer)

Apologies:  
Mr Daithi McKay  
Mr Peter Weir

The meeting commenced in public session at 10.33a.m.

## **6. Departmental briefing on the Goods Vehicles (Licensing of Operators) Bill**

Mr Gallagher left the meeting at 12.10p.m.

Mr Armstrong rejoined the meeting at 12.11p.m.

Departmental officials briefed the Committee and answered members' questions on the Goods Vehicles (Licensing of Operators) Bill.

Mr Gallagher rejoined the meeting at 12.35pm.

The main areas of discussion were the requirements for operators' licences, off road parking, the differences in Republic of Ireland and Northern Ireland operating centres, exemptions and 'flagging out'.

Mr Ford left the meeting at 12.48p.m.

Mr Armstrong left the meeting at 12.49p.m.

Patsy McGlone

Chairperson, Committee for the Environment  
12 June 2008

[EXTRACT]

## **Thursday 11 September 2008, Room 144, Parliament Buildings**

Present:  
Mr Patsy McGlone (Chairperson)  
Mr Billy Armstrong  
Mr Cathal Boylan  
Mr Trevor Clarke  
Mr Samuel Gardiner  
Mr Ian McCrea  
Mr Daithi McKay  
Mr Alastair Ross  
Mr Peter Weir

In Attendance:  
Ms Patricia Casey (Assembly Clerk)  
Mr William Long (Assistant Clerk)

Mr Sean McCann (Clerical Supervisor)  
Mr Iain Elliott (Clerical Officer)

Apologies:  
Mr David Ford  
Mr Tommy Gallagher

The meeting commenced in public session at 10.39a.m.

#### **4. Update on Goods Vehicles (Licensing of Operators) Bill**

The Chairperson informed members that the Bill was in Committee stage and that the Committee had received 3 responses to its public notice calling for submissions of views on the Bill.

Agreed: That the Ulster Farmers' Union, the Horticulture Forum, Planning Service and DOE enforcement officials are invited to future meetings to give oral evidence.

The Chairperson adjourned the meeting at 12.13p.m.

Patsy McGlone

Chairperson, Committee for the Environment  
18 September 2008

[EXTRACT]

## **Thursday 25 September 2008, Room 144, Parliament Buildings**

Present:

Mr Patsy McGlone (Chairperson)  
Mr Roy Beggs  
Mr Cathal Boylan  
Mr Trevor Clarke  
Mr David Ford  
Mr Tommy Gallagher  
Mr Ian McCrea  
Mr Daithi McKay  
Mr Alastair Ross

In Attendance:

Patricia Casey (Assembly Clerk)  
Dr Alex McGarel (Assembly Clerk)  
Mr William Long (Assistant Clerk)  
Mr Sean McCann (Clerical Supervisor)  
Mr Iain Elliott (Clerical Officer)

Apologies:  
Mr Billy Armstrong  
Mr Peter Weir

The meeting commenced in public session at 10.34a.m.

## **5. Briefing by Ulster Farmers' Union (UFU) on Goods Vehicles (Licensing of Operators) Bill**

Representatives from the UFU briefed the Committee and answered members' questions on the Goods Vehicles (Licensing of Operators) Bill.

Mr Gallagher left the meeting at 11.32a.m.

The main areas of discussion were exemptions, agricultural contractors and the position of agricultural vehicles under the corresponding legislation in Great Britain.

Agreed: That a letter is sent to the UFU requesting further information on the statistics in their submission.

Patsy McGlone

Chairperson, Committee for the Environment  
2 October 2008

[EXTRACT]

## **Thursday 2 October 2008, Room 144, Parliament Buildings**

Present: Mr Patsy McGlone (Chairperson)

Mr Roy Beggs  
Mr Cathal Boylan  
Mr Trevor Clarke  
Mr David Ford  
Mr Tommy Gallagher  
Mr Ian McCrea  
Mr David McClarty  
Mr Alastair Ross

In Attendance: Patricia Casey (Assembly Clerk)

Dr Alex McGarel (Assembly Clerk)  
Mr William Long (Assistant Clerk)  
Mr Sean McCann (Clerical Supervisor)  
Mr Iain Elliott (Clerical Officer)

Apologies: Mr Daithi McKay  
Mr Peter Weir

The meeting commenced in public session at 10.33a.m.

## **4. Briefing by Horticulture Forum on the Goods Vehicles (Licensing of Operators) Bill**

Representatives from the Horticulture Forum briefed the Committee and answered members' question on the Goods Vehicles (Licensing of Operators) Bill.

The main areas of discussion were exemptions and enforcement.

## **5. Briefing by DVA Enforcement officers on the Goods Vehicles (Licensing of Operators) Bill**

Mr Clarke declared an interest.

DVA Enforcement Officers briefed the Committee and answered members' question on the Goods Vehicles (Licensing of Operators) Bill.

The main areas of discussion were the potential increase in the number of vehicles that will fall within the remit of the Bill, the current numbers in the enforcement team, possible displacement of businesses and the possibility of similar legislation being introduced in the Republic of Ireland.

Agreed: That DOE officials forward statistics to the Committee on the number of enforcement cases and convictions in the last 5 years and a further breakdown of the number of these cases that are duplicate or triplicate.

## **6. Briefing by DOE Planning officials on the Goods Vehicles (Licensing of Operators) Bill**

DOE Planning official briefed the Committee and answered members' question on the Goods Vehicles (Licensing of Operators) Bill.

The main areas of discussion were the interpretation of a planning centre and planning law and the storage and movement of goods.

Mr Gallagher left the meeting at 11.40a.m.

Agreed: That Planning Service forward the Committee written clarification on the definition of an operating centre and the storage of goods.

Mr Clarke left the meeting at 11.47a.m.

Patsy McGlone

Chairperson, Committee for the Environment  
9 October 2008

**Thursday 9 October 2008,  
Room 144, Parliament Buildings**

Present:

Mr Patsy McGlone (Chairperson)

Mr Roy Beggs

Mr Cathal Boylan

Mr Trevor Clarke

Mr David Ford

Mr Tommy Gallagher  
Mr Ian McCrea  
Mr Alastair Ross  
Mr Peter Weir

In Attendance:  
Patricia Casey (Assembly Clerk)  
Dr Alex McGarel (Assembly Clerk)  
Mr William Long (Assistant Clerk)  
Mr Sean McCann (Clerical Supervisor)  
Mr Iain Elliott (Clerical Officer)

The meeting commenced in public session at 10.36a.m.

#### **4. Briefing by Beverley Bell, Traffic Commissioner, North West Traffic Area on the Goods Vehicles (Licensing of Operators) Bill**

Beverley Bell, North West Area Traffic Commissioner briefed the Committee and answered members' questions on the Goods Vehicles (Licensing of Operators) Bill.

The main areas of discussion were illegal operations, poor safety standards of vehicles, co-operation with VOSA, appeals mechanism, public inquiries, planning and operating centres.

Agreed: That a letter is sent to the Department for clarification on existing restrictions on parking goods vehicles in residential areas.

Mr Gallagher left the meeting at 11.45a.m.

Patsy McGlone

Chairperson, Committee for the Environment  
16 October 2008

[EXTRACT]

### **Thursday 16 October 2008, Room 144, Parliament Buildings**

Present:  
Mr Patsy McGlone (Chairperson)  
Mr Roy Beggs  
Mr Cathal Boylan  
Mr Trevor Clarke  
Mr David Ford  
Mr Tommy Gallagher  
Mr David McClarty  
Mr Ian McCrea  
Mr Alastair Ross  
Mr Peter Weir

In Attendance:  
Dr Alex McGarel (Assembly Clerk)



Mr William Long (Assistant Clerk)  
Mr Sean McCann (Clerical Supervisor)  
Mr Iain Elliott (Clerical Officer)  
Mr Richard Clarke (Clerical Officer)

Apologies: Mr Daithi McKay

The meeting commenced in public session at 10.34a.m.

#### **4. Departmental briefing on Goods Vehicles (Licensing of Operators) Bill – secondary legislation raising powers**

Mr McClarty joined the meeting at 11.10a.m.

Departmental officials briefed the Committee and answered members' questions on the secondary legislation raising powers of the Goods Vehicles (Licensing of Operators) Bill.

Agreed: That a letter is sent to the Department asking where they feel draft affirmative resolution is more important in the Bill.

The Chairperson adjourned the meeting at 1.17p.m.

Patsy McGlone

Chairperson, Committee for the Environment  
23 October 2008

## **Thursday 23 October 2008, Room 144, Parliament Buildings**

Present:

Mr Patsy McGlone (Chairperson)  
Mr Roy Beggs  
Mr Cathal Boylan  
Mr Trevor Clarke  
Mr David Ford  
Mr Tommy Gallagher  
Mr David McClarty  
Mr Ian McCrea  
Mr Daithi McKay  
Mr Alastair Ross

In Attendance:

Dr Alex McGarel (Assembly Clerk)  
Mrs Cathie White (Assembly Clerk)  
Mr William Long (Assistant Clerk)  
Mr Collan Cree (Clerical Supervisor)  
Mr Richard Clarke (Clerical Officer)

Apologies: Mr Peter Weir

The meeting commenced in public session at 10.35 a.m.

## **6. Committee consideration of Goods Vehicles (Licensing of Operators) Issues Paper**

Members deliberated over a paper of the issues raised to date from written and oral submissions in relation to the Goods Vehicles (Licensing of Operators) Bill.

Agreed: That an updated version of the 'issues paper' along with a copy of the 'key clauses' document be forwarded electronically to members

12.38pm Mr Ford left the meeting.

12.45pm Mr McGlone left the meeting and Mr Boylan assumed the Chair.

12.45pm Mr McKay left the meeting.

12.50pm Mr McGlone rejoined the meeting and resumed the Chair.

The Chairperson adjourned the meeting at 1.35 p.m.

Patsy McGlone

Chairperson, Committee for the Environment  
6 November 2008

[EXTRACT]

## **Thursday 6 November 2008, Room 144, Parliament Buildings**

Present:

Mr Patsy McGlone (Chairperson)  
Mr Roy Beggs  
Mr Cathal Boylan  
Mr Trevor Clarke  
Mr David Ford  
Mr Tommy Gallagher  
Mr David McClarty  
Mr Alastair Ross  
Mr Peter Weir

In Attendance:

Mr John Torney (Principal Clerk)  
Dr Alex McGarel (Assembly Clerk)  
Ms Patricia Casey (Bill Clerk)  
Mr William Long (Assistant Clerk)  
Mr Sean McCann (Clerical Supervisor)  
Mr Richard Clarke (Clerical Officer)

Apologies:

Mr Ian McCrea  
Mr Daithi McKay

The meeting commenced in public session at 10.05 a.m.

#### **4. Clause by clause consideration of the Goods Vehicles (Licensing of Operators) Bill**

Mr Clarke and Mr Beggs declared an interest.

Patricia Casey, Bill Clerk, briefed the Committee on the procedural aspects of scrutinising the Goods Vehicles (Licensing of Operators) Bill.

Mr Boylan joined the meeting at 10.18a.m.

The meeting was suspended at 10.35a.m.

The meeting resumed at 11.28a.m. with the following members present: Mr McGlone, Mr Ross, Mr Weir, Mr Clarke, Mr Ford, Mr Beggs, Mr McClarty.

DOE officials briefed the Committee and answered members' questions as the Committee began its clause by clause consideration of the Goods Vehicles (Licensing of Operators) Bill.

Mr Boylan rejoined the meeting at 11.35a.m.

Mr Gallagher joined the meeting at 11.46a.m.

Mr Gallagher left the meeting at 12.16p.m.

Agreed: That DOE forward a paper on exemptions to the Committee.

Mr McClarty left the meeting at 12.24p.m.

Mr Gallagher rejoined the meeting at 12.30p.m.

Agreed: That the DOE forward a list of bodies that provide training for the Certificate of Professional Competence.

Agreed: That the DOE further consider Clause 4 and further brief the Committee at its next meeting.

Agreed: That the DOE provide details of its consultation on the options for operator licensing (i.e. appointment of an independent Traffic Commissioner for NI)

Agreed: That Bill Team provide paper on exemptions for consideration.

Mr Gallagher left the meeting at 12.45p.m.

Patsy McGlone

Chairperson, Committee for the Environment  
13 November 2008

[EXTRACT]

## **Tuesday 11 November 2008, Room 135, Parliament Buildings**

Present:

Mr Patsy McGlone (Chairperson)  
Mr Roy Beggs  
Mr Cathal Boylan  
Mr Trevor Clarke  
Mr David Ford  
Mr David  
McClarty  
Mr Ian McCrea  
Mr Alastair Ross  
Mr Peter Weir

In Attendance:

Dr Alex McGarel (Assembly Clerk)  
Ms Patricia Casey (Bill Clerk)  
Mr William Long (Assistant Clerk)  
Mr Richard Keating (Clerical Supervisor)  
Mr Richard Clarke (Clerical Officer)

Apologies: Mr Tommy Gallagher

The meeting commenced in public session at 10.09 a.m.

The Chairperson advised members that the meeting would be suspended at 10.55a.m. to facilitate those who wish to mark Armistice Day.

### **1. Apologies**

Apologies are detailed above.

### **2. Clause by clause consideration of the Goods Vehicles (Licensing of Operators) Bill**

Mr Beggs declared an interest.

Mr Boylan joined the meeting at 10.12a.m.

Mr Clarke joined the meeting at 10.13a.m.

The meeting was suspended at 10.55a.m.

The meeting resumed at 11.11a.m. with the following members present: Mr McGlone, Mr McCrea, Mr Ford, Mr Beggs and Mr Boylan.

DOE officials briefed the Committee and answered members' questions as the Committee continued with its clause by clause consideration of the Goods Vehicles (Licensing of Operators) Bill.

Mr Weir rejoined the meeting at 11.12a.m.

Mr McClarty rejoined the meeting at 11.12a.m.

Mr Clarke rejoined the meeting at 11.16a.m.

Mr Boylan left the meeting at 11.58a.m.

Mr Beggs left the meeting at 12.24p.m.

Mr McCrea left the meeting at 12.24p.m.

Agreed: That copies of the letters from Karen Magill, Tom Wilson and the Consumer Council re the issue of an 'Independent Regulator' are forwarded to the Departmental Bill Team.

Agreed: That the note from the Examiner of Statutory Rules on the secondary legislation raising powers of the Goods Vehicles (Licensing of Operators) Bill is e-mailed to all members.

Agreed: That the Departmental Bill Team provide further clarification on the definition of 'parking'.

The Chairperson adjourned the meeting at 12.28 p.m.

Patsy McGlone

Chairperson, Committee for the Environment  
11 November 2008

## **Thursday 13 November 2008, Room 144, Parliament Buildings**

Present:

Mr Patsy McGlone (Chairperson)  
Mr Roy Beggs  
Mr Cathal Boylan  
Mr Trevor Clarke  
Mr David Ford  
Mr David McClarty  
Mr Ian McCrea  
Mr Alastair Ross  
Mr Peter Weir

In Attendance:

Dr Alex McGarel (Assembly Clerk)  
Ms Patricia Casey (Bill Clerk)  
Mr William Long (Assistant Clerk)  
Mr Sean McCann (Clerical Supervisor)  
Mr Richard Clarke (Clerical Officer)

Apologies: Mr Roy Beggs

Mr Daithi McKay

The meeting commenced in public session at 10.38 a.m.

#### **4. Clause by clause consideration of the Goods Vehicles (Licensing of Operators) Bill**

The Bill Clerk provided an update on the Examiner of Statutory Rules paper on the secondary legislation raising power of the Goods Vehicles (Licensing of Operators) Bill.

Mr Boylan joined the meeting at 11.13a.m.

DOE officials briefed the Committee and answered members' questions as the Committee continued its clause by clause consideration of the Goods Vehicles (Licensing of Operators) Bill.

Agreed: That the Department provides the Committee with further information in relation to consignment notes and the threshold of their applicability.

Agreed: That the Department provides the Committee with their views on the Examiner of Statutory Rules paper on the secondary legislation raising power of the Goods Vehicles (Licensing of Operators) Bill.

Agreed: That the Committee seeks Assembly legal services opinion on the weight given to any Ministerial statement before the Bill is introduced at Consideration Stage.

Agreed: That the proposed Ministerial statement provided by the Department is reviewed and amended.

Agreed: That the Department provides the Committee with information in relation to how EU legislation applies in other areas of Europe such as Spain, France and the Republic of Ireland.

Agreed: That the Department provides the Committee with information as to the length of time the role of Traffic Commissioner has been in operation in Great Britain.

Agreed: That the Freight Transport Association is asked to provide further information in relation to their recent letter regarding the establishment of a Traffic Commissioner.

Patsy McGlone

Chairperson, Committee for the Environment  
20 November 2008

[EXTRACT]

### **Thursday 20 November 2008, Room 144, Parliament Buildings**

Present:

Mr Patsy McGlone (Chairperson)

Mr Roy Beggs

Mr Cathal Boylan

Mr Trevor Clarke

Mr David Ford

Mr David McClarty  
Mr Ian McCrea  
Mr Alastair Ross  
Mr Peter Weir

In Attendance:

Dr Alex McGarel (Assembly Clerk)  
Ms Patricia Casey (Bill Clerk)  
Mr Hugh Widdis (Assembly Legal Services)  
Mr Jonathan McMillan (Assembly Legal Services)  
Mr William Long (Assistant Clerk)  
Mr Sean McCann (Clerical Supervisor)  
Mr Richard Clarke (Clerical Officer)

Apologies:

Mr Tommy Gallagher  
Mr Daithi McKay

## **5. Clause by clause consideration of the Goods Vehicles (Licensing of Operators) Bill**

Mr Beggs and Mr Clarke declared an interest.

The Committee deliberated on a proposal to make a recommendation in its report in relation to the separation of the regulatory and enforcement roles.

Agreed: That the Committee makes a recommendation in its report in relation to the separation of the regulatory and enforcement roles.

The Committee deliberated on a proposal to make a recommendation in its reports that the Department of the Environment pursues the feasibility of the appointment of a traffic commissioner for Northern Ireland, to have statutory responsibility for among other things, Goods Vehicles Operator Licensing.

The Committee divided: Ayes 6; Noes 1

AYES NOES

Cathal Boylan David Ford  
Peter Weir  
Ian McCrea  
Roy Beggs  
Alistair Ross  
Trevor Clarke

Agreed: That this recommendation is included in the Committee's report.

The Committee deliberated on a proposal to make a recommendation in its report that the Minister makes the following statement at Consideration Stage of the Bill:

'Following a designation by the Department of a place as an 'Operating Centre' under the Goods Vehicles (Licensing of Operators) Bill, the issue of read-across into interest or action by Planning Service may be of concern to some. As Minister of the Department that includes the Driver and Vehicle Agency, Road Safety Division and Planning Service, I want to give you an assurance that

the designation of a property as an Operating Centre will not in itself have any read-across to Planning action; nor will it be used by, or influence any action by Planning Service as to the use of the property.'

The Committee divided: Ayes 6; Noes 1

AYES NOES

Cathal Boylan Trevor Clarke

Peter Weir

Ian McCrea

Roy Beggs

Alistair Ross

David Ford

Agreed: That this recommendation is included in the Committee's report.

Members completed their clause by clause scrutiny of the Bill and agreed as follows:

### **Clause 1 – Operators' licences**

Agreed: That the Committee is content with clause 1 as amended by the Department.

The Committee recommended a further amendment in relation to this clause so that powers to exempt vehicles, Clause 1(2)(d), becomes subject to draft affirmative procedure. The Department agreed to do this by making the necessary amendment to Clause 57(9) within which the power lies.

Mr Ford left the meeting at 12.33p.m.

### **Clause 2 – 'Standard' and 'restricted' licences**

Agreed: That The Committee agreed to clause 2 as drafted.

### **Clause 3 – Temporary exemptions**

Agreed: That The Committee agreed to clause 3 as drafted.

### **Clause 4 – Vehicles authorised to be used under operators' licence**

Agreed: That the Committee is content with clause 4 as amended by the Department.

### **Clause 5 – Maximum numbers of vehicles**

Agreed: That the Committee agreed to clause 5 as drafted.

### **Clause 6 – Operating centres to be specified in operators' licences**

The Committee divided: Ayes 5, Noes 1

AYES NOES

Cathal Boylan Trevor Clarke

Peter Weir



Ian McCrea  
Roy Beggs  
Alistair Ross

Agreed: 'That the Committee is content with clause 6 as drafted'.

### **Clause 7 – Application for operators licences**

Agreed: That the Committee agreed to clause 7 as drafted.

### **Clause 8 – Notification of events subsequent to the making of an application**

Agreed: That the Committee agreed to clause 8 as drafted.

### **Clause 9 – Publication by Department of notice of application for licence**

Agreed: That the Committee agreed to clause 9 as drafted.

### **Clause 10 – Publication in locality affected of notice of application for licence**

Agreed: That the Committee agreed to clause 10 as drafted.

### **Clause 11 – Objections to, and representations against, issue of operators' licences**

Agreed: That the Committee agreed to clause 11 as drafted.

### **Clause 12 – Determination of applications for operators' licences**

Agreed: That the Committee agreed with clause 12.

The Committee recommended an amendment in relation to this clause so that powers to introduce a requirement for certificates of professional competence for restricted licences will be subject to greater Assembly scrutiny. The Department agreed to do this by making the necessary amendment to Clause 57(9) within which the power lies.

### **Clause 13 – Determination where objections etc are made on environmental grounds**

Agreed: That the Committee agreed to clause 13 as drafted.

### **Clause 14 – Issue of operators' licences**

Agreed: That the Committee agreed to clause 14 as drafted.

### **Clause 15 – Duration of operators' licences**

Agreed: That the Committee agreed to clause 15 as drafted.

## **Clause 16 – Variation of operators' licences**

Agreed: That the Committee agreed to clause 16 as drafted.

## **Clause 17 – Publication of notice of applications for variation in any locality affected**

Agreed: That the Committee agreed to clause 17 as drafted.

## **Clause 18 – Objection to, and refusal of, applications to vary operators' licences on environmental grounds**

Agreed: That the Committee agreed to clause 18 as drafted.

## **Clause 19 – Variation of Licences: further provisions**

Agreed: That the Committee agreed to clause 19 as drafted.

## **Clause 20 – Conditions of Licences**

Agreed: That the Committee agreed to clause 20 as drafted.

## **Clause 21 – Interim operators' licences**

Agreed: That the Committee agreed to clause 21 as drafted.

## **Clause 22 – Interim variations**

Agreed: That the Committee agreed to clause 22 as drafted.

## **Clause 23 – Revocation, suspension and curtailment of operators licences**

Agreed: That the Committee agreed to clause 23 as drafted.

## **Clause 24 – Revocation of standard licences**

Agreed: That the Committee is content with clause 24 as amended by the Department.

## **Clause 25 – Disqualification**

Agreed: That the Committee agreed to clause 25 as drafted.

## **Clause 26 – Revocation, disqualification, etc: supplementary provisions**

Agreed: That the Committee is content with clause 26 as amended by the Department.

## **Clause 27 – Periods of review for operating centres**

The Committee divided: Ayes 5;Noes 1

AYES NOES  
Cathal Boylan Trevor Clarke  
Peter Weir  
Ian McCrea  
Roy Beggs  
Alistair Ross

Agreed: That the Committee is content with clause 27 as drafted.

**Clause 28 – Power to remove operating centres on review**

Agreed: That the Committee agreed to clause 23 as drafted.

**Clause 29 – Power to attach conditions on review**

Agreed: That the Committee agreed to clause 29 as drafted.

**Clause 30 – Transfer of operating centres**

Agreed: That the Committee agreed to clause 30 as drafted.

**Clause 31 – Determinations as to environmental matters**

Agreed: That the Committee agreed to clause 31 as drafted.

**Clause 32 – Power of Department to hold inquiries**

Agreed: That the Committee agreed to clause 32 as drafted.

**Clause 33 – Power of Department to appoint assessors**

Agreed: That the Committee agreed to clause 33 as drafted.

**Clause 34 – Review of decisions**

Agreed: That the Committee agreed to clause 34 as drafted.

**Clause 35 – Rights of appeal in connection with operators' licences**

Agreed: That the Committee agreed to clause 35 as drafted.

**Clause 36 – Forgery of documents etc**

Agreed: That the Committee agreed to clause 36 as drafted.

**Clause 37 – False statements**

Agreed: That the Committee agreed to clause 37 as drafted.

**Clause 38 – Powers of entry**

Agreed: That the Committee agreed to clause 38 as drafted.

**Clause 39 – Power to seize documents etc**

Agreed: That the Committee agreed to clause 39 as drafted.

**Clause 40 – Obtaining of information etc by authorized persons**

Agreed: That the Committee agreed to clause 40 as drafted.

**Clause 41 – Obstruction of authorized persons**

Agreed: That the Committee agreed to clause 41 as drafted.

**Clause 42 – Exercise of enforcement powers: authorised persons and constables**

Agreed: That the Committee agreed to clause 42 as drafted.

**Clause 43 – Evidence by certificate**

Agreed: That the Committee agreed to clause 43 as drafted.

**Clause 44 – Detention of vehicle used without operator's licence**

Agreed: That the Committee agreed to clause 44 as drafted.

**Clause 45 – Prosecutions**

Agreed: That the Committee agreed to clause 45 as drafted.

**Clause 46 – Disclosure of information**

Agreed: That the Committee agreed to clause 46 as drafted.

**Clause 47 – Fees**

Agreed: That the Committee agreed to clause 47 as drafted.

**Clause 48 – Operators' licences not to be transferable**

Agreed: That the Committee agreed to clause 48 as drafted.

**Clause 49 – Certificates of qualification**

Agreed: That the Committee agreed to clause 49 as drafted.

**Clause 50 – Large goods vehicles**

Agreed: That the Committee agreed to clause 50 being dropped.

### **Clause 51 – Method of calculating weight of vehicles**

Agreed: That the Committee is content with clause 51 as amended by the Department'.

### **Clause 52 – Application of Act to holding companies and subsidiaries**

Agreed: That the Committee agreed to clause 52 as drafted.

### **Clause 53 – Application of Act to partnerships**

Agreed: That the Committee agreed to clause 53 as drafted.

### **Clause 54 – Application of Act to the Crown**

Agreed: That the Committee agreed to clause 54 as drafted.

### **Clause 55 – Application of Act to harbours**

Agreed: That the Committee agreed to clause 55 as amended by the Department.

### **Clause 56 – Supplementary provision**

Agreed: That the Committee agreed to clause 56 as drafted.

### **Clause 57 – Regulations**

Agreed: That the Committee is content with clause 57 subject to amendments agreed between the Committee and the Department.

### **Clause 58 – General interpretation**

Agreed: That the Committee agreed to clause 58 as drafted.

### **Clause 59 – Amendments and repeals**

Agreed: That the Committee agreed to clause 59 as drafted.

### **Clause 60 – Commencement**

Agreed: That the Committee is content with clause 60 as drafted.

### **Clause 61 – Short title**

The Committee agreed to clause 61 as drafted.

### **Schedule 1 – Meaning of 'small goods vehicle'**

Agreed: That the Committee is agreed to the Minister opposing the question that schedule 1 stands part of the Bill.

## **Schedule 2 – Transfer of operating centres**

Agreed: That the Committee is content with schedule 2 as drafted.

## **Schedule 3 – Detention of vehicles used without operator's licence**

Agreed: That the Committee is content with schedule 3 as amended by the Department.

## **Schedule 4 – Large goods vehicles**

Agreed: That the Committee is content with the Department removing schedule 4.

## **Schedule 5 – Amendments**

Agreed: That the Committee is content with schedule 5 as drafted.

## **Schedule 6 – Repeals**

Agreed: That the Committee is content with schedule 6 as drafted.

## **Long title**

Agreed: That the Committee is content with the long title as drafted.6.

Patsy McGlone

Chairperson, Committee for the Environment  
27 November 2008

[EXTRACT]

# **Thursday 27 November 2008, Room 144, Parliament Buildings**

Present:

Mr Patsy McGlone (Chairperson)  
Mr Roy Beggs  
Mr Trevor Clarke  
Mr Tommy Gallagher  
Mr David McClarty  
Mr Ian McCrea  
Mr Alastair Ross  
Mr Peter Weir

In Attendance:

Dr Alex McGarel (Assembly Clerk)  
Ms Patricia Casey (Bill Clerk)  
Mr William Long (Assistant Clerk)  
Mr Sean McCann (Clerical Supervisor)  
Mr Richard Clarke (Clerical Officer)

Apologies:  
Mr Cathal Boylan  
Mr David Ford  
Mr Daithi McKay

The meeting commenced in public session at 10.35 a.m.

#### **4. Goods Vehicles (Licensing of Operators) Bill**

Members deliberated on the Committee's draft report on the Goods Vehicles (Licensing of Operators) Bill.

Agreed: That the information on EU member states previously requested from the Department is requested again.

Agreed: That Departmental officials are invited to a meeting on 2 December to further discuss proposed amendments around Clause 50 and Schedule 4.

Patsy McGlone

Chairperson, Committee for the Environment  
4 December 2008

[EXTRACT]

## **Tuesday 2 December 2008, Room 144, Parliament Buildings**

Present:  
Mr Roy Beggs  
Mr Cathal Boylan  
Mr Trevor Clarke  
Mr Ian McCrea  
Mr Daithi McKay  
Mr Alastair Ross  
Mr Peter Weir

In Attendance:  
Dr Alex McGarel (Assembly Clerk)  
Ms Patricia Casey (Bill Clerk)  
Mr William Long (Assistant Clerk)  
Mr Sean McCann (Clerical Supervisor)  
Mr Richard Clarke (Clerical Officer)

Apologies:  
Mr Patsy McGlone (Chairperson)  
Mr David Ford  
Mr Tommy Gallagher  
Mr David McClarty

The meeting commenced in public session at 10.08 a.m. with the Deputy Chairperson, Mr Boylan, in the Chair.

## **1. Apologies**

Apologies are detailed above.

## **2. Clause by clause consideration of the Goods Vehicles (Licensing of Operators) Bill**

Departmental officials briefed the Committee and answered members' questions on Clause 4 (4), Clause 38, Clause 39, Clause 50, Clause 57 (9) and Schedule 4.

### **Clause 38**

Agreed: That the Committee is agreed with Clause 38 as amended by the Department.

### **Clause 39**

Agreed: That the Committee is agreed with Clause 39 as amended by the Department.

### **Clause 57**

Agreed: That the Committee is agreed with Clause 57 as amended by the Department.

### **Schedule 1**

Agreed: That the Committee is agreed to drop Schedule 1.

The Deputy Chairperson adjourned the meeting at 10.34 a.m.

Cathal Boylan

Deputy Chairperson, Committee for the Environment  
4 December 2008

**Thursday 4 December 2008,  
Room 144, Parliament Buildings**

Present:

Mr Patsy McGlone (Chairperson)

Mr Roy Beggs

Mr Trevor Clarke

Mr David Ford

Mr Tommy Gallagher

Mr David McClarty

Mr Ian McCrea

Mr Alastair Ross

Mr Peter Weir

In Attendance:

Dr Alex McGarel (Assembly Clerk)

Ms Patricia Casey (Bill Clerk)

Mr William Long (Assistant Clerk)



Mr Sean McCann (Clerical Supervisor)  
Mr Richard Clarke (Clerical Officer)

Apologies:

Mr Patsy McGlone (Chairperson)  
Mr Daithi McKay

The meeting commenced in public session at 10.34 a.m. with Mr Boylan in the Chair

## **7. Goods Vehicles (Licensing of Operators) Bill Report**

Mr Beggs declared an interest.

The Chairperson advised members that clause by clause scrutiny of the Goods Vehicles (Licensing of Operators) Bill had now been completed and that they needed to consider the second draft report on the Bill.

The Committee agreed the main body of the report:

- Membership, read and agreed
- Executive Summary, read and agreed
- Recommendations, read and agreed
- Introduction, read and agreed
- Appendix 1, read and agreed
- Appendix 2, read and agreed
- Appendix 3, read and agreed
- Appendix 4, read and agreed
- Appendix 5, read and agreed

Agreed: That an extract from the minutes of the Committee meeting on Tuesday 2 December is included in the report along with an extract of the minutes from the meeting on Thursday 4 December as agreed by the Deputy Chairperson, and Hansard transcripts from the same dates

Agreed: That the Committee Report be printed.

Cathal Boylan

Deputy Chairperson, Committee for the Environment  
11 December 2008

## **Appendix 2**

### **Minutes of Evidence**

**24 January 2008**

Members present for all or part of the proceedings:

Mr Patsy McGlone (Chairperson)

Mr Billy Armstrong

Mr Trevor Clarke

Mr Tommy Gallagher

Mr Samuel Gardiner

Mr Ian McCrea

Mr Daithí McKay

Mr Alastair Ross

Mr Peter Weir

Witnesses:

Mr Donald Armstrong

Mr John Brogan            Department of the Environment

Mrs Gillian McIntyre

1. The Chairperson (Mr McGlone): Department of the Environment (DOE) officials Mr Donald Armstrong, Mrs Gillian McIntyre and Mr John Brogan will brief the Committee on the proposed goods vehicles (licensing of operators) Bill. On 24 August 2007, we were initially informed of the intention to introduce the Bill, and, on 26 September 2007, the Committee wrote to the Department requesting a timetable for the progression of the Bill. We have received the Department's response, and we also have information relating to the Department's two previous consultations on the matter, the first of which was in 1998 and the second in 2003. The Department has also notified members of its intention to rename the Bill from the road freight (licensing of operators) Bill to the goods vehicles (licensing of operators) Bill.
2. Perhaps, Mr Armstrong, you could give a brief run-through of what is anticipated in the proposed Bill, and after that, members can ask questions.
3. Mr Donald Armstrong (Department of the Environment): Thank you, Mr Chairperson.
4. We have submitted a briefing paper on the topics that we wish to address. I will begin by describing the context from which the proposed Bill has emerged and by mentioning some of the terminology that is used therein. I will give a brief overview today of what we are aiming to do, but, obviously, we will return regularly to talk to the Committee in greater detail about certain aspects of the proposed legislation.
5. As a backdrop to the current situation, the Department of the Environment, through its road safety division, is responsible under the Transport Act (Northern Ireland) 1967 for the regulation of vehicles that carry passengers or goods for hire or reward. The road safety division is responsible for developing policy and introducing legislation, which is then implemented by the Driver and Vehicle Agency (DVA) from its headquarters in Coleraine.
6. The road-freight industry in Northern Ireland comprises approximately 35,000 vehicles, each of which weighs more than three and a half tons. Only a quarter of the industry is regulated. The regulated quarter is known as the hire-for-reward sector. In that sector, organisations carry goods for other people, that is to say, haulage companies. The unregulated section of the industry is known as the own-account sector, and that applies to organisations such as Tesco and Sainsbury's. Those companies have a business to run, and part of that involves them carrying their own goods.

7. The proposals that we will outline are an attempt to widen the industry's regulations in order to make them all-inclusive. That is the context in which the Bill is being proposed.

8. Moving on to the commitments that have been made in the past, the Chairman referred to the consultations that took place in 1998 and 2003. Following the consultation of 2003, the then Minister with responsibility for the environment, Angela Smith, gave a commitment in May 2004 that the development of the legislation would proceed, based on the proposals that resulted from that consultation. More recently, the head of the Northern Ireland Civil Service, in evidence to the Northern Ireland Affairs Committee — which was considering how to combat organised crime — gave a commitment that the Department would endeavour to formulate proposals fairly quickly. That has not happened, because the timetable for that was based on one that was devised in Westminster. The Northern Ireland Affairs Committee expressed concern at what it perceived as the delay in introducing the proposals. The proposals were part of the Westminster programme, and, with the restoration of the devolved Administration, they are now for the Assembly to formulate.

9. In 1991, before any of the consultations took place, a review into road-freight licensing in Northern Ireland recommended that the system should be expanded. The matter went out to consultation in 1998, and the responses to it were broadly favourable — although I hasten to add that neither consultation met with an overabundance of responses.

10. Members have been given a copy of the summary of the responses to the 2003 consultation. You will find that, although there were objections to expansion of the system, on balance, the responses either made no comment or were favourable. Some of the organisations that registered opposition to the 2003 consultation firmly support and are on board with the current process.

11. To understand the content of the consultations and the proposals, I refer members to the policy memorandum document that we have submitted. It sets out, in fairly good detail, the backdrop to the legislation and what the Department is trying to achieve. Given that that memorandum is comprehensive, covers the detail of the consultation and contains some valuable information, members may wish to lean heavily on it as a working document. Therefore, I commend it for your perusal and consideration.

12. I will talk about the communication process in which the Department is involved. Our basic philosophy is to make compliance with regulation as easy as possible, while making non-compliance as difficult as possible. Our goal is to introduce legislation and regulations to which people find it easy to adhere. Therefore, our consultations put great emphasis on talking to industry representatives to find out what is important to them, how they can work with the legislation, and then to introduce appropriate regulations. At the same time, we must be tough: there is no point in introducing regulations if we are not going to enforce them, so we must ensure that the enforcement regime is sufficiently tough and strong to make non-compliance difficult.

13. We have worked with a large number of stakeholders in the industry. Over the past couple of years, we have talked to stakeholders, including the Road Haulage Association (RHA) and the Freight Transport Association (FTA). Around two years ago, the then Minister with responsibility for the environment set up a road freight forum for Northern Ireland, through which departmental officials meet regularly with industry representatives. We talk about the issues that affect them and the proposals that we are seeking to introduce. Over the past few years, we have been in continuous touch with representatives of the industry to ensure that the key stakeholders are on board and are au fait with and supportive of our plans.

14. In the past couple of weeks, we have widened that net and spoken to other organisations, such as the Federation of Small Businesses. We have arrangements made to meet the Chamber of Commerce, the Confederation of British Industry (CBI), the Institute of Directors and local authorities. We have met with representatives of the transport managers from the 26 local authorities, and we hope to build on that interaction with key stakeholders in the industry to ensure that we deliver legislation that they are happy with and so that they feel that we have gone along with them to some degree.

15. We plan to embark on briefings with the freight industry over the next couple of months. That process will begin on 18 or 19 February and continue until the middle of March. We will invite as many people as possible from the industry to those briefings, and we will mail every single registered keeper in the own-account sector who has a goods vehicle that weighs over three and a half tons. We hope to explain what we are trying to do, the impact that it will have on them, how much it will cost and what the benefits will be. We will try to get feedback from those vehicle keepers so that we can introduce regulations that will be easy to work with. We will happily provide the Committee with a report of the outcome of those briefings.

16. There are four reasons for wanting to introduce the changes. The first, and overriding reason, is road safety. It is fairly common knowledge that the standard of compliance with roadworthiness in the road-haulage industry is not good. A survey that was carried out in 2005 showed that 18% of goods vehicles on the road were found to be non-compliant with roadworthiness standards. Although the results of a survey that has been carried out since then have not been finally tabulated, that figure has increased significantly. Therefore, the regulation and improvement of the industry will address a major road-safety issue.

17. There is a record of bad driver behaviour, such as drivers who abuse the drivers' hours regulations, who overload vehicles, who do not properly check their vehicles daily. There is a history and a culture of non-compliance in the road-freight industry, and, on a road-safety basis, we want to address that issue through better regulation and sound enforcement.

18. To compound that, information that we are getting from traffic commissioners and the police in GB indicates that the standard of Northern Ireland haulage-industry vehicles that reach GB is not at all good. We must improve the image of the industry by ensuring that road-safety standards are implemented.

19. Secondly, there is the problem of illegal operation. There is a feeling that several operators are operating illegally, undercutting legitimate business and placing financial strains on it. We are trying to create a level playing field where everybody is regulated, where there is sufficient enforcement to impose the prescribed standard and where the opportunities to participate in illegal operations will be reduced.

20. Thirdly, as I said earlier, the head of the Civil Service gave the commitment that legislation would be introduced as a tool to aid the combating of organised crime. Organised crime still exists, but it needs vehicles to work. If we can tie down the vehicles and link them all to a registered operator, we will have another tool to help combat organised crime.

21. Finally, we face environmental pressure to ensure that the road-haulage industry plays its part in making sure that its operating centres and vehicles are as environmentally suitable as possible.

22. As a result of the consultations, several proposals were considered. The first was to do nothing, which is not really an option. That would mean that one quarter of the industry would remain regulated, with those operators paying the regulation fees and so forth, while the rest of the industry would not be regulated, paying nothing. That option is not equitable.

23. The second option was to adopt the same systems that are in GB, which has a traffic-commissioner system in which everybody is licensed.

24. The third option, which is that with which we went, was to adopt the GB model to some degree but to have local variations. That is the model that the Minister proposed to implement and that we hope to introduce through the proposed Bill.

25. What will the legislation mean in practice? I will run through the topics quickly, and we can go over them again in more detail at a later meeting to determine how the legislation addresses those issues. All operators will have to be licensed; there will be continuous licensing, which will be phased by renewals and reviews every five years; those applying for operator's licences will be required to advertise locally so that representations can be taken from those who will be affected; environmental conditions will be applied to the operating centres from which the operators will work; and operators will be required to give maintenance undertakings on how they manage and keep their fleet, which is a big road-safety issue.

26. At present, the powers of traffic commissioners in GB are discretionary, while those in Northern Ireland are non-discretionary and limited. The powers that will be available to traffic commissioners in GB will be adopted by the Department of the Environment in Northern Ireland.

27. Finally, the Bill will create the power to impound vehicles that are used illegally. That measure will help to toughen our enforcement powers.

28. The Chairperson: Thank you for that overview. The idea is that, as part of the Committee's scrutiny process, you will return to the Committee in a few weeks' time — at some time around 7 February 2008 — to provide more detail on the Bill. The next step will be to begin the same process that Committee members undertook — those of us who were involved — when scrutinising the Taxis Bill. We will also hold a few pre-evidence sessions. The Committee will receive a lot more detail on the proposed Bill as it progresses.

29. Do any members wish to ask any further questions?

30. Mr Gallagher: I wish you all well with the proposed legislation. You mentioned poor road-safety standards, and some of what you said was quite shocking. The Committee has heard earlier evidence about that matter, so it is good to see that the problem is being tackled. As with certain other issues, if tougher regulations are introduced, enforcement will be important.

31. I represent a western constituency. There seems to be so many freight vehicles around. They are being driven on roads that are, in some cases, completely inappropriate for the size of the vehicles and for the speed at which they are being driven.

32. I have noticed that many vehicles have been registered in the Republic of Ireland and have been so for financial reasons. Where will they sit with regard to the enforcement of the proposed regulations? Many of those vehicles are owned by businesses in Northern Ireland, but the owners are able to — and therefore do — register them in the Republic of Ireland. I know that there are understandable financial implications in doing that, but I want to know how that sits with your proposed enforcement plans.

33. I also want to ask about driver licensing. Quite a number of workers are non-nationals and driving on our roads. I simply do not know enough about the qualifications that are required for driving in the countries from which they come. I would like to know whether those drivers are qualified to drive heavy goods vehicles here.

34. The use of mobile phones while driving such vehicles is a serious issue. Although driving while using a mobile phone may not be addressed in the proposed legislation, would you clarify whether it is being considered for inclusion?

35. The Chairperson: Are you asking about the illegal use of mobile phones?

36. Mr Gallagher: Yes. I simply want to clarify whether that matter is included anywhere in the plans to improve the regulations. I am sure that other members have often noticed that, in addition to driving at high speeds, it is not uncommon for drivers of those vehicles to be steering with one hand while chatting on their mobile phone, which they hold in their other hand.

37. I know that the drivers need mobile phones for certain purposes, but I know that members of the public, not just I, have observed lorry drivers having long conversations on hand-held mobile phones.

38. The Chairperson: Mr Armstrong, several members have indicated that the best way to proceed is for us to ask questions on the issues that concern us and then for you to address them.

39. Mr I McCrea: I notice that fees will come into line with those that apply in GB. What is the difference between those? Obviously, they are increasing to cover the costs of implementing the regulations, but is there much of an increase?

40. Mr McKay: You said that several objections were raised in past consultations; could you summarise those? Are any enforcement powers included in the proposed legislation to check the discs of lorry drivers regularly to ensure that they are not tampered with fraudulently?

41. Mr Ross: Two issues that you highlighted were the poor standard of vehicle maintenance and the extent of illegal operations. Given that you gave us figures for the approximate number of vehicles on the roads that were not up to the appropriate maintenance level, could you tell us the extent of the illegal operations? I presume that an approximate figure indicating the extent of the problem was in the House of Commons report.

42. Mr B Armstrong: Any measure that brings more safety to our roads must be welcomed. We have to make sure that our roads are safe, and that the loads that are being carried are safely secured and driven.

43. Most lorries, especially long distance lorries, have Citizens' Band (CB) radios. Those devices are normally hand-held, so some legislation should be introduced that states that they are necessary in order that drivers can communicate with each other. Sometimes life can be boring in a lorry, especially for long-distance drivers. We must take that into consideration and introduce legislation that addresses drivers' use of CBs and mobile phones.

44. I presume that some hauliers operate here but are registered in other countries and use their vehicles more often in Northern Ireland than in other countries. How will you address that?

45. Mr T Clarke: Having read some of the objections on the paper that has been submitted today, and having heard mention today of lorries that travel across the border, it is clear that that is an issue. Along the lines of what Billy has just suggested, will it not be seen as an unfair advantage to such operators if the industry in Northern Ireland is to be regulated, but some will be free to continue to operate as they have been in the Republic of Ireland? Will that not put pressure on businesses here? Those operators will have to adhere to stringent guidelines here,

whereas those in the Republic can come up here, pick up the work, and continue to operate in the Republic's system.

46. The Chairperson: Members have highlighted several issues to which you can respond. Unless any member has anything further to add, you can address them. I am sure that we will hear much more detail on the matter as the Bill progresses. However, in the meantime, will you please respond to the issues raised that have been raised today?

47. Mr D Armstrong: People who have an operator's licence in Northern Ireland will be required to have an operating centre here. The only vehicles that can be used will be vehicles that are UK-registered under the Vehicle Excise and Registration Act 1994 — also known as VERA. With an operator's licence, one will not be able to have vehicles that are registered in the Republic of Ireland. That effectively treats vehicles that have been registered across the border as foreign vehicles in much the same way that other vehicles coming here from the rest of Europe are dealt with. That means that the only vehicles that will be linked to the operating centre are those that are registered in either Northern Ireland or Great Britain.

48. The use of mobile phones is outwith operator licensing. That said, penalty points that operators in the hire-for-reward sector received for the illegal use of mobile phones will count against them when their reputations are being considered. Although the illegal use of mobile phones and CBs is an issue, it is not within the remit of what we are talking about. We are concerned with the licensing of operators, with a view to ensuring that they maintain and use their vehicles more safely. If they do not comply — and get caught — it will go against them as operators, and that will be reflected in their licence. We will talk about that in more detail when we discuss with the Committee the standards that we want to introduce and that operators must reach.

49. Mr McCrea asked about fees. Gillian has conducted some research on the fees, and has ascertained that they will decrease.

50. Mrs Gillian McIntyre (Department of the Environment): I can inform you of the fees, based on what they are in Great Britain. They cover five years. An operator who has one vehicle pays approximately £760; the cost is approximately £1,120 for an operator with three vehicles; and £2,380 for an operator with 10 vehicles. At present in Northern Ireland, only the hire-for-reward sector is licensed, and anybody who has more than four vehicles would be better off with the GB fees.

51. The Chairperson: How much better off would they be?

52. Mrs McIntyre: An operator with 10 vehicles would pay approximately £2,380 in Great Britain and £3,150 in Northern Ireland.

53. The Chairperson: Are any other supplementary fees or attendant issues being added?

54. Mrs McIntyre: No.

55. Mr D Armstrong: Many of the objections that we received related to cost, and many came from the own-account sector. One must put the fees into context. One tyre for a commercial vehicle costs in excess of £200, and, in some cases, it can cost a lot more. Therefore, the costs that are involved are less than it would cost to tyre a lorry each year. In the overall cost of running a business, that is a small amount of money. However, I accept that people are unhappy with costs.

56. The Chairperson: Whether that is a small amount of money depends on the individual's profit.

57. Mr D Armstrong: If a lorry owner is putting new tyres on a vehicle every year, the regulation cost is a small extra. It will be 20% of the annual cost of tyres. We are not talking about huge fees that will drive people out of business. Although most of the objections are based on cost, we are not talking about exorbitant amounts.

58. Mr T Clarke: We are focusing on the least expensive aspect of the proposed regulations. My reading of what you are saying is that there will be particular yards in which lorries and vehicles will be kept. The single-man operator who drives his lorry home every night and parks it at the side of his house has never needed a property yard. Paying £700 for a licence for five years is not a huge amount, but I am concerned that a single-man operator seeking an operator's licence will have to pay for a dedicated yard, and that will cost considerably more than £700.

59. Mr D Armstrong: Most operators who have more than one vehicle will have a yard, so they will not have an extra cost. Some drivers may have one vehicle, drive it home and park it on their premises, provided that no objections are made when they apply for their licence and make their representations. We do not see any problem with that continuing.

60. The Chairperson: From whom might there be objections?

61. Mr D Armstrong: The neighbours who may be affected might object. Drivers who park their vehicle at their house at night may apply for a licence, and, as the process requires, advertise their intention. The application will go ahead, if nobody objects. However, there will be difficulties in instances where people have to specify an operating centre on their licence application, and "on the street" is not considered to be an option as an operating centre. People who currently park their lorries outside people's houses at night will have to find somewhere else to park. Perhaps they could find a yard, or somebody could allow them to park the vehicle — off-road at night — on their property, for what is, hopefully, a relatively small fee. However, that would be specified.

62. Some operating centres will be more expensive than others, but those who park their lorries on the street will be directly affected because it will no longer be an acceptable practice.

63. Mr Gardiner: Those who live beside people who own lorries will welcome that. On many occasions, I have been contacted by people who cannot, for instance, see out of their windows because of the lorries that are parked outside their house. The new regulations will help to tackle that, and I welcome them.

64. Mr D Armstrong: I want to return to discussing the objections that we received. Most are related to cost, which is an issue. The Department will carry out impact assessments, not only on what the fee will be, but on the impact that the costs will have on the industry. The Committee will have access to that impact assessment.

65. Issues such as enforcement and the fraudulent use of discs are outwith the provisions of the Bill, but offences of that nature will reflect negatively on an individual's reputation. However, when the whole industry is regulated, in broad terms, the fee receipt will be four times its current rate, with the result that much more money will be available to invest in enforcement. Enforcement will be stronger, which means that those who display fraudulent discs, increase drivers' hours or overload their vehicles will have fewer opportunities to avoid being detected. Hence, road safety and compliance with the restrictions on drivers' hours will be improved. By regulating the whole industry, the Department is providing a basis for fairer and more comprehensive enforcement.



66. In regard to vehicle maintenance —

67. The Chairperson: Mr Gallagher wants some clarity on enforcement.

68. Mr Gallagher: I am waiting to hear something about drivers' licences.

69. Mr D Armstrong: I apologise, please remind me of the question.

70. Mr Gallagher: I asked about the proper licensing of drivers. My question is prompted by a serious accident that happened in County Cavan. The driver of the vehicle involved was not licensed and was also a foreign national. Does the Department plan to address matters such as that?

71. The Chairperson: Was the driver not licensed as an operator or as a driver?

72. Mr Gallagher: He was not licensed as a driver.

73. Mr D Armstrong: That is a slightly different issue. The use of inappropriate driving licences should be picked up through enforcement; it is not specifically connected to operators. It is the duty of operators to ensure that those who drive their vehicles are appropriately licensed and insured and that their vehicles are in proper condition. Related offences will reflect on the suitability of the operator to hold an operators' licence.

74. I have already touched on the issue of foreign-registered vehicles. When the Minister addressed the Committee a couple of weeks ago on road safety, she mentioned that the Department was considering introducing graduated fixed penalties and a deposit scheme. We will do more work on those over the next couple of months. The deposit scheme is specifically being introduced to address the problem of foreign drivers who commit road-traffic offences. With greater enforcement resources, we hope to detect those offenders. Instead of being issued with a fixed penalty, foreign drivers will be required to pay a deposit at the roadside for any offences that they commit. They will have to face the penalty or forfeit their deposit. That will ensure that they do not escape without punishment. They will be restricted from moving until they pay the deposit. Therefore, a mechanism is being introduced to deal specifically with foreign drivers who commit offences in Northern Ireland.

75. Have I covered all the points that Members wanted me to?

76. Mr Ross: Do you have an approximate figure on the level of illegal operations?

77. Mr D Armstrong: No, but we will try to find out. It might be quite a difficult figure to tie down — we can examine the illegal operations that have been detected, but I do not know whether we could provide the detail on the number involved.

78. Mr T Clarke: I asked whether operators in the Republic of Ireland are not subject to the same stringent controls, which put pressure on operators, as their counterparts in Northern Ireland. If not, operators in Northern Ireland will find it more difficult to survive, because those from the South of Ireland could come here and take our work.

79. The Chairperson: Could some sort of harmony be reached to make sure that that does not happen?

80. Mr D Armstrong: Obviously, the authorities here and those in the South share information on offenders. We will meet with our counterparts in Dublin to talk to them about our proposals, and

we will consider what they are doing, what they have been doing, and the consequences of their policies. We can give that information to the Committee.

81. Mr B Armstrong: The Road Haulage Association believes that the activity of vehicles that cross the border means that the provisions of the proposed Bill will not work in Northern Ireland.

82. The Chairperson: That was mentioned in relation to the 2003 consultation. Are you assuring us that you have had further talks with the RHA and that it is now on board?

83. Mr D Armstrong: The RHA is very supportive of our proposals. Gillian and I were at a briefing with representatives of that body on Tuesday night, and they meet with us on the road freight forum. They are keen for us to press ahead with the proposals as quickly as possible. Their view is now different to what it was in 2003, and they are happy to verify that.

84. Mr B Armstrong: Will the legislation in the Republic be tightened? There seems to be a weaker system there.

85. The Chairperson: We have perhaps jumped over an issue.

86. You clarified earlier that you will be working with your counterparts in Dublin in an attempt to establish whether any complications that arise from competition between firms can be overcome and that no firm will be disadvantaged.

87. The other question concerned the Road Haulage Association. I know that you are working very closely with them at the moment.

88. Mr D Armstrong: We are running eight of the freight industry briefings that I mentioned from 19 February to 12 March, and the Road Haulage Association has already indicated that it will come along to every one of those and actively support us. If that is a measure of its change of heart, that is very good news.

89. Mr Gallagher: Can we have clearer information on the road safety aspects of the policy memorandum? The very first sentence of that document reads:

“Goods vehicles make a significant contribution to the number of people killed or seriously injured (KSI) in Northern Ireland.”

90. What exactly are those statistics? If you do not have them today, will you forward them to the Committee?

91. Mr D Armstrong: Would it be all right if we brought them to the Committee when we come in two weeks' time?

92. The Chairperson: We would appreciate that.

93. Mr D Armstrong: I ask the Committee to consider the timetable for the proposed legislation. Perhaps John will talk about how we are moving forward.

94. Mr John Brogan (Department of the Environment): The Bill is currently being drafted, and that is going very well. We should have a reasonably complete draft sometime in February, and that will allow us to begin the formal tasks of submitting the draft to Ministers and getting the Executive's approval for it by April 2008. With a fair wind, that will allow the Bill to have its First Stage in May, and its Second Stage, when it will be debated in its broadest sense in the House,

will be in June. If we achieve those targets, the Committee Stage will start sometime before the summer recess. The hope is that that will allow the Committee to carry out a consultation exercise over the summer that is similar to that which was done for the Taxis Bill, thereby allowing the Committee to hit the ground running in September.

95. The Chairperson: Thank you very much for that presentation; it has given us an indication of where we are going with the proposed Bill.

96. Gillian, you mentioned the related fees and the comparator between the GB fees and those in Northern Ireland. Can you send those to the Committee? We want to establish how advantageous the GB fees would be.

97. Mrs McIntyre: Yes.

98. Mr Gardiner: How do our fees compare with those in the Irish Republic?

99. Mr D Armstrong: I do not know; I will find that out for you.

100. Mr Gardiner: It would be good to have a benchmark so that we can gauge what the situation is down there.

101. Mr D Armstrong: We will check that out. In the 2003 consultation, we gave an undertaking that initially we would match the GB fees. However, it is probably worth mentioning that a review of the whole structure of the fees in GB is ongoing; therefore, they may be calculated using a different framework. We will give the Committee a comparison with the present fee, and we will try to find out what they may be once the review has been completed.

102. The Chairperson: Thank you for that. Did you want to make another point?

103. Mr D Armstrong: No.

104. The Chairperson: Thank you very much for your time. I am sure we will see one another fairly frequently as the proposed Bill proceeds.

## **7 February 2008**

Members present for all or part of the proceedings:

Mr Patsy McGlone (Chairperson)  
Mr Cathal Boylan (Deputy Chairperson)  
Mr Billy Armstrong  
Mr Trevor Clarke  
Mr David Ford  
Mr Tommy Gallagher  
Mr Samuel Gardiner  
Mr Ian McCrea  
Mr Alastair Ross

Witnesses:

Mr Donald Armstrong  
Mr John Brogan           Department of the Environment  
Mrs Gillian McIntyre

105. The Chairperson (Mr McGlone): Officials from the Department of the Environment gave us an initial briefing on the Bill on 24 January. After we have heard evidence from the same officials today, we may wish to consider obtaining further evidence from key stakeholders. I welcome back to the Committee Donald Armstrong, Gillian McIntyre and John Brogan.

106. Mr Donald Armstrong (Department of the Environment): At our previous evidence session, we covered the generality of our proposals for the Bill. We talked about the context of the proposed Bill, the commitments that have been made and the consultations and communications with various parties that have taken place. Today, we will discuss the current situation and examine the proposed Bill more closely and the requirements that it is seeking to place on operators.

107. The Bill will require all operators of goods vehicles that are over three and a half tons to have an operator's licence. There are approximately 2,500 licensed operators in Northern Ireland who carry goods for hire and reward — that is, for other people. That sector is commonly known as the haulage industry. Our research has found that a further 13,300 operators who carry their own goods use vehicles that are over three and a half tons. Those operators are not included in the present regulatory regime, but we propose that they will be. The total Northern Ireland goods fleet is estimated at approximately 35,000 vehicles. That gives you an idea of the size of the market that we are trying to deal with.

108. The basic requirement for an operator's licence is that all operators must have one. We are considering three types of licence, and each operator must have one of those types. First, we are considering a restricted licence, which is a licence for those who are restricted to carrying their own goods as part of their own business. Those operators will be newly regulated under the regime. Secondly, we are considering a standard licence, currently known as a national licence, for the hire-and-reward sector. That is for people who carry other people's goods, but who can also carry their own. Thirdly, an international licence will be granted to operators who want to carry their own or other people's goods across member-state boundaries, for example, into Ireland. Those operators will require — and will get, free of charge with the licence — a Community authorisation. That must be kept on the premises and a certified copy must be kept in every vehicle that crosses the boundaries between member states.

109. All operators will be required to satisfy standards of fitness, repute, financial standing, and professional competence in order to obtain certain groups of licences. The proposed Bill will not introduce any real changes for operators who are already licensed in the hire-for-reward sector, but it will result in some changes for those who will be coming into the regime, namely the own-account operators.

110. Standards of fitness and repute are based on any convictions that the operator may have for transport and traffic offences and on those of their partners, directors, transport managers, servants or agents — in other words, any employees. Any employee in an organisation could have an impact on the repute or fitness of an operator, thus affecting their ability to obtain a licence.

111. For those in the hire-for-reward sector, that standard will widen to include convictions beyond those that have been handed out for transport and traffic offences. If a person has misbehaved in other aspects of criminal law, that will reflect on the repute of a hire-for-reward operator. The reason for widening the standard is that we are trying to ensure that operators who employ hauliers to carry their goods have some comfort in knowing that those people are of a certain standard of repute. Therefore, the rules will be more stringent for the hire-for-reward sector than for the own-account sector. There would not be so much difficulty if a driver were to carry his own goods. However, we are trying to provide some form of comfort to the hire-for-reward sector that its drivers are of sufficient repute.

112. Convictions include those that have been handed out when drivers are abroad, not just those obtained in Northern Ireland. If people have convictions in Ireland, GB or the rest of Europe, those will count toward the repute and fitness of an operator.

113. The Department must be satisfied that an operator has adequate resources to maintain vehicles in a fit and serviceable condition. Therefore, there is a requirement on operators to declare their financial standing. With regard to hire-for-reward operators, we will be looking for an indication that they have sufficient funds to ensure that they can run their businesses properly and that if they are going to take on business for other people, there is a guarantee that they will be able to do so.

114. Presently, EU regulations require hire-for-reward operators to have professional competence. That means that he or she must be a professionally competent person who will continuously and effectively manage their transport fleet.

115. All operators will be required to have a designated operating centre in Northern Ireland, although they may have more than one, depending on the size of their fleet. They must have a centre that is of a suitable size to accommodate their fleet of lorries and trailers; it must be in a suitable location; it must be available for drivers to enter and leave; it must be used for a suitable purpose; and it must adhere to road-safety access and egress.

116. All applicants will have to advertise in the local press their desire for a licence. That will give people who live in the vicinity of operating centres an opportunity to make representations to the Department about that centre on environmental grounds. In addition, other people will have a statutory right to object, and they will be able to object to a licence on more than environmental grounds: they will be able to object on grounds of repute, financial standing, competence, and road safety, etc. The system will therefore be much more open, and people will know what operators are applying for.

117. In addition to the applicant publishing a notice in the press, the Department will also regularly publish decisions and applications so that people will know what is happening with regard to the regulation of the industry.

118. Operators will be required to give certain undertakings as part of their licence granting. Those are: to observe all the laws regarding the driving and operation of vehicles under the licence; to show that they have systems in place to observe the rules in relation to driver's hours and tachographs; to observe the rules of weights, overloading, and the speed limits that have been set for specific vehicles, as well as the national speed limits to which we are all subject; and to maintain vehicles and trailers in a fit and serviceable condition. The operators must also give undertakings that they will ask their drivers to inspect their vehicles daily, to record those inspections and to report faults. They will be required to keep those records for 15 months.

119. The operators will also be required to give undertakings that they will use the operating centre in the way in which it was authorised to be used and that it will not be misused. They will have to notify the Department of any convictions that they or their employees may have throughout the period of the licence — that will certainly be the case when they apply for the licence.

120. Operators will have to notify the Department of any change in the nature of their business in order that their licence can be reviewed.

121. Those are the requirements that the proposed legislation will specifically place on all operators. The legislation seeks to address the four key policy areas that we outlined at our

previous meeting — road safety, fairer regulation, environmental conditions, and combating organised crime.

122. The Department will take on some key powers that are connected to operator licensing. First, it will have stronger enforcement powers through its ability to impound vehicles that are not properly licensed. Secondly, the Department will have the power to enter premises in order to inspect records, even those of third-party premises that are responsible for the maintenance of an operator's vehicles. It will be much easier for enforcement staff to gain access to records and to the information that is necessary for sound enforcement.

123. Thirdly, the Department will have the power to hold public inquiries to consider the representations and objections that are made against an operator who wants to hold a licence. In disciplinary cases, operators who have not complied with the terms of their licence can also be brought before an inquiry. The Department will have the power to attach conditions to a licence with regard to the operating centre, including its terms and hours of operation, the number of vehicles that can be used and its parking arrangements.

124. The key difference between those new powers and those that are currently available to the Department is that the proposed provisions are more discretionary. At the moment, we can receive an application, examine an operator's behaviour and grant or refuse a licence accordingly. The new regime will allow much more discretion, as they will enable the Department to understand the operator's situation, talk to them and make it easier for them to comply. The Department will not merely say yes or no; it will work with operators so that we can help them to comply, rather than continuing with the current shall or shall not scenario.

125. The Chairperson: Thank you.

126. Mr Boylan: I missed your first presentation on the proposed Bill. I would like some clarity on some of the issues. You said that approximately 13,300 operators are not affiliated to key stakeholders. How many of them have you been in contact with? How will you consult with them? Will you advertise a consultation process? How will you address that issue?

127. Mr D Armstrong: We will hold a series of industry briefings between 19 February and 18 March, and we will add others as necessary. This week, we will mail every registered keeper of a goods vehicle in Northern Ireland, informing them about the changes and about the industry briefings. We will tell them about the information that is on our website so that they can look at that if they are unable to attend the briefings. By the middle to the end of March, everyone who owns a goods vehicle will have been contacted, and everyone will be aware of the nature of the proposals.

128. Mr Boylan: OK. Are the 2,500 licensed goods vehicles that you mentioned owned by the major road hauliers?

129. Mr D Armstrong: It could be that a road haulier owns only one vehicle. As long as they are carrying goods for somebody else, they have to be licensed, but the consultation will include the major road hauliers.

130. Mr Boylan: There are approximately 13,000 more operators who will be subject to the proposed new arrangements. What financial impact will the requirement for a licence have on them? Have you nailed that down yet?

131. Mr D Armstrong: We have provided the Committee with information on the three different types of fees that will be charged. They will be based on operators who have one, three, or 10 vehicles. We talked a little bit at the previous meeting about the impact that that will have.

Operators will no longer be able to park their vehicles on the roadside; those who park their vehicles on the street will have to find somewhere off-road. In many cases, they may find somewhere to park for free. In other cases, they may have to pay. The range of fees may be quite dramatic. In our series of seminars and when we talk to people, we will hope to tie down some idea of what that will mean; we do not currently have a ballpark figure of the potential impact that that will have.

132. Vehicles should be maintained anyway to keep them safe. We therefore do not look on maintenance costs as an extra cost to the industry.

133. Mr Boylan: Do the operators that I am talking about currently pay anything?

134. Mr D Armstrong: They are not paying anything to the Department; they are completely unregulated.

135. Mr T Clarke: Your presentation states that the overall purpose of the Bill will be that it:

“places a requirement on all operators of goods vehicles of weight over 3.5 Tonnes to have an operators licence for those vehicles.”

136. Is that smaller than a rigid lorry?

137. Mr D Armstrong: It could include some rigid lorries.

138. Mr T Clarke: Rigid lorries weigh seven tons.

139. Mr D Armstrong: They weigh between seven tons and seven and a half tons.

140. Mr T Clarke: Where does the three and a half ton weight start? I am concerned that a weight requirement of three and a half tons will allow regulation of large vans.

141. Mr D Armstrong: The legislation would cover large vans. The Transit van and the Mercedes van, for example, weigh less than three and a half tons. Large vans would be subject to the legislation.

142. Mr T Clarke: Is the legislation for Transit vans the same in England and the Republic of Ireland?

143. Mr D Armstrong: In the Republic of Ireland, only the hire-for-award sector is regulated, but that is done on the same weight basis. The same weight basis applies to the Republic of Ireland as it does to Northern Ireland and GB. The Republic of Ireland is similar to Northern Ireland in that it regulates only the hire-for-award sector, not the own-account sector.

144. Mr I McCrea: The fee comparison table that you have provided to the Committee refers to a grant. Is that paid by the Department?

145. Mr D Armstrong: A fee is paid when an application is made. When the licence is granted, the remainder of the fee is paid. The grant refers to the second part of the fee that operators pay on the granting of the licence. It is not a fee that the Department pays to the operator.

146. Mr I McCrea: That clarifies what I was asking. The table shows that the grant is added to the total, and I was not able to see how that could have been a grant that was paid to the operators.

147. Mr Ford: I want to follow up on Mr Clarke's point. I run a small business in Lisnaskea, and I have a couple of lorries on the road, on my own account. I am about to open —

148. The Chairperson: Is this a hypothetical situation?

149. Mr Ford: It is entirely hypothetical. I am expanding my business by opening a shop in Clones, and I have decided to base my lorries there. Given that those lorries travel all over County Fermanagh, who will regulate me in the future?

150. Mr D Armstrong: If you are based in Northern Ireland, you will be required to have an operator's licence.

151. Mr Ford: That was not the question. The question was: who will regulate me when my lorries are based in Clones?

152. Mr D Armstrong: If you base those lorries in Clones, they will not be part of a Northern Ireland regulatory regime.

153. Mr Ford: As I understand it, the Republic has no plans to regulate.

154. Mr D Armstrong: That is correct.

155. Mr Ford: Say that I run a business in Antrim, and I have decided to open a depot in Clones. What happens then?

156. Mr D Armstrong: The same rules will apply.

157. Mr Ford: What is the point of the regulation in that case?

158. Mr D Armstrong: The point is to ensure that all goods vehicles in Northern Ireland are subject to an operator's licence so that there is better compliance with road safety, fairness of industry and environmental centres in Northern Ireland. The only vehicles that will be on a Northern Ireland operator's licence are those that are registered in the United Kingdom. Vehicles that are registered in Clones will not be on a Northern Ireland operator's licence.

159. Mr Ford: Given that we have seen that a large number of road-haulage vehicles are registered in the Republic, despite being run by firms that traditionally have been based in Northern Ireland, why should we assume that the same will not happen with people who operate on their own account and who can get the same financial benefits from a potentially bogus address in the Republic? Firms can operate across the border because of free trade in goods and services across the EU.

160. The Chairperson: That is an interesting point. The legislation could lead to displacement of businesses, particularly in the border areas. I know that that has happened in other sectors.

161. If people perceive that there has been an increase in red tape, there will be a displacement of businesses and potential economic implications. Unless the policy is adopted in an all-island context, it will have implications.

162. Mr D Armstrong: We met with our counterparts in Dublin last week, and we talked through our proposals with them. We asked them what their proposals are, and they have no plans to license the own-account sector of the industry.



163. Mr T Clarke: To use your own word, can you demonstrate where the fairness is in that? You said that you are trying to introduce a fair system. At the previous meeting, I brought up the point that vehicles in the Republic of Ireland operate under a different system.

164. Mr D Armstrong: The fairness applies to the industry in Northern Ireland. At the moment in Northern Ireland, one quarter of the industry is regulated and pays a regulatory fee. Three quarters of the industry is unregulated. The fairness comes in in that we must try to enforce over the whole industry the required standards of roadworthiness.

165. The Chairperson: The big problem is that the economy is not sited purely in a Northern Ireland context. There are implications for business. Everybody in this room knows that businessmen or businesswomen make business decisions; many of us have encountered such decisions. If there is a perception of a difficulty, or of increased red tape — which does not exist two or three miles down the road — that will influence their decisions on where to locate their businesses.

166. Mr D Armstrong: At the previous meeting, I pointed out that the licensing fees will not have what you might call a major impact. In that sense, if a business is in operation, the cost of fees to the Department should not have a significant impact on that business. That remains to be teased out in the impact assessments.

167. There may be an impact on what operators who currently park their vehicles at their houses or on the roadside have to pay, depending on whether they have to pay for an operating centre. Again, those fees might not have a great impact. In Northern Ireland there will be an impact on those who pay a licence fee and those who do not.

168. Mr Ford: I applaud what you are trying to do. However, to take that last example, if a lorry that is parked in an Antrim housing estate has a Monaghan registration, there is nothing that the Department can do about it, as I understand it.

169. Mr Gallagher: Most of them have such registrations.

170. The Chairperson: Do you want to pick up on that point, Tommy?

171. Mr Gallagher: That was the very point that I wanted to make.

172. Mr D Armstrong: If an operator has a licence in Northern Ireland, his vehicle must be registered here. The Northern Ireland operators licence will not cover Southern vehicles. As I pointed out at the previous meeting, the vehicles must be registered in Northern Ireland or in Great Britain, under the Vehicle Excise and Registration Act 1994 (VERA). Vehicles from the Republic of Ireland are treated as foreign vehicles. If an operator wants to operate from a centre in the South, that is completely outwith the proposed legislation.

173. Mr Ford: I would like to see what is being suggested. When we see the statistics — 40% of vehicles are not roadworthy and 18% have tachograph offences — we can all sympathise with the Department's view that something must be done. However, unless measures are being taken in conjunction with the authorities in the Republic, their road-safety value will be minimal.

174. Mr T Clarke: That applies to enforcement as well.

175. Mr Boylan: Is Mr Ford calling for an all-island policy?

176. Mr Ford: No. I am calling for co-ordination between the two jurisdictions.

177. Mr Boylan: Coming from a border constituency, I would like to think that Mr Ford was suggesting —

178. Mr Ford: I thought that even Trevor was calling for co-ordinated action between two separate jurisdictions.

179. Mr Boylan: An all-island policy would be a very good idea.

180. Mr T Clarke: I do not see any purpose to the whole legislation; its introduction will inhibit the entire freight business in Northern Ireland. If there were proper enforcement in Northern Ireland, the Department could detect more illegal operations and could penalise those who act illegally, as opposed to penalising all business, including legitimate ones.

181. Mr D Armstrong: Do you want me to respond to that?

182. The Chairperson: Yes, please do.

183. Mr D Armstrong: The regulation of the industry is self-funding, so the funding that comes into the industry, through regulation, is used for enforcement. We take funding from only one quarter of the industry; therefore, it is hardly fair to try to regulate the roadworthiness standard of the whole of Northern Ireland freight industry by taking a fee from only one section of it. That is where fairness comes in. If we regulate the whole industry, it is obvious that there will be much more money for better enforcement. I am not here to defend the enforcement situation at the moment — that is not the issue — I am trying to demonstrate that, by regulating the whole industry, we will have much greater ability and more enforcement powers available to us to improve the industry in Northern Ireland.

184. Enforcement will apply to foreign vehicles, not just to Northern Ireland vehicles. Any vehicle that is on the road in Northern Ireland will be subject to our enforcement regime.

185. Mr T Clarke: Are you saying that there is no money in the kitty to allow for proper enforcement in Northern Ireland? Are you saying that a self-funding licence is required to fund the operation to ascertain to what extent vehicles are breaking the law in Northern Ireland?

186. Mr D Armstrong: What I am saying is that by implementing the proposed measures, we will have much more funding for enforcement.

187. Mr Ford: Has the anticipated income that will result from the proposed new regulations been estimated? Furthermore, has the potential loss of income that will result if some people decide to register across the border been estimated?

188. Mr D Armstrong: We have not estimated any potential loss of income if people register across the border.

189. Regarding the income that may result from the regulation of the industry, in the past week we have bottomed out the number of vehicles and operators. We will be able to calculate the income on the basis of the fees that we have presented. However, the breakdown of how those fees are used for administration, enforcement and so on has not yet been calculated. Such issues will be subject to assessment.

190. Mr I McCrea: Will you clarify what you meant by farm vehicles?

191. Mr B Armstrong;

192. I thought that he said "foreign vehicles".

193. Mr T Clarke: To expand on that point, foreign contractors who work in the agriculture and environment sector have already been penalised. Will they be subject to the new regulations, or will they be treated differently because they work as contractors rather than for their own business purposes?

194. Mr D Armstrong: The regulations do not include vehicles that are used in the agriculture sector; they are for people carrying out freight work. However, there will be a list of exemptions.

195. Mr T Clarke: Can we expand on that? Those farm vehicles are now supposed to be running on clear diesel because they are carrying out contract work as opposed to agricultural work, even though it is contract work in the agriculture sector.

196. Mr D Armstrong: If they are carrying out contract work they will be subject to the regulations. Tractors will be exempt.

197. Mr B Armstrong: How do define a tractor?

198. The Chairperson: Can you clarify which agricultural and/or farm vehicles will be exempted in the proposal?

199. Mr D Armstrong: Our base document will be the exemptions that currently operate in GB. Tractors, including agricultural tractors, are currently exempt there. The definition is unclear. However, we may have our own variations.

200. Mr T Clarke: What do contractors want? Agricultural contractors as opposed to —

201. Mr D Armstrong: Are you referring to people who use freight vehicles?

202. Mr T Clarke: I am referring to people who carry out contract work for various farmers using fast-track tractors that have dump trailers. For example, someone who cuts silage for 20 or 30 farmers as opposed to for himself.

203. The Chairperson: Can we assume that tractors are completely exempt, irrespective of the context in which they are working?

204. Mr D Armstrong: My mind is going round as to whether we are talking about size of tractors. Tractors are exempt.

205. The Chairperson: Therefore, are tractors exempt for the purpose of agricultural contracting and other agricultural use?

206. Mr D Armstrong: Yes.

207. Mr B Armstrong: Tractors have two roles during the year. They can be used as agricultural tractors to work with silage or slurry at one time of the year, and they can then be used on a building site at another time of the year.

208. Mr D Armstrong: That is a difficult issue. The current problem is that an agricultural tractor is a construction tractor. I will come back to you on that point, because it is not clear.

209. The Chairperson: Perhaps you should; it deserves a bit more clarification.

210. Do any members wish to add anything?

211. Mr B Armstrong: When you are clarifying what happens with tractors, please remember to include their trailers.

212. The Chairperson: The Road Haulage Association and the Freight Transport Association, which are at the top of the list of key stakeholders that you provided, will be interested in the topic. The Department has said that there is a fair degree of agreement among some, if not all, the stakeholders. Would it be appropriate to invite those two stakeholders to discuss the proposed Bill? However, some of the issues that we have discussed today need to be teased out further.

213. I thank the witnesses for attending and for their presentation.

214. Mr T Clarke: I ask that the Ulster Farmers' Union be added to that list of stakeholders, in case it has a view on the matter. The Northern Ireland Agricultural Producers' Association (NIAPA) should also be added; we could add it to the bottom of the list and rule it out if necessary.

215. Mr Ford: The departmental officials may return and say that farmers are not at all affected. However, they seemed a little unclear about that.

216. Mr B Armstrong: I should add that farmers' machines are classified according to what they are doing.

217. Mr Boylan: There are 13,300 unaffiliated operators. May we have a breakdown of that figure? I am sure that some firms have 10, 20 or 30 vehicles that may not be affiliated. That point should be researched.

218. The Chairperson: Do you mean that they are not affiliated to the stakeholder organisations?

219. Mr Boylan: Some 2,500 appear to be involved in major road haulage. There may be firms with 10, 12, 15 or 20 vehicles that may not be affiliated to those organisations. We need a breakdown of the statistics.

220. The Chairperson: I am sure that the Department can establish that.

221. Mr T Clarke: What I hear today is alarming. Large Transit vans, a man on his own who is on hire, for example, working for a parcel delivery service, will now be expected to have a licence. To refer to what was said at the previous meeting, he will also need a yard for keeping his vehicles. Many of those people run small, one-man businesses from their houses. Can we tie their hands by expecting them to buy yards?

222. The Committee Clerk: Has the Committee agreed that those first two sets of witnesses be invited to begin with?

223. Members indicated assent.

224. Mr B Armstrong: The only reason that this matter is policed is because a fee is charged. Had they not charged a fee in the first place, they would not now have to police it. There is no money to do it.

225. The Chairperson: That is what I said. Many issues have arisen for consideration.

226. We have agreed a course of action for the next meeting.

### **3 April 2008**

Members present for all or part of the proceedings:

Mr Cathal Boylan (Deputy Chairperson)

Mr Trevor Clarke

Mr David Ford

Mr Tommy Gallagher

Mr Samuel Gardiner

Mr Ian McCrea

Mr Daithí McKay

Mr Alastair Ross

Mr Peter Weir

Witnesses:

Mr Gerry Fleming

Ms Joan Williams Freight Transport Association

Mr Tom Wilson

227. The Deputy Chairperson (Mr Boylan): The Committee will now hear evidence from the Freight Transport Association (FTA) on the draft goods vehicle licensing of operators Bill as part of the pre-legislative scrutiny.

228. Mr Wilson, you and your colleagues are welcome to this morning's Committee meeting.

229. Mr Tom Wilson (Freight Transport Association): Thank you for giving us the opportunity to provide evidence to the Committee. You have received notes on the background to the Freight Transport Association, which is a large trade organisation. I have been in the industry most of my life. For the past five years, I have represented the Freight Transport Association in Northern Ireland. Gerry Fleming is the fleet manager for Belfast City Council, which operates one of the largest fleets of commercial vehicles in Northern Ireland. Joan Williams is the head of road freight policy for the FTA in the United Kingdom and Ireland, and she helps our members to deal with legislation as it is introduced.

230. I will run through the briefing paper that I submitted this morning, which explains the purpose of our presence here today, and I am aware of the time limitations.

231. The Department of the Environment (DOE) had consultations in 1991, 1998 and 2003 on its proposals to introduce full operator licensing for Northern Ireland commercial vehicle operators. The consultations were issued to over 2,000 operators in 2003, and DOE stated its intention to introduce primary legislation by 2005, but, dealing with direct rule Ministers, that was never achieved.

232. The DOE, supported by the Freight Transport Association, subsequently conducted eight roadshow presentations throughout Northern Ireland during February and March 2008, providing comprehensive information to all commercial vehicle operators, which detailed the reasons for introducing the new legislation in the Assembly. The DOE wrote to the registered keepers of all 35,000 commercial vehicles weighing over 3.5 tonnes, inviting them to attend those information meetings. They were very well attended, with a huge turnout, and there was very positive feedback to those meetings.

233. There is now a strong expectation in all sections of the freight transport industry and its users for the Assembly to urgently address the passage of the Bill, because operators in Northern Ireland have a poor record in terms of road safety. The industry would be supportive of action taken by the Assembly. There is an immediate need to raise the image of the road freight transport sector through education and better regulation, and there should be no further delay in introducing the legislative process.

234. I underline again the importance of the local supply chain, which is essential to everything, from having a newspaper delivered, to going to a restaurant or working on a farm. None of that could happen without road freight transport. We rely entirely on it.

235. The review of the transport industry in Northern Ireland addresses the following needs: to improve road safety and operational standards; to raise the image of the industry, which is very low and does not attract young people to work in it; to improve its poor reputation; to make the business sector a desirable place to work in, because we are looking for inward investment and increased employment opportunities, and if our image is tarnished in road transport, that will not help; to ensure fair competition; and to help reduce criminality. Those are the key reasons why we feel that the Bill must be introduced now.

236. Let us look at how the standards of operators in Northern Ireland are rated against the rest of Europe. Statistically, the worst three countries in Europe are Romania, the Republic of Ireland and Northern Ireland, with German- and British-registered heavy-goods vehicles being the safest vehicles on the road. Department of Transport statistics illustrate that the roadworthiness condition of visiting vehicles, and their drivers' non-compliance with the rules on drivers' hours, presents a significant road-safety risk. Hence, vehicles from this island are regularly targeted when they visit GB.

237. The industry urgently needs to improve its reputation with the outside world, therefore better regulation must now be a top priority for the Assembly — especially after the recent findings that, out of 40 roadside school-bus inspections carried out by DOE enforcement, 17 buses were issued with immediate prohibitions, and a further 10 were issued with delayed prohibitions.

238. The next issue is to improve road safety and operational standards. Out of all the inspections carried out by the DOE road safety policy branch in 2007 — both at the roadside and by visiting premises — it was found that 40% of the vehicles inspected were in an unroadworthy condition, and 30% were given immediate prohibitions. There were 26,267 vehicles tested at the 15 test stations in 2007, and the submission we have provided for the Committee gives the figures of the fail rates. Those tell us that no one is really trying very hard to work to get their vehicles passed first time. We believe that, in the absence of full operator licensing in Northern Ireland, operators are not paying enough attention to the condition of their vehicles, and are not preparing their vehicles.

239. If all operators in Northern Ireland were required, as part of their licence acquisition, to undertake to carry out safety inspections at specified intervals, and ensure drivers carry out pre-use checks, the detection levels of non-compliance would be significantly less, and our roads would be much safer. That system has been in place in GB for 40 years, and it has the best record for vehicle roadworthiness in Europe.

240. Moving to the issue of parity with the Republic, InterTrade Ireland's 'Freight Transport Report for the Island of Ireland', published in March 2008 concludes with a recommendation:

"To co-operate North-South and East-West to regulate and support the freight industry".

241. The report states:

“There should be a joint approach to the licensing of commercial vehicles and enforcement of Vehicle Standards.”

242. It notes that the present situation creates many difficulties for companies operating across the whole of Ireland, as well as those that travel to and from Scotland, England and Wales and suggests that it is, therefore, a topic that might usefully be considered by the transport sector of the British-Irish Council.

243. The Road Safety Authority (RSA), which is a section of the Irish Department of Transport, commissioned a report by PricewaterhouseCoopers entitled ‘Commercial Vehicle Testing Review’. That report, which was published in 2007, contains 25 recommendations, the majority of which require immediate attention. Improvement 24 notes that:

“A commonly held view amongst stakeholders interviewed is that all operators of commercial vehicles should be licensed, irrespective of whether they are used for ‘own account’ or ‘hire and reward’ activities.”

244. The Irish Minister for Transport, Noel Dempsey, announced on 8 February 2008 that he approved the RSA proposals with a requirement that the measures be implemented within the shortest possible timescale.

245. The cost of road-safety regulation is currently borne entirely by the hire and reward transport sector. Some 35,000 commercial vehicles over 3.5 tonnes are registered in Northern Ireland. Only one fifth, or 7,000, of those are operated by the hire and reward sector and are subject to current operator licensing. The remaining 28,000 are operated by the own account sector and are not subject to the same regulations. Therefore, it is unfair that the hire and reward sector should have to bear the cost of all road-safety enforcement.

246. It is important to ensure fair competition. Three areas of unfair competition currently exist. First, there is the issue of overloading. The enforcement bodies’ findings revealed that commercial vehicles are often overloaded by as much as 25% over the legal carrying weight. Not only does that make the use of the vehicle unsafe — vehicles are designed to carry only the weight for which they are constructed — it also has an adverse effect on the condition of our roads and can lead to excessive wearing down of the road surfaces.

247. An example about the overloading issue that I often use involves the consideration of a working week — five working days. A person who overloads every day will be finished his work by Thursday. However, a person who is working legally will not finish his work until Friday. That is how bad it is.

248. The second issue of unfair competition involves drivers’ hours. There was evidence in the findings of widespread abuse of the EU drivers’ hours’ regulations with drivers not taking the appropriate rest breaks.

249. Thirdly, there is an issue about unroadworthy vehicles, which appears to be the most common infringement as many operators continue to work their vehicle until it breaks down — there is no preventative maintenance.

250. All such activities result in unfair competition for both the own account and the hire and reward industry. Full operator licensing will go a long way to reduce the levels of non-compliance and infringements, and ensure fair competition. The high annual test fail rate costs operators

more money, it delays the appointment of waiting times, and it creates resource problems for the DOE test centres.

251. There is a need to reduce criminality. There is a high proportion of illegal trading of fuel, which I have talked about. It is immoral for criminals to be permitted to continue with those activities. The introduction of full operator licensing will go a long way in enabling the enforcement authorities to detect and apprehend those involved.

252. In conclusion, in order to become one of the best vehicle operators in Europe, Northern Ireland must aspire to raise vehicle operator standards through a continuous improvement process. The Freight Transport Association urges the Committee for the Environment to write to the Minister, Arlene Foster, to progress the legislative process without further delay.

253. It is our understanding that a slot has been allocated. The issue has been well consulted, the industry is waiting for the legislation to be introduced, and we would be happy if the Committee were able to ensure that that happens without further delay.

254. Mr Weir: Thank you for your presentation. You have made a cogent argument in favour of the legislation. It is obvious that there are higher standards of regulation across the water. It is also clear that the Republic of Ireland is moving in the direction of having a much greater degree of proper regulation. It is important that Northern Ireland is not left in some sort of black hole.

255. It is also important that the majority of transport providers, who operate in a responsible fashion, are given a level playing field and that they are not undercut by unfair competition. The Committee has touched on that issue on a number of occasions, and it has serious road safety implications. It is very dangerous for drivers to exceed the legal limit on their working hours or for vehicles which are not roadworthy to be used. If there is an accident involving freight transport, it is much more likely to be fatal because of the size of the vehicles concerned.

256. You mentioned that the Department has been involved in consultation through roadshows. As far as you know, what was the industry's reaction to these proposals? What was the level of response at the roadshows?

257. Mr T Wilson: The response was very positive. Firms asked questions about how the new regulations would affect them. Without exception, the feedback was positive. There is great concern that almost 50% of the vehicles, on roads that we travel every day, are not roadworthy. The Department provided statistics and illustrated that it has little power at present to deal with those illegal operators. The fines for illegal drivers' hours are relatively small. If we compare the Northern Ireland legislation to that which has been running for 40 years in GB, we find that operators there are very fearful of falling foul of the authorities because the ultimate sanction is the removal of their licence and closure of their business after two or three instances.

258. The message that came back is that the industry is getting very poor rates for its services, that there is oversupply in the industry and that the way to tidy that up is through better regulation. Everyone must conform to the same standards and a level playing field should be created.

259. Mr Weir: Presumably, if regulation is spread right across the field, it will generate more money that can be used for enforcement. The Department will at once create the level playing field for enterprises and the safety of everyone can be enhanced.

260. Mr Fleming: The member is correct. What we are looking for is consistency across the panel. We have identified what is happening in Southern Ireland. The member has mentioned a key point. Earlier, we discussed finance and how these changes will be supported. The flow of



revenue from the organisation to enforce the legislation would be self-perpetuating. That is important: it is a key area in finance.

261. It is most important to have transparency right across the board, throughout Great Britain, Southern Ireland and Northern Ireland, to show that we are adhering to the regulations, both in the transfer of information and the transportation of freight.

262. Mr T Clarke: How many members has the Freight Transport Association? What organisations are affiliated and roughly how many members does each have? From your presentation, it seems that the association is in favour of the introduction of the legislation. However, I understand that the association strongly opposes the proposal to maintain an annual road freight vehicle licence.

263. Ms Williams: Let me explain: we oppose not so much the concept of licensing, but the ways that fees are charged and the administration process. The system will demand that a licence must be applied for every year. There is also the road-freight operator's licence, but the actual vehicle disc has to be applied for every year. We do not oppose the licensing system, but the processes and the administration requirements of the system. I do not know what wording the member has before him, but I understand the concept because I was part of the discussion on that issue.

264. Basically, we oppose the administration and the process that is currently in place that operators must go through every year in order to apply for the disc.

265. In comparison, the system in GB allows continuous licensing for five years, at the end of which there is a review process. The operators are asked to confirm that they are still compliant with the financial standing qualifications, and so on, and their licences continue to be valid. The operators do not actually have to apply for a new licence every five years, nor do they have to apply every year for a specific vehicle disc. We oppose the process, rather than the principles, of licensing.

266. Mr T Wilson: There are 14,000 commercial vehicle operators in the UK and Ireland. The total number of commercial vehicles on the roads is 440,000. Our members operate over 250,000 of those, a large percentage of which operate in Northern Ireland. We have approximately 350 members in Northern Ireland. The FTA has lobbied for licensing for the last 15 years, and we are absolutely behind the proposed legislation, because our members believe that it will create a level playing field. Our members feel that the enforcement authorities lack the ability to take strong measures against those who regularly flout the law in the three areas that I described — overloading, drivers' hours and unroadworthy vehicles. It is so bad that it allows those operators to undercut rates. Therefore our members are behind the proposals, without any doubt.

267. Mr T Clarke: Is your organisation the largest one for drivers?

268. Mr T Wilson: The FTA is multi-modal; it covers road, rail, sea and air transport, and it has many members that are not vehicle operators, but manufacturing companies. They do not physically operate vehicles, but they are members of the FTA because transport is critical. The other organisation is the Road Haulage Association, which is not as large as the FTA, but it specifically looks after the hire-and-reward sector; its members are road-haulage contractors.

269. Mr T Clarke: Do you have a rough figure of how many members it represents in Northern Ireland, as opposed to your 350 members?

270. Mr T Wilson: The Road Haulage Association is not based here. It covers Northern Ireland from Scotland. However, I understand that it has about the same number of members as the FTA. Many of our members are also members of that association. The Road Haulage Association was present at the eight roadshows at which we presented. The FTA and the Road Haulage Association present a very united front in their attempts to convince the Committee that it is important that the legislation goes through without further delay.

271. Mr Ford: Thank you, Tom and your colleagues, for that presentation, which was extremely useful in setting out some of the circumstances, particularly the road-safety issues. Perhaps the Committee should look at that issue on a wider scale, including the work that was done previously on school buses, for example.

272. You will be aware that officials from the Department of the Environment came to the Committee a few weeks ago. On that occasion, I took the line that I wished to see the highest possible standards in Northern Ireland. I was concerned that there seemed to be nothing happening with regard to regulation in the Republic, and that operators in the Republic could, in effect, be used in Northern Ireland in order to get around the proposals.

273. You said specifically that, on 8 February 2008, the Minister in the Republic announced that he approved of the recommendations. Therefore, do you envisage any obstacle to the two jurisdictions implementing broadly similar legislation quickly?

274. Mr T Wilson: We certainly do not want to be left behind the Republic. We are heartened by the fact that the Republic has made that announcement. The PricewaterhouseCoopers report was lengthy, and, during its production, PricewaterhouseCoopers visited GB and investigated how the system works there. It compared that system to the one in Northern Ireland, and it went to the Road Safety Authority, because the Republic's road-safety record is worse than Northern Ireland's. The Republic's Minister for Transport said publicly, through a press release, that he wants the measures to go ahead without further delay.

275. With regard to our ability to work through the North/South Ministerial Council, I suggest that that is one important area where, through the Committee and the Ministers, we can work towards trying to ensure that the measures that are introduced are as similar as possible.

276. Many of our members cross the border daily, and the last thing we want is for there to be widely differing sets of regulations South and North — that would simply create further confusion. We can see no reason why the Republic's measures should be any different from those that are applied here.

277. Mr Ford: You highlighted issues such as overloading, drivers' hours and unroadworthy vehicles. Is there any significant difference between the safety standards for the minority of vehicles that are hire and reward and those for own-account operators, given that the hire-and-reward sector is supposed to be subjected to a more stringent regime?

278. Mr T Wilson: The regulations in the hire-and-reward sector are such that a driver must give an undertaking to keep the vehicle in a roadworthy condition when applying for a licence. That differs from the regulations in GB in that, in GB, a driver must specifically state the frequency of safety inspections when applying for a licence. That provision is not included in the current legislation for the hire-and-reward sector here, and we strongly recommend that it be included.

279. You asked about finding out how many in the own-account sector fall within that poor category. DOE has not given us those figures, and we have been told that it occurs across the board. I suspect that if drivers in the hire-and-reward sector who travel cross-channel regularly want to ensure that their journeys are not impeded by the authorities, they will make an effort

to ensure that their vehicles are roadworthy. However, the own-account operators who work within the North will not be subject to that same scrutiny. If those vehicles are found to be not roadworthy, the authorities can do very little about it. They cannot revoke or suspend drivers' licences, because they do not have a licence.

280. Mr Ford: The figures for roadside tests show that 40% of vehicles are unroadworthy, and that, even in annual testing, over 30% are unroadworthy. Have you any figures that show how Northern Ireland compares with GB in that respect?

281. Ms Williams: I have not prepared the statistics on roadworthiness, but I can certainly send them to the Committee without delay because they are published regularly by the Vehicle and Operator services Agency (VOSA). There are statistics on foreign vehicles, or non-GB vehicles, from April to December 2007. Of the total number of non-UK vehicles that were prohibited, HGV vehicles accounted for 46.3% and trailers accounted for 52.3%. The figures for Northern Ireland for January to December last year show that of the total number prohibited, HGV vehicles accounted for 39.98%, while trailers accounted for 58.8%. I can provide the Committee with the GB statistics later, but I can say that they are substantially lower than those for visiting vehicles.

282. Mr Ford: It would be very helpful if you could forward them to the Committee.

283. Ms Williams: I can certainly do that.

284. Mr T Wilson: My understanding is that the figure is around 10%; it is very much less than the mainland. One of the key reasons for that is that, in GB, performance at the annual operator test is recorded on a database, and that information is made available to roadside enforcement officers when they check vehicles. Thus, drivers in GB have even more of an incentive to ensure that they pass the test first time. However, it seems that drivers here are not trying very hard to pass the test, and their performances are not logged against their driver details. That GB system is called operator compliance risk-scoring and has been in operation for a couple of years. We understand that DOE would like to introduce such a system here.

285. Mr Gallagher: I thank the witnesses for their interesting presentation. You mentioned the figure of 28,000 drivers.

286. Mr T Wilson: Yes, that is the number of drivers in the own-account sector.

287. Mr Gallagher: It seems that at present, until enforcement officers are available who will pull vehicles over and examine whether they are defective, vehicles in your sector will be tested and certification issued. Is that correct?

288. Mr T Wilson: All of the 35,000 vehicles — 7,000 hire-and-reward vehicles and 28,000 own-account vehicles — are subjected to the same annual PSV MOT test. Once the MOT certificate is issued, it is only good for that day. From the next day, the standard of that vehicle declines at a certain rate depending on its usage. The system that applies in GB is that the onus is on operators; whether they belong to the hire-and-reward sector or own-account sector, to have six- or eight-weekly safety inspections in order to examine all items that are subject to wear. They must stick to that plan rigidly. There is no such plan here. The legislation will require operators to undertake those six- or eight-weekly safety inspections.

289. Mr Gallagher: Thank you for that clarification. Do you believe that the legislation should embrace all heavy-goods vehicles that are on the roads in the way that all vehicles in the hire-and-reward sector are covered at present? Would that make a significant contribution to road safety? If you believe so, I would be interested to know whether there will be financial implications, as there are with everything else. I would not want operators whose businesses are

small to have to pay huge fees. However, if that would make a significant contribution to road safety, I certainly believe that the legislation should be all-embracing, provided that there were not serious financial penalties for smaller operators.

290. Mr T Wilson: That question is typical of those that were asked at the eight roadshows; such as what the cost would be for small operators who, perhaps, have only one vehicle that goes out once or twice a week and has little mileage. The cost per year of holding a licence is between £130 and £150. It is a five-year licence, so that is not a huge amount of money. The business of taking a vehicle out on the road, whether it is going out on the road one day a year, or is double-shifted and on the road 24 hours a day, is that, at all times, regardless of the activity, and in the interests of road safety, all of those vehicles should be roadworthy. The operator has responsibility to ensure that before a vehicle leaves the yard, the driver has checked whether it is safe to take on the road. Anything other than that is totally inexcusable.

291. Mr Gallagher: Therefore, you believe that the legislation should apply to everybody.

292. Ms Williams: Operators with fewer vehicles will pay less because fees are structured on the terms of the application and the grant fee per vehicle. Therefore, if someone has only one vehicle, that person will pay less than someone who has 10 or 50 vehicles. Therefore, fees are structured in a way that will prevent small businesses being severely affected.

293. Mr McKay: I thank Tom and his colleagues for their presentation. Tom, you explained to the Committee why it is important that the legislation is introduced as soon as possible. On that point, I believe that it is important that there is fair competition and a level playing field. I am aware of cases in which workers have had their rights abused and been forced to work lengthy hours. That will continue the longer that we drag the process out. How widespread are breaches of European legislation and directives on working hours?

294. Mr T Wilson: Such breaches are extremely widespread. From the feedback that I am getting from our members, I understand that they are unable to get good rates, they have to pay for the increased cost of diesel, they have to pass the increase in rates to their members and are then told that someone else can do it cheaper. How are other operators doing it cheaper? They are using subcontractors to do work that they would not undertake because getting caught would be harmful to them.

295. The majority of the industry is keen that roadside enforcement is ruthless on drivers who work outside the EU regulations. Breaches of those regulations are widespread, and, despite the keenness of the enforcement officers, their powers are limited. Stricter enforcement would make the situation fair for everyone. The enforcement officers will only have to set up shop at the ferry ports to ensure that a message is sent that there are regular inspections. Once that message gets through, it will soon be adhered to.

296. If operators who employ subcontractors and encourage such practice are caught, the matter should go back to their door not just the driver's. That will jeopardise their licence. The enforcement officers will only knock on the door of operators who break the law two or three times. They then face being shut down if they do not conform. Many of our members would be keen on that because it would enable them to run a proper business safely.

297. Mr McKay: Are there any possible loopholes? When you say the operator do you mean the company name or an individual? For example, if operators lose their licence can they get another licence under a different company name?

298. Mr T Wilson: No, because the checks on the issuing of operator licences is a thorough process: applicants must give an undertaking of their good repute, and, if they have past records

of poor repute that are declared, they will not be given a licence. If they are given a licence and are subsequently found to have lied, the licence will be immediately revoked.

299. Ms Williams: At the same time as revoking a licence, we can disqualify the company or its directors from holding another licence. Therefore, the penalties are quite severe. In GB, some of the less reputable operators do not fear the courts because they are happy to pay the fines. However, they have a greater fear of losing their operator's licence, which makes it a significant penalty that will make operators conform and ensure that they run roadworthy vehicles.

300. Mr Fleming: The licence is registered to the individual rather than the company. Therefore, once it is lost, it is lost forever.

301. Mr McKay: You said that the standards in Britain and Germany are very high. Are breaches still a major problem in those countries? Can you give the Committee an indication of the extent of the problem in comparison to other countries?

302. Mr T Wilson: There is a league table that lists every European country, of which Romania, Northern Ireland and the Republic of Ireland are bottom. To get on the league table, 50 inspections must have been carried out in the particular snapshot. In drivers' hours/prohibition rate, the UK has been 8%, Austria 31%, Czech Republic 16%, Eire 35.8%, France 6.3%, Germany 31%, Hungary 25%, Lithuania 16% and Romania 40%.

303. Mr T Clarke: You missed Northern Ireland.

304. Mr T Wilson: Northern Ireland is 25%, Hungary 25%, Slovenia 30%, Romania 40%; GB 7.52%, and Italy 25%.

305. Mr T Clarke: Could it be that enforcement is not as good in GB as it is in Northern Ireland? There are no statistics that collate accident figures, or the number of checks conducted, in England compared to Northern Ireland. Perhaps, the figures you quoted suggest that we are more proactive in Northern Ireland?

306. Mr T Wilson: An EU target of 10,000 or 20,000 inspections must be achieved every year. Those inspections comprise visits to operators' premises and roadside inspections. A certain number of inspections must be carried out in proportion to the number of vehicles operated. Those per-thousand figures are categorised by, and based on, feedback from VOSA.

307. The Deputy Chairperson: Will you forward those figures to the Department and also send a copy to the Committee?

308. Mr T Wilson: I will do that.

309. Mr McKay: Obviously, you are familiar, in great detail, with the British model, and it is important that we learn from good practice in other countries. If we are to mirror the British model, are there any areas in which we can improve on it?

310. Mr T Wilson: In the GB model, there are some exemptions from operator licensing. However, the percentage of features in the legislation that we would want to change is small. The DOE stated at its roadshows that there are areas in the operator-licensing system that it would wish to adapt or fine-tune, because it recognises elements of the GB system with which it is not happy. The Assembly will have the opportunity to execute those changes through subordinate legislation. The DOE position is that the operator-licensing legislation in Northern

Ireland will mirror that which is in place in GB; however, the opportunity exists to make improvements that are deemed to be correct.

311. Mr T Clarke: Much of what we have been discussing seems to be directed towards bigger companies. How will the requirement for operating centres affect small operators, such as individuals who work with a large transit vans?

312. Mr T Wilson: Licensing and the requirement for an operating centre will apply only to vehicles over 3.5 tonnes.

313. Mr T Clarke: Large, twin-axle transit vans are 3.5 tonnes.

314. Mr T Wilson: Considering the environment, when vehicles are not in use, we believe that it is good practice to keep them in a proper operating centre. Throughout Northern Ireland, various vehicles are kept in the middle of housing estates, and if they are coming and going in the middle of the night and early in the morning it is inconvenient to neighbours.

315. Questions about operating centres were typical of those raised at the roadshows, and the feedback was that people were concerned about the cost of finding a yard, or whether their employer would have a yard, in which to park a vehicle overnight. First and foremost, such an arrangement would help their insurance premiums. Secondly, it would certainly help relationships with their neighbours. Environmentally, it would stop diesel dripping on tarmac in housing estates. Finally, the cost to park a truck was estimated to be between £10 and £20 a week.

316. Mr T Clarke: The Department states that the Planning Service would be able to determine a premise's suitability. Therefore, people will automatically become involved in Planning Service applications. People would first have to find a site in a suitable area, and then apply for planning permission for that site. I do not know over how many years you would have to take a £20-a-week mortgage, but it must be a long time.

317. Mr T Wilson: That interpretation is slightly different from the one that I heard from the DOE at the roadshows.

318. Mr T Clarke: That is from the Department's comments on the expressions of concern.

319. Ms Williams: If the same system is being adopted as currently operates in GB, then an operator who already has planning consent cannot be refused entitlement to use the premises as an operating centre. However, it is not a specific requirement to have planning consent.

320. Mr T Clarke: Under the proposed Bill, if there is any variation in the operator's circumstances — for example, if the operator has additional vehicles — then that planning consent will not stand. That will place a burden on the small operator, the man working with one or two vans, to find an operating centre, apply for planning permission and get a suitable site. In a sense, the proposed legislation will put the small operator off the road.

321. Ms Williams: My understanding, which we will check with the DOE, is that planning consent should not be required in order to get an operator's premises authorised as an operating centre. However, if the operator has planning consent, then the DOE should not be able to refuse to authorise the premises as an operating centre, but that can be clarified.

322. The Deputy Chairperson: We will have to clarify that with the Department.

323. Mr T Wilson: The DOE said that if an existing operator, someone with one or two vehicles, is able to drive the vehicle into the premises from the road, turn it at the back of the house and drive out again, then those premises would be acceptable to the DOE as an operating centre. That is what the DOE was saying to those operators.

324. Mr T Clarke: To clarify, was that the DOE Planning Service?

325. Mr T Wilson: It was the DOE road safety and vehicle standards division, which gave the impression that it had the power to grant approval for an operator centre and that the DOE Planning Service was not really involved.

326. Mr T Clarke: The situation that you described would be seen as operating a business from a residential address, which would require planning permission. If that is what the Department told you, I think that you are being misled.

327. Mr T Wilson: The Department said that if planning permission had been granted and the business was up and running, then the operator is already entitled to use the premises as an operating centre. Therefore this would not be an issue.

328. The Deputy Chairperson: We will not get into that now; we need to seek clarification from the Department.

329. Mr Gardiner: It is not a critical issue.

330. Mr Wilson, I was very impressed with your presentation, and I welcome the points made in it, particularly your association's attitude to roadworthiness and to safety. So often we hear about accidents on roads resulting in deaths and those accidents are blamed on the road; however, I have never seen a road getting up to kill anyone — those accidents are generally caused by the vehicle or the driver of the vehicle. I wish your association every success.

331. The Deputy Chairperson: I thank the representatives of the Freight Transport Association for their presentation.

## **24 April 2008**

Members present for all or part of the proceedings:

Mr Patsy McGlone (Chairperson)  
Mr Cathal Boylan (Deputy Chairperson)  
Mr David Ford  
Mr Tommy Gallagher  
Mr Samuel Gardiner  
Mr Ian McCrea  
Mr Alastair Ross  
Mr Peter Weir

Witnesses:

Mr William Oliver  
Mr Phil Flanders    Road Haulage Association

332. The Chairperson of the Committee for the Environment (Mr McGlone): I welcome Mr Phil Flanders and Mr William Oliver from the Road Haulage Association. Mr Flanders is the Road

Haulage Association's director for Scotland and Northern Ireland, and Mr Oliver is the national chairman of the Road Haulage Association. You are both very welcome, and the Committee thanks you for giving up your time to be with us. We are in listening mood, but we hear good reports about the progress of the Bill. Perhaps you would like to make a statement, and then Committee members will ask questions.

333. Mr Phil Flanders (Road Haulage Association): Thank you for inviting us. I do not intend to make a long statement.

334. The Road Haulage Association has supported the Bill from the outset. There is a great deal of concern in the haulage industry in Northern Ireland about some of the issues that the Bill addresses, and hauliers are keen to see the Bill become legislation as soon as possible

335. The Road Haulage Association has been involved in the education of hauliers for several years. We have had meetings with hauliers over the last few nights in an attempt to enlighten them about the effects of the Bill and what standards they will need to achieve as a result of its implementation. I have brought with me the GB 'Guide to maintaining roadworthiness', as the Committee may find it helpful.

336. The meetings have progressed well. Hauliers' views have been mainly positive and many hauliers are already undertaking the necessary actions. What we need to do now is to ensure that a proper system is established so that hauliers can prove that they are doing what they say that they are doing. If hauliers or drivers receive a visit and/or inspection and their paperwork is in order it will make life much easier for the enforcement officer to investigate.

337. The substance of what we are going to say today has already been submitted in writing, and I do not want to read it out again. The best way to proceed is to take questions from members that Mr Oliver and I will be more than happy to answer.

338. Mr William Oliver (Road Haulage Association): The essence of the Bill is that own-account licensing has now been brought to the same level as professional haulage licensing. Therefore the driver who has, up to now, been exempt — or did not have to be licensed as a result of hauling his own goods — will now require to be licensed.

339. That has traditionally been a grey area, particularly in the quarry sector. Drivers working for a quarry and hauling its goods have been required to be licensed, yet a quarry owner running his own vehicles has not. The Bill should level the playing field.

340. At present, only 15% to 20% of lorries in Northern Ireland require a licence. That is because most lorries belong to the own-account sector. By licensing everyone — and requiring everyone to pay a fee to become licensed — a much greater pool of money will be created for the purposes of enforcement. That is good news for the professional haulage sector as it is particularly keen on enforcement.

341. Mr Weir: Thank you for your presentation. I agree that the legislation will create many advantages. Will the Bill improve road safety?

342. Mr Oliver: From a wider road-safety perspective, more enforcement will lead to better vehicles on the roads. There are two key elements to running a road-haulage business from a road safety point of view. The first is the roadworthiness of the vehicles; the second is ensuring that drivers comply with rest periods and tachograph and drivers' hours legislation.



343. Statistics show that Northern Ireland is the third worst area in Europe for compliance with the rules. As a professional organisation that represents professional operators, we want the compliance level raised. We may never have the highest rates of compliance, but we want to be among the highest. Great Britain and Germany have the highest levels of compliance in Europe, whereas we are dragging along at the bottom. The only two countries in Europe with worse compliance rates than us are the Republic of Ireland and Romania.

344. Therefore more compliance with the rules and drivers ensuring that their vehicles are roadworthy will have major benefits for road safety.

345. Mr Weir: The Department's approach will move drivers in Northern Ireland to a similar position to those in Great Britain. However, given Northern Ireland's circumstances, small variation will be required.

346. Can we learn lessons from how the rules have been implemented in Great Britain? Should advice be given to the Department about what measures should be taken and what should be avoided? We want to ensure that the legislation is implemented as smoothly and as effectively as possible from the beginning.

347. Mr Flanders: The two most important areas are road safety and the need for all operators to compete on the same level. If operators do not look after their vehicles, it will cost them more when the vehicles break down; however, if they have preventative maintenance systems, they will benefit from lower maintenance costs. Another benefit will be that they will not be targeted as much when they go abroad, particularly to Great Britain. When the Vehicle and Operator Services Agency (VOSA) is conducting roadside checks, it will pick on the vehicles that it believes to be breaking the rules. I hate to say it and I do not like that it happens, but vehicles from Northern Ireland are picked on.

348. If the system changes and if links can be established with the authorities in Great Britain so that they are aware of the situation of individual hauliers, those who comply with the rules should no longer be targeted. If all the measures are implemented properly, there will be benefits.

349. Mr Weir: Operators from Northern Ireland are targeted because they are known to have the third worst compliance rate in Europe.

350. Mr Oliver: The legislation will result in two major differences between the system in Northern Ireland and that in Great Britain. The first is that we will not have a traffic commissioner as such, although a departmental official may exercise the powers of a traffic commissioner. If the Driver and Vehicle Agency (DVA) wanted to take action against an errant operator, the case would be dealt with in-house by the Department. In Great Britain the evidence would be presented to a traffic commissioner who would make a decision on the case. We have taken soundings on that, and the industry at large does not believe that that will be a problem; it seems to be happy with the proposal.

351. The other major concern is the environmental impact.

352. In the road haulage sector in GB, environmental issues have been high on the agenda for some time. There are many aspects to environmental awareness. The one that concerns hauliers — and people operating vehicles from an operating centre in GB — is that established hauliers must advertise in local newspapers any changes, for example, to the size of the fleet. Usually, someone will object to renewal of a licence. That has caused major problems, and it is something that the Department is looking at carefully with regard to the legislation.

353. Historically, we are largely a rural economy and many small hauliers are farmers' sons who park their lorries in the farmyard. A neighbouring farmer may sell a field, someone may build a bungalow at the end of the lane, and then an objection is lodged that lorries are being driven up and down the lane.

354. Am I striking a chord?

355. Mr Boylan: I am listening intently.

356. Mr Oliver: That has to be looked at. It is the one element of the GB interpretation that could cause problems if it was extended to Northern Ireland.

357. Mr Weir: The Department is aware of that problem and I am sure that it will take account of it.

358. Mr Flanders: It is a problem in GB where an industrial area changes use. If former docks are turned over to industrial use, there tend to be objections, even though the docks were originally intended for industrial use.

359. In England, one of our members started his business in the countryside, but five years ago 200 houses were built round him. Most of the neighbours objected to the presence of the business, and he decided to close shop because there were so many restrictions. He could not move his vehicles before 7.00 am; he was not allowed to operate them after 6.00 pm; he could not have more than 10 vehicles at once, so he decided to close the business.

360. I would not want that to happen in Northern Ireland. There must be more flexibility and understanding. If someone wants to build a house in an area where there are businesses, they should accept that those businesses may pose problems for them in the future.

361. Mr Boylan: Peter has already mentioned the point that I wanted to raise.

362. However, there is another issue: that of requiring all vehicles over 3.5 tonnes to have an operator's licence. In some cases, people operate large vans from homes and private developments. What can we learn from England about the effect of that? Some of those vans do not fit on the driveways of homes — they are parked over the sides of footpaths. Many constituents complain to me about that sort of thing. How is that problem dealt with elsewhere? Have such operators had to move to an industrial site? There are many such operators in the North.

363. Mr Flanders: In GB, an operating centre must be specified. It will be inspected to meet certain criteria, the main one being that a vehicle must be parked off-road.

364. In some circumstances, an operator can apply for a vehicle to be parked at a driver's house; however, a vehicle cannot be parked on a road or on a grass verge. The criteria must be met. Such permission has not been granted more than three or four times in the past 10 years.

365. In one case in Scotland, a driver's wife had cancer and he wanted to be home every night. The haulier did not apply for an operator's licence and he was called to a public inquiry. When the Traffic Commissioner for Scotland found out the circumstances, she explained to the haulier that if he wanted to apply for the licence, he could do so, as long as the criteria were met. The haulier succeeded in that. However, major road-safety and health-and-safety issues arise where vehicles are parked willy-nilly.

366. Mr Oliver: In the past, members may have seen even coal lorries parked alongside houses. Our view is that provided the vehicle is off-road and on private property, one should be able to live with it. However, we are totally opposed to people parking such vehicles along the side of the road or half-way up a footpath, which is worse.

367. Mr Ford: The association mainly represents people who operate for hire and reward rather than own-account operators. Given that your members would be subject to the new licensing measures, do you think that road-safety aspects of the Bill will make a difference? I do not expect you to produce statistics, but is there even anecdotal evidence that there will be safety benefits for your members?

368. Mr Oliver: You should study the report that the DVA published in the past week, which contains details of a sample survey that it conducted last summer on road worthiness in Northern Ireland. I had the privilege to be with DVA representatives when they took samples for that survey.

369. In the own-account sector, there is a great deal of non-compliance. Professional hauliers tend to do more mileage and get stopped more, which means that they tend to have their vehicles inspected and looked after. However, in the own-account sector, a lorry is low on the list of priorities of a driver — it is something that he uses like a trolley to deliver stuff. The lorry is the lifeblood of a haulier.

370. The day that I went out with the DVA representatives, we stopped a small 7.5 tonner with a fridge body, which the driver was using to deliver bacon and sausages. The vehicle was in an abysmal condition — even the headlights did not work. As part of the inspection, I asked the driver whether he was worried that the headlights did not work; he replied that he never goes out in the vehicle at night. [Laughter.] That is how some people think, so there is a major problem.

371. People in the DVA will tell you that instances of vehicles with broken springs and defective breaks are an everyday occurrence, particularly in the quarry sector. The work in quarries is heavy, and the trucks are not maintained as they should be.

372. Mr Ford: How big is the issue of hauliers from Northern Ireland being stopped on roads in GB because it is assumed that they do not comply with the necessary standards? Is it an inconvenience that happens now and again or is it a major drawback?

373. Mr Oliver: That question was raised at our meeting on Tuesday night at the Templeton Hotel. At that meeting there was a respected haulier from Ballymena who has a high-profile fleet and who is one of our best members — his fleet is 99% compliant all the time. He complained bitterly about the number of times that he was stopped in GB. A gentleman from the RHA who is based in GB explained to him that VOSA operatives are target-driven, which is the problem. Due to the high number of non-compliant vehicles that come from Northern Ireland, VOSA operatives think that if they stop a vehicle registered in Northern Ireland, as opposed to a vehicle registered in Yorkshire, they have a better chance of getting a hit. Unfortunately, hauliers have to live with that. The evidence is not entirely anecdotal, as most drivers tell us that they are stopped regularly. Many hauliers from Northern Ireland are compliant, but many are not.

374. Mr Ford: I would like to return to one of my hobby horses. Your presentation referred to the potential for the Republic of Ireland to introduce similar legislation — the Freight Transport Association told us that a couple of weeks ago. However, we received correspondence from the Department today that suggests that there is not much co-ordination. Some of us see a potential loophole without some co-ordination. Where did you get the information that the authorities in the Republic of Ireland were preparing to introduce similar legislation?

375. Mr Oliver: From our meetings with the Irish Road Haulage Association, we were led to believe that it was likely that they would follow the same path as us. We were informed only today that they are backing off and saying that it is too expensive and too big a legislative burden. About 70% of my haulage work is in the South of Ireland, and there is no compliance there at all.

376. You would be lucky to find that a vehicle was stopped once a year, which sets a pretty bad example. Although we are targeted, Southern drivers in GB are targeted even more. On the route across to Holyhead, VOSA regularly pulls in scores of non-compliant Irish vehicles at night and at weekends. Some of the headlines in the trade press are horrific. Irish drivers who have been driving non-stop for 30 hours on the continent have been stopped. There is a major problem, and I despair if the Southern Government have now decided to back off introducing legislation.

377. Mr Ford: I take it that the Irish Road Haulage Association agrees that legislation should be introduced.

378. Mr Oliver: Yes, very much so.

379. Mr Gardiner: I thank William and Phil for their presentation; they certainly have a wealth of knowledge on the subject. How can the Committee help with some of your difficulties?

380. Mr Oliver: We want the Committee to give the Minister every encouragement to get the legislation on the statute book as soon as possible. It is then up to the Department to decide how and when it will implement the legislation. There are many operators to be brought under a licensing regime, and that will not happen overnight.

381. Mr Gardiner: I agree. Does your association have any record of accidents that have been caused by your members? Is there a mechanism for reporting accidents that are a result of breakdown or careless driving?

382. Mr Oliver: We do not have such statistics.

383. Mr Gardiner: In the Irish Republic, are hauliers more considerate to domestic users of the roads, given that they generally pull over when they see a long trail of cars following them? That does not happen in Northern Ireland; perhaps that is a fault of the roads.

384. Mr Oliver: There is a different culture down there. In the South of Ireland, a car driver who is travelling at 40 mph will pull on to the hard shoulder to let other motorists past. That does not happen here — even a tractor would not do that. [Laughter.]

385. Mr Boylan: Thank you, Sam; I did not want to bring that up in case I was accused of bias.

386. Mr Gardiner: I would not think that you were biased.

387. Mr I McCrea: I thank the witnesses for coming. Mr Boylan said that vans that weigh more than 3.5 tons are to be subject to the regulations, and I am concerned by that. I feel that that will place an added burden on small enterprises, on which people rely for their livelihood. Vans are likely to weigh more than 3.5 tons because of their long wheel base, and similar legislation affects vans in GB. Will the legislation affect small enterprises?

388. Mr Flanders: Probably, but if vans are brought under the regime, their owners will know what to do to keep them compliant. In the long term, they will probably save money on vehicle

maintenance. They will have to pay a fee, but if everyone pays — rather than only the 20% of drivers who do so at present — the fees should drop and more money will be available to ensure that all drivers are compliant. A driver of a three-and-a-half tonner is probably not earning the money that he should because of the pressure from raids. If all drivers were compliant, that driver would probably earn more, so the extra cost would not be such a burden. Under EU law, all vehicles that weigh more than 3.5 tons must have a tachograph and if those vehicles are for the purposes of hire and reward, they must have an O licence. Anecdotal evidence suggests that some own-account vehicles that are supposed to carry only their own goods operate as hire-and-reward vehicles. That takes away our bread and butter. If all vehicles were compliant with the law, the situation would improve for everyone.

389. Mr Oliver: Few small businesses have vehicles that weigh between 3.5 tons and 7.5 tons. To avoid having to comply with the tachograph legislation when buying a van, most small businesses will deliberately target one that weighs 3.49 tons. The Committee may be concerned about tradesmen who own one or two vans, but the legislation applies only to a very few of them.

390. Mr I McCrea: Those to whom it does apply will probably seek to get out of it.

391. Mr Oliver: Many of those who previously owned 3.5 ton vehicles have probably moved up to 7.5 ton vehicles to reap the benefits of a bigger vehicle.

392. Mr I McCrea: You said that 70% of your work is in the Irish Republic. I am concerned that the Irish Government are not acting to close the loophole to which David Ford referred. You could relocate to the Republic if you so wished. It would probably be in your interest to do so, given that 70% of your business is there — although I suppose that you would have to comply with GB legislation when your drivers went across the water. However, I am concerned that some of the regulations could force people out of Northern Ireland and into the Irish Republic to take advantage of that loophole.

393. Mr Oliver: Mr Armstrong from the Department is here, and you should raise that issue with him. Flagging out was not an issue at any of the roadshows that we attended. It was an issue 10 years ago, when many people flagged out of Northern Ireland and went to the Republic because of changes in legislation. Some high-profile operators flagged out for a short time, but soon discovered that there was more to deal with than the regulatory scheme for drivers. When they ran into different problems in the Republic, they quickly reflagged their vehicles and registered them in the North again. Flagging out, therefore, is not a major problem.

394. However, a greater problem for the Road Haulage Association is the fact that non-compliant vehicles will enter from a country that shares a land border. The DVA staff who stop such vehicles will tell you that they do not comply and that regulations governing drivers' hours in the South are totally ignored.

395. The Chairperson: Thank you, Mr Flanders and Mr Oliver, for taking time to come here today. We want to be as supportive as we can and to expedite matters as quickly as possible for the benefit of your industry. You are welcome to stay to hear what the departmental officials have to say.

396. I advise members that, following the previous briefings on the Bill on 24 January 2008 and 7 February 2008, departmental officials will update the Committee on the outcome of the public briefing sessions. Members should have copies of the Goods Vehicles (Licensing of Operators) Bill, its explanatory and financial memorandum and a summary of the main provisions. The Department has also provided a written report of the public briefing sessions that were held during February and March 2008, which members will find highly informative.

## 24 April 2008

Members present for all or part of the proceedings:

Mr Patsy McGlone (Chairperson)  
Mr Cathal Boylan (Deputy Chairperson)  
Mr David Ford  
Mr Tommy Gallagher  
Mr Samuel Gardiner  
Mr Ian McCrea  
Mr Alastair Ross  
Mr Peter Weir

Witnesses:

Mr David Armstrong  
Mr John Brogan      Department of the Environment  
Mr Gillian McIntyre

397. The Chairperson of the Committee for the Environment (Mr McGlone): Mr Armstrong, it is good to see you again; you are most welcome.

398. Mr Donald Armstrong (Department of the Environment): We assume that members have read the report of the public briefings, and we will simply summarise its key points.

399. At the minute, the Minister is in the Executive Committee seeking approval to introduce the Bill to the Assembly, and we expect that to happen within the next few weeks. The Bill will eventually come before the Committee, formally.

400. Another document, a summary of the main provisions of the Bill, has been produced by my colleague John Brogan. The Committee should find that very useful, along with the explanatory and financial memorandum.

401. We were staggered by the response to the briefings. In our temerity, we thought that 50 people would attend each of the eight briefing sessions, and we booked hotels accordingly. That assumption was based on previous experiences — such as during briefings for the Taxis Bill — during which, sometimes, no one turned up. Of the 15,000 invited, approximately 1,800 to 2,000 attended, and, in fact, at the Comfort Hotel venue in County Antrim people were turned away, and the volume of traffic caused congestion in Antrim town centre. Therefore, those figures do not reflect the number of people who wanted to attend.

402. The Department made some presentations, as did the Road Haulage Association — which was very supportive — the Freight Transport Association and a company of independent solicitors called Aaron & Partners, who are involved in transport law and with traffic commissioners in Great Britain. The presentations were, for the most part, well received; people sought information on how the regulations will work, when they will be introduced, how much it will cost, and what individuals need to do in preparation for implementation. That was pleasing; it vindicated the briefing process.

403. The Department was impressed by the reception and response. We approached the process with fear and trepidation, wondering whether we would get hammered or, proverbially, knifed. However, that did not happen. Some people were not keen on the proposed legislation, but the majority of people wanted information. We are listening to the industry and received a huge amount of valuable information that will help us steer our course over the coming months.

404. Before we return to the Committee for the consideration of the Bill, we will have completed much work on its detail. In essence, that is not required until the regulation stage. We received tremendous help from people in the industry, which highlighted issues that we must address.

405. We expected certain issues to be of major concern. For example, we thought that cost and the issue of operating centres would cause huge concern. However, although those issues were raised, they were not over-problematic and raised less concern than we had predicted.

406. We expected the issue of competition from Irish operators to cause concern in regions around the periphery such as Armagh, Omagh, Enniskillen and Derry. In fact, that matter was only mentioned in four of the eight venues, and even then it was very low-key, which surprised us. Mr Oliver's comments this morning on flagging out reflect that.

407. The majority of queries came from individuals, who wanted to know how the new Bill will affect them. That is a legitimate question, and, in the majority of cases, we answered those queries. We issued questionnaires to those who attended at all of the venues, which asked about the nature of businesses, fleet size, numbers of operating centres, costs, and what they anticipated the impact of operator licensing would be. We achieved a response rate of about 13%. Although we would have liked that figure to be higher, statistically, it was quite good. Responses were, generally, useful and have been fed into the regulatory impact assessment, which will be available to the Committee in due course. For example, 60% of operators said that the new regulations would have virtually no impact on them. We expected a negative reaction to the Department's plans. Therefore, we were surprised that 60% of operators felt that the proposed licensing scheme would have little or no impact on them.

408. At almost every venue, we discussed the frequency of maintenance checks, what those checks would involve, what qualifications those conducting the checks would require, what standards would have to be met, and so on.

409. A number of concerns were raised that, although not relating directly to the Bill, are of interest to the Department. For example, some people at a number of the briefings mentioned what they view as inconsistency in DVA test pass rates. They expressed concerns about how failure in a Driver and Vehicle Agency test impacted on an operator's repute. Such concern is not unfounded — DVA testing statistics indicate that almost 50% of vehicles fail first time round. That is not good for DVA capacity, it is not good for operators, and it is costly.

410. Some attendees questioned whether improved roadworthiness would actually improve road safety. There was also confusion about whether certificates of professional competence (CPC) would be required by transport managers, or drivers, or across the entire industry. Single vehicle operators who take their vehicles home also expressed some concern about what they would be permitted to do, what they would have to change, whether they would have to hire operating centres, and so on. Those are all genuine concerns that must be addressed.

411. Exemption from licensing requirements occupied one of the biggest areas of discussion. At this stage we do not know who will be exempt, and who will not. The Bill will give the Department the enabling powers to grant exemptions, so we have not got into the detail of that. However, at the briefings we handed out a list of the exemptions as currently seen in GB to give a guide to what is happening — not necessarily what will happen. Although exemptions will only be included in regulation at a later point, it is an issue that should be addressed early on. We have to find solutions that are distinct to Northern Ireland, because our circumstances are different to those in GB. For example, in relation to driveways, the regulations have been in place in GB since 1937, so everybody in business there has been aware of those since they started. However, that will be new to many people in Northern Ireland. We must decide whether

to apply the same standard in Northern Ireland, or make it slightly different. Do we grant grandfather rights, or do we have traditional arrangements to phase it in?

412. We explained the main drivers of the Bill in relation to enforcement and the fact that there will be more and tougher enforcement. That did not seem to be a problem and, indeed, most people said that they would welcome enforcement.

413. Although not necessarily relating directly to the Bill, other interesting issues were raised. Questions were asked about: tachographs; the number of tractors being used for construction and general haulage work; insurance costs; competition from foreign operators; and, unsurprisingly, the topical matter of rising fuel costs.

414. While the people that we spoke to were not opposed to licensing, we were repeatedly urged to adopt a pragmatic and sympathetic approach to its implementation. We are going to try to see what we can do on that.

415. In addition to those public meetings, we held briefings with the Northern Ireland Local Government Association (NILGA), the Rivers Agency, Roads Service, Belfast City Council, Northern Ireland bakeries, and the Federation of Small Businesses (FSB). We targeted specific groups that we feel will be impacted by the licensing scheme, and we talked to them and, in some cases, made presentations. We have also offered to give briefings to other groups such as the Ulster Farmers' Union, the Department of Agriculture and Rural Development, Northern Ireland fruit and vegetable growers, and the Belfast Chamber of Commerce. We are waiting on a response from those organisations to our offer.

416. We have had quite a bit of exposure on the proposed licensing scheme and received useful information. We have been inundated with telephone calls, and we have responded in writing to over 160 queries that we received via email. There is a huge interest in what we are doing, and we are trying to satisfy that by supplying the information as we go along.

417. As the process moves forward, we will consider a number of key issues, including exemptions, standards in operating centres and transitional arrangements, which are critical. Finally, we will consider what alternatives to the role of the traffic commissioner in Great Britain are available to us.

418. The Chairperson: Thank you, Donald.

(The Deputy Chairperson [Mr Boylan] in the Chair)

419. The Deputy Chairperson (Mr Boylan): Thank you for the presentation. Many single operators are concerned about the limit of 3.5 tonnes, above which they will need a licence, and also about the use of driveways. Do you know how many single-vehicle operators took part in the consultation process? With regard to planning, is it correct that the area space in which single operators work from will be restricted?

420. Mr D Armstrong: The Planning Service is a separate part of DOE. We do not delve into planning issues, which are viewed separately. We are looking at this from a road safety point of view.

421. The standard for operators in Great Britain is that they have to be able to drive in and out of their premises before they are allowed to park at home. That is because a significant number of children in particular have been killed by lorries reversing over footways. That standard will probably cause difficulty for a number of operators in Northern Ireland.



422. Some 9,000 of the 15,000 operators in Northern Ireland are single-vehicle operators. That is a significant proportion, and we need to address that issue. We will consider the consequences of applying that standard in Northern Ireland. It may be impractical to apply it as it could have too big an impact. However, a balance is required between that and the road-safety criteria.

423. The issue of operators who park their vehicles at home is one of our biggest difficulties with regard to operating centres. Obviously, operators with huge lorries will not be able to park them at the side of the driveway. No one wants a monster beside their house. They will not be allowed to park on the roads; therefore, they will have to look for somewhere else.

424. We have to consider issues for operators with smaller vehicles — those between 3.5 and 7 tonnes. We may consider restrictions for reversing in and driving out of areas or we may consider providing them with some form of grandfather rights. All such issues will have to be considered with road safety in mind, because as soon as a child is killed by a vehicle reversing over a footway, we are going to be vulnerable.

425. The Deputy Chairperson: I agree that there should be a level playing field. However, there are a substantial number of single-vehicle operators, and they have to be considered.

426. Mr I McCrea: A number of responses to the consultation were to do with enforcement. What is the current level of enforcement? I presume that that will have to increase. How many more officers will be required?

427. Mr D Armstrong: I will have to offer a disclaimer on that issue: enforcement management, and cost, is a matter for the chief executive of DVA, not for me. However, I am aware that, irrespective of the legislation, there will be a significant increase in the number of enforcement officers over the next couple of years. I am not certain of the figures, so it would be better for the chief executive to detail that, or I can check with him and come back to the Committee with the information.

428. One of the issues with the Bill is that because the whole industry will be regulated, the funding for greater enforcement will be vastly increased. Currently, only a quarter of the industry pays a fee; in the future, the whole industry will do so.

429. Mr Ford: You heard what Mr Oliver said about flagging out. The Committee received a letter from the departmental Assembly liaison office (DALO), which says that there are no immediate plans to reform operator licensing legislation in the Republic. Are you satisfied that, despite the lack of progress in the Republic, the necessary progress can still be made in Northern Ireland to protect road safety and resolve environmental issues such as parking on housing estates?

430. Mr D Armstrong: I will answer that question by referring to the 'Commercial Vehicle Testing Review' that was published by PricewaterhouseCoopers for the Road Safety Authority (RSA) in the Republic of Ireland. There seems to have been some confusion about what that document said and did not say. Improvement 24 of the review recommends that the RSA should have operator licensing over the whole industry, including the own-account sector. It said that if the RSA was not going to do that, it should insist that some of the standards should be met — for instance, on the undertakings that are to be made.

431. In February 2008, Gillian McIntyre and I met Department of Transport officials in Dublin, and they confirmed that they are not introducing operator licensing for the own-account sector. Two weeks ago, I contacted the Department and it confirmed, through the Road Safety Authority, that it will not introduce own-account operator licensing. However, it will tighten up on enforcement and require operators to give undertakings on maintenance. Therefore, in the

future, a driver who operates in the Republic of Ireland should find it more difficult to avoid compliance than they currently do.

432. In the briefings, 11% of respondents said that they would consider flagging out; we were surprised that the figure was so low. Even those people said that they were considering flagging out, rather than saying that they will do it. Given that enforcement will tighten up in the Republic of Ireland and the fact that there are other disbenefits to flagging out, I do not see it as being a major issue.

433. Mr Ford: Do you remain optimistic that progress can be made?

434. Mr D Armstrong: Yes, I am very optimistic.

435. Mr Ford: If flagging out were to become a problem after the implementation of the Bill, would there be any easy ways in which the Bill, under its current formulation, could deal with that?

436. Mr D Armstrong: Anyone who runs a business with vehicles in Northern Ireland must have a licence under the Vehicle Excise and Registration Act 1994 (VERA), which is part of UK law. Under subordinate legislation, on which we are currently working, a graduated fixed penalty and deposit scheme will be brought forward. That will try to set the penalty for road transport and traffic offences in keeping with the level of the offence. For example, a fine for speeding would be greater depending on the level of speeding, and a heavier fine would be imposed according to the greater contravention of transport law.

437. The deposit part of that scheme is specifically to enable enforcement against foreign drivers. So if people do flag out, and if foreign operators from Ireland and other parts of Europe are driving in Northern Ireland or the rest of the United Kingdom, they will be obliged to pay a deposit at the roadside that is equivalent to the penalty so that they cannot simply take a ticket and get away without paying the penalty. That measure will act against those who are not licensed in the United Kingdom. Subject to GB timetables, we hope to introduce that proposal to Northern Ireland in April 2009.

(The Chairperson [Mr McGlone] in the Chair)

438. Mr I McCrea: Can you remind me of your proposal for the fee structures? Will those be brought into line with current GB fee structures? I note that the fees in GB are to be reconsidered; perhaps the fees will be reduced there, although that is unlikely. In Northern Ireland, an operator with 10 vehicles pays a fee of £3,150; in GB the fee for that is £2,381. I presume that the disparity between fees in Northern Ireland and GB will come down.

439. Mr D Armstrong: During the consultation, we gave an undertaking that the fees would initially be tied to the fees in GB. There does not seem to be an awful lot of logic in doing it differently, and we are holding to that view. Costs will be tied to the current level of fees in GB. The fees in GB are being reviewed, and it is hoped that they will go out to consultation in the next few months.

440. I met Department for Transport officials in London last week, and we discussed fees. They will keep us informed on the structure and level of fees. The main difference in the fee structure is that, instead of having a three-part fee as is the case at present in GB, the vehicle fee will be attached to the vehicle test fee. Therefore, when someone applies for an operator licence, he will not have to worry about fees for vehicles because that will already be catered for as the vehicle has already been tested. As for the level of fees, I have no indication from the

Department for Transport whether they will go up or down. Not much goes down these days, but I cannot comment because I do not know what the proposed fee levels will be.

441. Mr I McCrea: We talk about single operators perhaps not getting the money that they should be getting, yet it is the single operator who will be most affected by this increase.

442. Mr D Armstrong: The fee for single operators with one vehicle is about £150 per year for the first five years, and then drops to £100 per year because they will not have to reapply for a licence. You apply for a licence only once and get it for ever, as it were. The licence is then reviewed each year and you pay a vehicle fee and grant fee. A tyre for a commercial vehicle of 3.5 tonnes or more costs from £250 to £400. Therefore, £100 to £150 per year is a very small amount in the overall costs of running a business. I am not saying that it is not a cost, but that amount did not seem to cause any difficulty with operators. In public briefing sessions they said that licensing was not a major cost in running a business, and they did not see it having a major impact. In fact, 60% of people said that it will not have an impact.

443. Mr Gardiner: I have one point about your public briefing sessions and the questions that you were asked. For example, there was a question about a CPC and where to get one. We would not know the answer to that. For laypeople such as ourselves, it would have been beneficial if you had provided the Department's answers to the questions, because we could be asked such a question and we simply would not know the answer.

444. Mr D Armstrong: Would you like us to go through some of the sample questions and answers?

445. Mr Gardiner: You have given us some of the questions that were raised at the public briefing sessions, but you have not given us any answers.

446. Mr D Armstrong: There is a fair bit of work involved but we could certainly do something on that, if you wish.

447. The Chairperson: It would be helpful if you could do that.

448. We have a summary of the main provisions of the Bill, but can you give the Committee a broad overview of the Bill as it is taking shape?

449. Mr John Brogan (Department of the Environment): I wrote the summary of the main provisions. You have to bear in mind that I am not a legal person. In some cases, my interpretation might not be exactly right. I hope that I am right, but I want to make that qualification.

450. The Chairperson: That is OK.

451. Mr Brogan: You will be familiar with the Taxis Act (Northern Ireland) 2008. That was drafted in a nice way in that there were chapters and sections that helped the Bill to flow. We do not have the same luxury in this case in that the Bill just starts and flows right through to the end.

452. The Bill is drafted in a way that reflects primary legislation in GB — the Goods Vehicles (Licensing of Operators) Act 1995 — but it deals with who needs to have a licence and what type of vehicles will be authorised under the licence. The Bill moves to the application process and covers the power to ask someone for an application, the information that may be required through the application form, the requirement for the Department and the applicant to publish a

notice of the application, and who can object and make representations on the notice of application.

453. It then moves to the determination of the application: what the Department will take into account in its determination; how it will deal with operating centres on environmental grounds; what it will do once the determination has been made; how it will issue the licence; the details that will be included in the licence; and the duration of the licence.

454. The next stage covers any variations of that licence in years to follow and, again, the application process for a variation of the licence and the need to repeat the notification in local newspaper the objections and representation issue, and how the Department deals with the application for variations. It outlines the Department's power to attach conditions to the licence and its power to issue interim licences and interim variations, which will allow an operator who makes an application to begin work during the period when the application is being processed and the determination is made. It allows the operator to continue operating if the application is for a variation to an existing licence.

455. The Bill then moves to the power to carry out some form of disciplinary action against an operator who has not been complying with the conditions or the undertakings of the licence. It is a power to revoke, suspend and curtail the licence, which is reflective of what the Committee will be familiar with in the Taxis Bill. There will be very similar provisions.

456. Donald mentioned that the application for a licence is a one-off procedure, but the Bill provides for operating centres to be reviewed on a five-yearly basis. There will be a process for the transfer of an operating centre. That will allow the title to the operating centre to be transferred from one licence to another, if, for example, businesses are merging or someone retires and passes his business to someone else. It outlines in more detail the environmental matters that will be taken into account in relation to operating centres.

457. The Bill will give the Department the power to hold a public inquiry. That is already in place in GB, and the power is held by the traffic commissioner. The power would be to hold an inquiry for the determination of an application. If the determination went against the operator, or was instigated at the behest of the objector or someone who has made a representation against the granting of a licence, he or she would have the power to ask for a public inquiry to be held.

458. There is a two-stage review of decision and appeal procedure built into the Bill. The first stage would involve the Department carrying out a review of the decision made at the request again of the applicant, and the second stage would grant the right to make a formal appeal in connection with any aspect of the operator licence.

459. Several offences of forgery and making false statements are built into the section on enforcement, which is similar to the Taxis Act (Northern Ireland) 2008. Most enforcement powers that are in place came from the Transport Act (Northern Ireland) 1967 and apply to the current operator licensing system. Those powers were lifted from the 1967 Act and dropped into the Bill. The Department added additional enforcement powers, particularly the power to impound a vehicle that has been detected being used without a licence. Clause 44 is the major new element of the enforcement regime:

"Schedule 3 (which relates to the detention, removal and disposal of goods vehicles in respect of which it appears that section 1 is contravened) shall have effect."

460. The remainder of the Bill consists of miscellaneous matters, such as fees. It is particularly important to note that the Bill applies to the Belfast harbour estate and other harbour areas. Current operator licensing laws do not operate in harbour areas, and that causes difficulties for

enforcement staff. Generally, the Bill is not as much of a skeleton as was the Taxis Bill in relation to a series of regulatory powers. However, in parts there are quite a lot of regulatory powers. The Department dropped some of the detail that is contained in the Act that applies in Great Britain. In due course, we will bring subordinate legislation, in the form of Orders, to the Committee.

461. The Chairperson: Thank you. I am trying to get a handle on how the conditions attached to licences will pan out. The Department will be able to attach an increasing number of conditions to the licence. One possible condition is the requirement for the licence holder to inform the Department of any event which affects the licence, which is par for the course.

462. However, another condition is the prevention of vehicles from causing danger to the public while entering or leaving an operating centre. That strikes me as more of a criminal matter, and I am unclear about a third possible condition to prevent or minimise the adverse effects of the operating centre. That seems akin to attaching conditions to a standard driving licence that the applicant must not drink and drive, speed or drive a car that is not roadworthy. Will you elaborate on what that third condition means?

463. Ms McIntyre: That condition could apply, for example, when an individual advertises an operating centre about which the Department receives representations from landowners that the use of the operating centre, as applied for, could impinge on their enjoyment of their land. The Department has the power, for example, to agree with the applicant that he or she will operate within certain hours or limit the size or number of vehicles used in the operating centre.

464. The Chairperson: I am trying to get my head round that condition. Some members deal with planning applications almost every day. I listened to Mr Flanders describe a particular application to build houses that would surround an operating centre. Under those circumstances, such conditions are normally built into environmental health considerations as part of the planning application.

465. Presumably, if an operator wants to establish a business in a new or changed venue, he or she would have to submit either a fresh planning application or, if wishing to diversify from farming to road haulage in a rural area, a new planning application. I am trying to work out how the operator licensing fits in. So far, and until you tell me otherwise, it seems as though you are duplicating, or mirroring, the responsibility of another wing of the Department.

466. Mr D Armstrong: The vast majority of applications that we will receive over the next five years will be from existing operating centres. An application from a centre that has been operating for four years, for example, will be approved. Therefore the Planning Service will not have a role in such a scenario.

467. The Chairperson: I thought that such businesses had to be operating for at least 10 years.

468. Mr D Armstrong: That is only if conditions are attached. The vast majority of the applications that we will receive over the next five years will be from the 12,000 to 15,000 businesses that are already up and running. We will apply conditions about how they operate on their sites.

469. It could be argued that applying conditions to brand new sites would duplicate work. However, I am not certain that that would be the case. We are working on the basis that existing sites already have merit. We will tell the operators that they will have to meet access standards and that there may be time restrictions and loud music restrictions so that other people do not get disturbed.

470. The Bill provides a balance in that the Department will be granted the discretionary powers that the traffic commissioners have, and we will be able to grant licences. It will make life easier for the operator and for the people in the area if licences can be granted with agreed conditions or restrictions. That will be better than simply saying yes or no.

471. The Chairperson: Page 7 and page 8 of the summary of the main provisions refer to environmental matters. The summary states that:

"The determination may be on the suitability of an operating centre on environmental grounds; the attachment of conditions to a licence to prevent or minimise any adverse effects on using a place on an operating centre; the effect on environmental conditions in a locality of the use of the place as an operating centre."

472. Your section of the Department is not normally the arbiter for such issues. That is usually the job of local councils through their health and environmental services departments. I am trying to tease out how the practicalities of the process are going to work.

473. Mr D Armstrong: A new operator setting up an operating centre will be required to go through the planning process. For the foreseeable future, the majority of applications that we receive will be from existing operators. When they submit an application and advertise, the people who live in the vicinity of the site will have an opportunity to make representations on environmental grounds.

474. In addition to that, we will have a statutory list of consultees whose opinions we will seek. Included on that list are the PSNI and the Planning Service. Therefore, the Planning Service will have a role in the process. Any declaration from the Planning Service that it is unhappy with an application will be taken into consideration.

475. The Chairperson: My point was that it is the health and environmental services departments of the respective councils that have the expertise on environmental concerns. I am sure that the Department has its own expertise, but usually the arbiters of issues over potential environmental hazards are the health and environmental services departments of the councils.

476. I am trying to determine the outworkings of the process. Any new application will go through the process. Inevitably, as part of the consultation process on planning, the health and environmental services departments of the various councils act as the consultees.

477. There could be a situation in which a group of residents have moved to a development that has been built only in the past five to seven years. That development could be in close proximity to an existing site for which an application has been submitted. Were those residents to object to the application, the Department will decide whether to grant a licence. However, the health and environmental services department of the relevant council would presumably act as the arbiter as to whether there is a potential noise nuisance.

478. Will the individual councils be statutorily consulted as part of the process?

479. Mr D Armstrong: Yes the councils will and the Environmental Heritage Service, as it currently exists, will also consult as part of the process.

480. The Chairperson: Would that apply to new applications in addition to established applications?

481. Mr D Armstrong: This would apply to any application whether new or existing.

482. Mr Boylan: Mr Armstrong alluded to the reversing and the driving into driveways. In rural areas drivers could, as Mr Armstrong pointed out, drive around the building to do this as there would be sufficient space to turn. However there may not be room for this in urban housing developments and the driver may have to park a three and a half ton lorry on the footpath outside their property.

483. Mr Armstrong also mentioned that there were currently 9,000 operating centre business, many of which could be in private urban developments. How would the proprietor be able to reverse from their driveway without causing a risk to road safety?

484. Mr D Armstrong: I indicated at the end of my short presentation that one of the big issues that the Department needs to examine is operating centres. That is, what actually constitutes an operating centre.

485. A balance needs to be struck between introducing legislation that will have an impact on a person who has been carrying out their business for a number of years and the issue of road safety. The Department has a number of options available in this area including, whether we establish an introductory period of time over which the standard can be brought in; or whether grandfather rights are granted to those businesses that have existing parking arrangements; whether the standards are applied as they are or whether the standard is dropped locally.

486. The Department will need to examine all of these options and decide on the best fit for Northern Ireland. In preparations we have already begun a process of consultation. It is a very difficult issue, as legislation will have an impact in some way if drivers cannot drive in and reverse out of their properties. However, the issue of drivers trying to drive into driveways, not capable of taking their vehicles totally different.

487. We do not know what proportion of the 9,000 business proprietors do park their vehicles at home, in the road, or can drive in and drive out of their properties without causing a road safety issue. To apply the current GB standard would be problematic at present and the Department needs to investigate the issue in a lot more detail before we move forward. Unfortunately I do not have an answer on this at present.

488. Mr Gallagher: What is the GB standard at present?

489. Mr D Armstrong: The GB standard is that if a vehicle is parked at home, in an operating centre that it must be able to drive in and out in a forward direction. In other words the vehicle must be able to be driven in, turned and driven out again without reversing over a public footway. That is the road safety issue in question and it is a valid one.

490. The Chairperson: Sorry Donald, I did not quite catch that. Do you mean that the vehicle must be able to driven in, turned and driven out again in a forward direction?

491. Mr D Armstrong: Yes. It must be able to go into the site and out again in a forward direction. Basically, this means that it must be go in and turn again and that the vehicle cannot be reversed in or out. This represents a problem for people who park at the side of their house and I accept that it is a problem. However, there is also a problem for road safety and people have been killed as a result of the parking or moving of vehicles in this way.

492. Again, I do not have a definitive answer on this yet and I freely admit it. However, one of the areas of difficulty that the Department have got to work with is what the standard is going to be and how that standard is going to be implemented.

493. The Chairperson: Thank you very much to all the witnesses who have attended today. The Committee now has plenty of reading to do on this subject, which I am sure we will revisit again.

## 5 June 2008

Members present for all or part of the proceedings:

Mr Patsy McGlone (Chairperson)  
Mr Cathal Boylan (Deputy Chairperson)  
Mr Billy Armstrong  
Mr Trevor Clarke  
Mr David Ford  
Mr Tommy Gallagher  
Mr Samuel Gardiner  
Mr Ian McCrea  
Mr Alastair Ross

Witnesses:

Mr Donald Armstrong  
Mr John Brogan           Department of the Environment  
Mrs Gillian McIntyre

494. The Chairperson (Mr McGlone): We now move to the departmental briefing on the Goods Vehicles (Licensing of Operators) Bill. The Committee has been provided with a copy of the departmental briefing, which includes a summary of the overall purpose of the presentation; a document outlining how road haulage operator licensing functions under the existing legislation; information about changes in the licensing system that will be enabled by the Bill; and a list of key potential issues to be addressed by the Bill. Members may wish to identify other issues. We have also been provided with a Goods Vehicles (Licensing of Operators) Bill master file, which contains the documents for the Committee's consideration of the Bill. It will be updated and retained by the Committee staff after each meeting.

495. I welcome Mr Donald Armstrong, Mrs Gillian McIntyre and Mr John Brogan.

496. Mr Donald Armstrong (Department of the Environment): Thank you for the invitation. The Goods Vehicles (Licensing of Operators) Bill is now at Committee Stage, so we have drafted a short presentation, which aims to put the Bill into context and to focus on the key issues for scrutiny.

497. The Bill is not a riveting read; some people might consider it a cure for insomnia rather than an inspiration. Nevertheless, some aspects are worth mentioning. We will outline the philosophy behind the Bill, comment on the Bill's powers and draw the Committee's attention to specific areas of detail that we must begin to consider. We will comment on the range of documentation and guide members to the most useful sections. Finally, without telling the Committee how to do its job, I will outline how the Department can help with the process.

498. During the drafting of the Bill, the Department sought advice from a range of people, including our counterparts who use the Bill in GB. They advised that the Bill should be as straightforward as possible and contain basic enabling powers, the detail of which should be carried into subordinate legislation. With the agreement of the Office of the Legislative Counsel (OLC), we have followed that advice, and Gillian McIntyre has drafted the instructions for the Bill on that basis. Therefore, the Bill is essentially an enabling document, and, upon scrutiny, members will recognise that much detail is missing. Those details will subsequently be included



in subordinate legislation. We will discuss and research those details more thoroughly, consider the options and reintroduce those details in the subordinate stages. However, we recognise that the Committee needs to know details, which will be discussed over the next few months.

499. The Bill attempts to focus on the drivers for change — road safety, fair competition, environmental impact and combating organised crime — that were discussed during previous presentations. In the coming months, we hope to demonstrate that the Bill addresses those issues, and members will, undoubtedly, have plenty of questions about that.

500. At a previous briefing, my colleague John Brogan provided an overview of the Bill, which he will now revisit. He will not go into the Bill in detail, but he will outline some of the Bill's key powers and what those powers seek to achieve.

501. Mr John Brogan (Department of the Environment): Unlike other Bills, the Goods Vehicles (Licensing of Operators) Bill is not divided into neat chapters, so it can be a daunting read. However, it has several distinct areas or clusters, and I shall identify those during my presentation.

502. The first area is covered by clauses 1 to 22. Those clauses comprise almost the entire first page of the contents list, and they refer to the powers of the operator's licence. They establish the requirement to hold an operator's licence and provide for exemptions. That section outlines the two different types of licence — the restricted licence and the standard licence — the application process and, importantly, determines the factors that will be used to assess applications. All applicants will have to demonstrate that they are fit to hold a licence and that they have the finances that are required to maintain and operate the business' vehicles safely.

503. Standard licence applicants will also have to demonstrate standards of good repute, appropriate financial standing and professional competence. The reason for that is that we want operators to show strong standards of fitness and reputation, particularly those that are involved in hire-and-reward work. They will be required to show that they are professional, and that they are able to maintain their vehicles in a roadworthy condition.

504. The Bill also includes powers to attach conditions and undertakings. Those are intended to reduce road safety problems around operating centres and to reduce any adverse effects on environmental conditions around the operating centres. The licence holder will also have to inform the Department of anything that might affect the licence. That condition is generally applied to all licences; they must notify the Department of any relevant convictions, of an event that could affect their repute and any prohibitions, for example, for overloading. The reason for that is that the power to place conditions on a licence provides the Department with an element of discretion when making a final decision on an application. That leaves an option other than outright refusal.

505. The second area concerns disciplinary powers, and those are covered by clauses 23 to 26. Those powers are intended to keep a firm level of control on the operators. They should provide a deterrent to those who have a disregard for road safety and road traffic laws, and they should contribute to the image of a clean industry. They include the powers to revoke, suspend or curtail a licence and to take action against a licence holder in a range of circumstances, from a breach of conditions, to a failure to meet specified standard licence criteria. The Bill also includes the power to disqualify someone whose licence has already been revoked from holding or obtaining a further licence.

506. The third area is covered by clauses 27 to 31, and it deals with operating centres. It contains powers to carry out a review of an operating centre every five years and to close a centre down if necessary. The Department would seek to alleviate any problems that were found

during the review. The Department would be able to attach certain conditions to the licence, or even vary existing conditions, which would, hopefully, resolve the problems without taking the drastic action of closing down an operating centre. The Bill includes provision relating to environmental matters in and around operating centres.

507. The next area, which is covered by clauses 32 to 35, deals with legal issues. It includes powers to hold public inquiries into applications, or into disciplinary actions taken against a licence holder. It also includes provision for all decisions to be reviewed by the Department, and for an appeal to be heard by the Transport Tribunal if necessary. The Bill refers to that as the Upper Tribunal. In April 2009, the Transport Tribunal will be subsumed into a grand Upper Tribunal, so we have taken the opportunity to use the name by which it will be known when the Bill comes into force.

508. The fifth area contains the enforcement powers of the Department; those are covered by clauses 38 to 45. All the main powers, bar one additional power, have been in place in Northern Ireland since 1967, and they are currently in use to enforce the operator licensing system. They have been copied from the Transport Act (Northern Ireland) 1967, and placed in the Bill, because they work well. Among other powers, those include powers of entry to vehicles and premises and powers to seize documents and obtain information. The one new power relates to the impounding of vehicles and their contents. That will take place when a vehicle is detected as being used on a road without an operator's licence.

509. The remainder of the clauses appear under the headings "miscellaneous" and "supplementary". They deal with a range of miscellaneous matters, and I do not need to talk about those today. The final section of the Bill includes the schedules. Schedules generally deal with provisions that contain detail, as distinct from principles, which should always be in the main body of the Bill.

510. Detail can also be included in regulations, and that is the case with this Bill. Some detail has been outlined in schedules to the Bill, and some has still to be developed and drawn up in the regulations. There are six schedules, the most notable of which include the arrangements for the transfer of an operating centre from one licence to another and provisions for the detention of vehicles used without an operator licence, which I mentioned earlier.

511. Many of the powers that I have described can be linked to the four drivers for change that Donald mentioned: fair competition; road safety; environmental impact; and combating organised crime. To ensure fairer competition, all operators will have to be licensed. As regards road safety, the Bill's powers are designed to maintain an element of control in vehicles, whereby every vehicle should be related to an operator's licence, and it should be possible to trace any vehicle that is involved in an offence back to an operator. The operator must be held responsible for certain actions of his or her drivers. The environmental factors will be taken into account in the assessment of applications, and they will be kept under review. The measures to tackle organised crime will again involve all vehicles being registered and traceable to an operator. Vehicles that operate illegally will be impounded, along with their contents.

512. Mr D Armstrong: Members will become more familiar with the details of the Bill as times goes on, but I hope that John's overview has set out the broad blocks of the Bill and the main areas: its application; discipline, the operating centres, and so on.

513. It is clear from reading the Bill that it contains very little detail — it has all been taken out. Broadly speaking, it provides enabling powers. Recently, Gillian McIntyre and I have looked at some of the key areas that must be addressed for the regulation stage. I have no doubt that the Committee will be interested in what is happening in that area. Gillian will expand on the four or

five key areas on which we need to work over the summer and on which we hope to bring the Committee information.

514. Mrs Gillian McIntyre (Department of the Environment): As Donald said, the Bill is really a framework for the licensing of operators of goods vehicles in Northern Ireland. As members will know, much of the detail of the scheme will be contained in the regulations. We have identified five areas on which we feel that we must focus at this early stage so that we can develop proposals for regulations that will be workable and acceptable, both to the Department and the industry.

515. The first issue is that of operating centres, which has been mentioned many times, both by the Committee and at industry briefings. The main concern is the potential impact that the requirement for an operating centre may place on small businesses. In Great Britain, all operators are required to have an operating centre that is big enough, has safe access and meets environmental standards. In Northern Ireland, standards for operating centres are applied to the hire-and-reward sector only.

516. Mr T Clarke: Chairman, may I ask a quick question?

517. The Chairperson: Perhaps we will wait until Gillian has finished her presentation before taking questions.

518. Mrs McIntyre: The hire-and-reward operators here have to have an operating centre, although they do not have to meet the same stringent environmental standards as operators in Great Britain. The Bill will require all operators to have an operating centre. Given the large number of small operators out there, many of whom have only one vehicle, we are considering what an appropriate standard for Northern Ireland might be.

519. For example, we understand that many of the small operators in Northern Ireland park at home. In Great Britain, operators who wish to park at home must be able to drive into their driveway, turn and come out again in a forward gear. We are considering whether that standard would be appropriate for Northern Ireland. We are also considering other options, such as the granting of grandfather rights to existing operators. There is much work to be done in that area.

520. We are also researching the role of the traffic commissioner in Northern Ireland. During consultation, it was decided that there would not be a traffic commissioner for Northern Ireland. However, the Bill gives the Department all the powers that traffic commissioners in GB have. The traffic commissioners in GB are the issuing authorities. They issue licences, hold public inquiries and take decisions on disciplinary matters. They have wide discretionary powers, and they are accepted by the industry, largely because of the degree of independence that they have. We are considering how best that function can be carried out. For example, we are considering whether the Driver and Vehicle Agency (DVA), which is, and will continue to be, the issuing authority, should carry out that role, or whether it would be better for the Department to carry out that function and keep it separate from the DVA. Those are further issues requiring our consideration.

521. One of the issues that was raised most at the industry meetings was exemptions, and the Department has been asked to examine that issue as a matter of urgency. GB has a long list of exemptions, and a list of exemptions also applies to the hire-and-reward sector in Northern Ireland. However, the exemptions are complicated and, in some cases, outdated. The DVA and our colleagues in the Vehicle and Operator Services Agency (VOSA) advised us that the Bill may provide a good opportunity to examine the list of exemptions more closely and consider a suitable list of exemptions for Northern Ireland. For example, we are determining the breadth of the definition of Crown vehicles and to which vehicles that will apply.

522. The Committee asked us to work closely with our counterparts in Ireland on the introduction of operator licensing in Northern Ireland. As the Committee knows, the current system of operator licensing in Ireland meets EU requirements and is similar to the current system here. A short time ago, we met officials in Dublin and, although a recent report by PricewaterhouseCoopers recommended that the Irish Government consider the introduction of full operator licensing, our information to date is that they have no plans to do so. We will continue to work closely with our Dublin counterparts to share information on our respective plans and to co-operate where possible, for example, on enforcement.

523. In introducing the proposals, we are aware that they present a considerable change to a large number of operators. The wide-ranging change will present a challenge not only to operators but to the Department's staff. We want to avoid peaks every five years when licences are up for review. We are considering, for example, how we might migrate the existing hire-and-reward sector to the system and how to introduce the own-account sector so that there is a transitional period. The Bill gives us the power to introduce appropriate transitional arrangements. We are considering various options: phasing in operators by fleet size; perhaps phasing in the standard at renewal stage; and the possibility of granting grandfather rights to existing operators.

524. Mr D Armstrong: Members can see that much work lies ahead of us over the next few months. Although the detail is to be provided through subordinate legislation, it is important that we get on with the work and bring the Committee some detail on what is happening to give members a flavour of the major issues that will arise.

525. The last stage of our presentation deals with the long list of documentation that the Committee has received. Gillian will go through the list and highlight to members the documents that she considers to be most useful to them at this stage of their consideration of the Bill.

526. Mrs McIntyre: It may be helpful to point out several documents that will give members a good background to the Bill. Early on, the Committee received copies of the policy memorandum that outlines policy and gives details of the consultations, the various options and the key measures. Today, members received a further two documents that set out how freight operator licensing operates under the existing legislation. Another document illustrates the changes to the licensing system that the Bill facilitates. All those documents provide good background information.

527. To gain an understanding of the contents of the Bill's clauses, the explanatory and financial memorandum gives a brief policy summary and a short commentary on each of the main clauses. The summary of the main provisions of the Bill should be read together with that memorandum. It provides a fuller commentary on the content of the various sections of the Bill that John Brogan outlined. It is not a clause-by-clause examination, but it follows the structure of the Bill.

528. Members also have notes from the stakeholder meetings, questions and answers and the Bill itself.

529. Mr D Armstrong: I shall finish with our hopes and thoughts about working with the Committee during the next several months. Our team of three wants to give you as much support and be as helpful and as informative as possible. That may include providing clarification on the meaning of clauses, about which John is our expert, or helping to align the contents of the Bill with the submissions that members receive in response to the Committee's call for views. That process will complete by 11 July 2008. We can answer questions, explain any aspects of the Bill and help the Committee to understand the freight industry as it is and as it will be in the

future. We want to be as helpful as possible and to give Committee members as much assistance as they require.

530. In conclusion, we want to produce a good piece of legislation. To date, we have received a lot of help from the industry and from stakeholders. We hope that the Bill will be good for the future. Bad legislation is worse than none at all. We aim to create a good piece of legislation and we want to help members as much as possible to achieve that.

531. The Chairperson: Good. We look forward to working with you towards a productive outcome.

532. Mr T Clarke: I want to raise a few points because I might have missed the essence of Gillian's comments on England and centres for small operators. Do small operators need a full operating licence for 3.5 ton vehicles?

533. Mrs McIntyre: A full operating licence is needed for any vehicle that weighs over 3.5 tons.

534. Mr T Clarke: So, licences are needed for all vehicles that weigh over 3.5 tons. That is OK.

535. The summary of main provisions, which refers to operator's licences, says that it will not apply to certain vehicles, including small goods vehicles that weigh under 3.5 tons; vehicles that are used by a haulier who is established in another member state; and vehicles that are used by a haulier who is established in GB and not in NI. Does that basically mean that if a haulier is established elsewhere and not in Northern Ireland, it does not need a licence?

536. Mrs McIntyre: A haulier who is established outside Northern Ireland will not require a Northern Ireland operating licence.

537. Mr T Clarke: Therefore, if I were to establish a business in the Republic of Ireland and move the operation to Northern Ireland, would I be exempt from needing a licence?

538. The Chairperson: To clarify, a licence would not be needed in Northern Ireland; although one may be required in GB. A business established south of the border will not need a licence. The potential driver or owner of the business may not have a licence. Is that what you are saying?

539. Mr T Clarke: It refers to a haulier who is established in another member state. Therefore, if someone from Northern Ireland wanted to establish a haulage business in the Republic of Ireland, then move the operation to Northern Ireland, that person would not need a licence because he or she is established in the Republic of Ireland.

540. Mr D Armstrong: If someone wants to establish an operation in the Republic of Ireland, he or she is free to do so. As a foreign operator, his or her vehicle could come in and out of Northern Ireland. However, he or she cannot establish as an operator in the South of Ireland and work from the North.

541. The Chairperson: I understand Trevor's point. Potentially, someone from Newry could simply move his or her operation down the road to, for example, Drogheda or Dundalk. Likewise, someone in Derry could move his or her business out the Letterkenny Road, and, bingo, he or she does not need a licence.

542. Mr D Armstrong: That is correct. However, that haulier would be classified as a foreign operator who is registered and hired for work in another member state, namely the Republic of Ireland.

543. The Chairperson: That would not affect the haulier's work and business operationally, other than to lessen the cost that he or she potentially would have to pay and the regulation that he or she have to work under as a consequence of the Bill.

544. Mr D Armstrong: If a haulier has an operating centre or operates a business in Northern Ireland, and wants an operator's licence in Northern Ireland, all the vehicles covered must be registered in either GB or Northern Ireland. Vehicles that are registered in the Republic of Ireland would not to be covered. If the haulier transfers its operation to another base —

545. Mr T Clarke: According the definition in the summary of main provisions, that will not apply to a vehicle that is used by haulier established in another member state. We had a presentation earlier from a representative of a business that has operated for over 100 years. I am sure, though, that the representative was not about when the business was established.

546. The Chairperson: He certainly did not look it, Trevor.

547. Mr T Clarke: According to that definition, there is nothing in the legislation to say that if someone moves an established business that has been formed in a state other than Northern Ireland, he or she is exempt from holding a licence.

548. Mr D Armstrong: If that person was to move that business and re-establish it in Northern Ireland —

549. Mr T Clarke: If someone established a business — for example, "McGlone Transport" — in Drogheda, and then moved it to Northern Ireland, it has been established in the Republic of Ireland.

550. Mr D Armstrong: That is different. There is no exemption for someone who transfers a business to Northern Ireland that has been established in another country. There is no provision for that. The legislation refers to operators and operating centres that are established in another member state, and can send their vehicles in and out of Northern Ireland. There is nothing to stop them from doing that.

551. The Chairperson: A haulage operator from Derry, for example, may operate a mile down the road across the border for all sorts of reasons, not least because of fuel costs. Have you picked up from the industry that it thinks that the extra regulation could potentially tip it over the edge?

552. Mr D Armstrong: We have not found that. The briefings that we gave and the questionnaires that we issued showed little interest in the issue of flagging out, as transferring business across the border is sometimes called. First, the standards that will be applied to vehicle roadworthiness and compliance with the law will stand, regardless of where the vehicle is registered. Secondly, the cost of licensing under the Bill will not be business-breaking money; it is a relatively small cost. Most businesses will not notice a huge difference in cost. It is less than the cost of one tyre for one vehicle a year.

553. Mr T Clarke: That is not a valid point.

554. Mr D Armstrong: Those issues were raised at our briefings, and we did not find any indication that significant numbers of operators wanted to flag out. Only around 11% of the questionnaires that we received raised the fact that they would even consider flagging out, let alone decide to transfer their business. Other costs are associated with transferring a business across the border that would not be incurred in the North. From our briefings, it has not come across as an issue that people wanted to register in the Republic of Ireland and would try to operate in Northern Ireland. As more detail emerges, that may well become an issue.

555. Mr T Clarke: Donald, can you find a location at which I could buy an operating centre for less than the price of a tyre?

556. Mr D Armstrong: No.

557. Mr T Clarke: The cost is more than the price of a tyre, so you are misrepresenting the case. For someone to have an operator's licence, he or she must have an operating centre. Mr Armstrong said that the cost of licensing was less than the cost of one tyre for one lorry for one year. If an operator does not need an operating centre, the licence is an additional cost; therefore, what he said is incorrect.

558. Mr D Armstrong: We are talking at cross purposes. I am talking about the cost of licensing.

559. Mr T Clarke: As am I; and an operator must have an operating centre to have a licence.

560. The Chairperson: If you finish your point, Trevor, we can get clarification on that issue.

561. Mr T Clarke: To have an operator's licence, someone will be required to have an operating centre. I count the cost of acquiring the operating centre as being part of the cost of acquiring the licence.

562. The Chairperson: Are you referring to someone who works from home and who parks their vehicle outside their house?

563. Mr T Clarke: It will include anyone who operates a vehicle weighing 3.5 tons and over.

564. Mr D Armstrong: When we refer to an operating centre, we mean the place where a vehicle is normally kept, stored or parked when it is not in use. In Northern Ireland, a significant number of people park their vehicles at home, and others park their vehicles at the roadside. Parking at the roadside will not be an acceptable way of storing a vehicle; people will have to find somewhere else to park their vehicles. As Gillian said, if the GB standard were to be applied in Northern Ireland, operators would have to be able to drive in and drive out of their driveways. They would have to be able to drive in, turn and drive out again.

565. Gillian mentioned that consideration must be given to whether that standard is acceptable in Northern Ireland. Given that lots of people in Northern Ireland park in their driveways, it may not be acceptable. It may be that our impact assessment results in that standard being changed. We do not anticipate that people who do not currently have somewhere to park their vehicles will have to buy operating centres. Everyone currently has somewhere to park their vehicle, but people who park on the roads will have to find somewhere else to park.

566. The Chairperson: Perhaps I am being a bit stupid, but do you define a road as being somewhere that is adopted by Roads Service?

567. Mr D Armstrong: That is the definition that we use for a public road when considering on-street parking.

568. The Chairperson: Potentially, that could affect quite a lot of people.

569. Mr D Armstrong: Yes, that is possible.

570. Mr B Armstrong: What will be done about a person who has a vehicle in the Republic of Ireland, lives in Northern Ireland and parks their vehicle on the edge of the road?

571. Mr Boylan: A mechanism is needed to check on drivers who come across to park outside homes in the North, because operating centres are not required in the South. Is that being considered?

572. Mr D Armstrong: It is currently unacceptable for people to regularly park goods vehicles on a public road.

573. Mr Boylan: That is the clarification that we were seeking.

574. The Chairperson: Members have all been out and about around housing estates and have seen lorries or vans parked outside houses on public roads. It may be unacceptable, but it happens. To pick up on what Mr Clarke said, the consequences of the legislation may be to enforce penalties and to force people to address the issue. We need to know what will be done and what the repercussions may be. Operators will have to find somewhere else to park vehicles and deal with the financial impact of that. The parking of vehicles on a road may be perfectly workable at present. However, whether it is acceptable is a different question.

575. Mr D Armstrong: That is correct. For owners to get an operator's licence, an operating centre will have to be specified. When Gillian spoke about that, she said that we need to consider what it will mean for operators who currently park in a driveway or on a public road. We will have to conduct a lot of research to ascertain what will happen in such cases. The impact of insisting on the GB standard and of insisting that operators park off-road — as they ought to at present — will have to be considered. It is unacceptable for operators to park on-road at present; we are not changing legislation in that respect. However, as a requirement for an operator's licence, operators must be able to specify where they will park, and it must be off-road.

576. Mr T Clarke: I want to return to the subject of operating centres. It was said earlier that there is no reason why an operating centre should not be from a private home, provided the vehicle can turn in the driveway and drive out again. There is possibly an option of doing that. However, the Department's letter of 16 April 2008 states:

"Additionally and separately, an operator will have to ensure that any proposed operating centre meets the requirements of planning law."

577. Most elected Members are aware that if someone applies to operate a registered business from a rural dwelling, planning permission will be refused. That means that rural operators will have to move their businesses to another operating centre.

578. Mr D Armstrong: We are not experts in planning. However, if a person has been parking in a driveway over a period of time, it is deemed as having been approved by the Planning Service.

579. Mr T Clarke: Not necessarily.



580. Mr D Armstrong: Approval of an operating centre and planning approval are separate issues. We talked about that at a previous meeting. We will not be involved in the planning constraints of an operating centre. However, planning law will impact on new operators, because existing operators, for the most part, will be deemed to have received planning approval, provided they have been operating in that fashion for years.

581. Mr T Clarke: Yes, provided they have been operating for at least 12 years.

582. The Chairperson: Trevor is correct about running an established business. We will return to the issue of the legislation's knock-on effects.

583. Mr Boylan: My point is related to that. Many members have raised the issue of operating centres. We worry about it because there are a substantial number of single operators. We discussed that at a previous meeting, and we will come back to it.

584. We received a presentation from representatives of a transport company who discussed a level playing field. What are your views on exemptions? I do not refer, as Trevor has, to operators across the border who will have exemptions. I mean exemptions from licensing for Crown vehicles, and so on. Gillian has already referred to it, but perhaps she could elaborate on it.

585. Mrs McIntyre: At present, there is a list of vehicles that are exempt from complying with operator licensing, including emergency vehicles, such as fire engines, ambulances and certain military vehicles. The list is long and complicated, and, because of the wording, enforcement teams find it difficult to interpret. Provisions for Crown vehicles are the subject of discussions with officials in GB. We are uncertain what the final definition of Crown vehicles will be. Potentially, it could include the vehicles owned by local authorities and Departments.

586. Mr T Clarke: That is unfair.

587. Mr Boylan: I do not have an issue with emergency vehicles. We will wait for your reply, but the question needs answered. Emergency vehicles should be exempt, but a level playing field is required.

588. Mr Ford: I want to follow up the points that have been raised about ineffective flagging out, which the industry does not consider to be a particular problem. Therefore, we accept that. However, there is an issue about vehicles that are registered elsewhere being parked on the street; that will not lead to a level playing field. For example, it could be possible for somebody with a Monaghan or Donegal registration to regularly park in a housing estate in Antrim. There must be some way of regulating that. Will provision be included in the regulations, because there is none in the Bill?

589. Mr D Armstrong: I cannot give you an answer on that issue. I cannot imagine, for example, that the Goods Vehicles (Licensing of Operators) Bill will contain provisions for vehicles that park on a road in a residential estate. I am happy to investigate the issue to ascertain how it will be addressed, and I will then respond. However, such a provision will not appear in the Bill or in the regulations.

590. Mr T Clarke: There should not be a provision for that. If someone with an operating licence in Northern Ireland cannot park in the street — with the greatest respect, and I do not care where they are from — no one else should be allowed to do so. Why should we tie the hands of people from north of the border?

591. Mr Ford: That is the point that we tried to make during previous discussions on the issue. We wanted to ensure, as far as is possible, that there is a level playing field. About once a year, a Polish lorry driver may stop in the street, but that is not the same as parking regularly.

592. The Chairperson: As you can see, we have a flavour of some of the issues that are ahead of us.

593. Mr D Armstrong: I am gratified by that, because those are the issues that Gillian talked about in her presentation.

594. Mr T Clarke: I want to return to the issue of tractors used for purposes other than farming. A letter from the Department stated:

“Subject to further consideration, a person using a tractor for purposes other than farming would be required to hold an operator’s licence.”

595. Agricultural contractors are not deemed to be farmers because they have to use clear diesel in their vehicles. I believe that their vehicles should be classified the same as a tractor. That is an issue that must be tied down.

596. Mr D Armstrong: Farming and forestry vehicles will be included when we consider exemptions. A decision must be made as to whether they are classified on the basis of the function that they perform or on the type of vehicle. That is a huge area.

597. Mr T Clarke: A problem exists with that issue. Agriculture contractors are expected to use clear diesel because they have contracts, even though the purpose of their work is agricultural.

598. The Chairperson: The point has been well made. I am conscious of the time. We will revisit the issues that were raised. I thank Gillian, John and Donald for their time.

## **11 September 2008**

Members present for all or part of the proceedings:

Mr Patsy McGlone (Chairperson)  
Mr Cathal Boylan (Deputy Chairperson)  
Mr Billy Armstrong  
Mr Trevor Clarke  
Mr Samuel Gardiner  
Mr Ian McCrea  
Mr Daithí McKay  
Mr Alastair Ross  
Mr Peter Weir

599. The Chairperson: The next item of business is an update on the Goods Vehicle (Licensing of Operators) Bill. It has been some time since the Committee dealt with the Bill. The Committee Clerk will talk members through the various stages.

600. The Committee Clerk: The Goods Vehicles (Licensing of Operators) Bill Committee is now at the Committee Stage.

601. The Committee’s most recent piece of work on the Bill was to ask the Assembly to extend time to 12 December 2008. That was agreed; however, the Committee does not have to use all of that time. If its work is complete, it can report earlier.

602. Under the Committee's instruction, a public notice was issued, inviting written comments. Three responses were received, and those are included in members' documents. The Chairperson may want to take members through those, or give them time to consider them today. They are not long.

603. The Committee must now decide what, if any, oral evidence it wants to take. If the Committee believes that sufficient evidence has been received on the relevant issues, it may decide to take no more. Alternatively, it may consider that further issues arise from the oral evidence, which it may want to tease out in more detail. Furthermore, it may decide to hear evidence from other bodies — people who have not responded but from whom the Committee wants to hear.

604. Once that evidence has been received, Committee staff will collate the issues that arise from all of the written and oral correspondence and map those against clauses in the Bill. The clause-by-clause analysis will then begin.

605. The Department will receive, and respond to, that document and, at that stage, the Committee will decide whether to propose amendments to, or make recommendations on, the legislation. That will bring the Committee to the pre-report stage. The purpose today is, therefore, to decide on the evidence.

606. The Chairperson: When we initially discussed this some members — certainly Mr Armstrong and Mr Clarke — raised issues around the question of agricultural and horticultural vehicles. I think that it is important to hear from those people.

607. Mr T Clarke: They expressed concern on that issue in their submissions. Therefore, we must listen to them.

608. The Chairperson: The third written submission we received is from Ms Beverley Bell, traffic commissioner for the North West Traffic Area in England. She offers to make a presentation to the Committee. I am not so sure about that — how do members feel about inviting her to appear as a witness?

609. For the sake of clarity, do members accept her submission, which arrived after the 11 July closing date?

610. Committee Members: Yes.

611. The Chairperson: Do we wish to hear from her? No enthusiasm is evident.

612. Therefore, we will take evidence from the Ulster Farmers Union and the Horticulture Forum for Northern Ireland. Is there anyone else from whom we want to hear? No?

613. I advise members that the Committee had agreed to treat the paper from the Federation of Passenger Transport as a submission in respect of the Goods Vehicles (Licensing of Operators) Bill. However, the Committee staff contacted Mrs Karen Magill, chief executive of the federation, who advised that it would not be appropriate to treat its paper as a submission.

614. We have already taken pre-legislative evidence from two stakeholders — the Freight Transport Association (FTA) and the Road Haulage Association (RHA). Is there any other organisation, group or Government agency from which we must take evidence? No?

615. Mr Boylan: There is the issue of planning permission for three-and-a-half-ton vehicles operating from home. Do we need someone to advise us on that?

616. Mr Clarke: That would be helpful, Chairperson.

617. The Chairperson: I agree.

618. Mr Boylan: Should we hear from someone in the Planning Service?

619. The Chairperson: It should probably be the appropriate person dealing with that issue in the Department. What about hearing from enforcement officers, who are at the coalface? We can have the Department bring their respective officials in relation to planning issues. We will hear from enforcement officers, then. Is that agreed?

Members indicated assent.

620. Mr Clarke: We need a definitive answer, because we could not get a straight answer from the Roads Service witnesses on the obligations of persons operating from residential properties. We must have a definitive answer from the Planning Service on whether such operators must apply for permission to run businesses from home addresses.

621. The Chairperson: As a reminder to myself, in relation to the McAnulty case, aside from maybe notifying Mr McAnulty when the officials will be attending the Committee meeting, we should also notify Mrs Magill in order to keep her informed of developments.

## **25 September 2008**

Members present for all or part of the proceedings:

Mr Patsy McGlone (Chairperson)

Mr Cathal Boylan (Deputy Chairperson)

Mr Roy Beggs

Mr Trevor Clarke

Mr David Ford

Mr Tommy Gallagher

Mr Ian McCrea

Mr Daithí McKay

Mr Alastair Ross

Witnesses:

Mr Chris Osborne

Mr Gregg Shannon      Ulster Farmers' Union

Mr Harry Sinclair

Mr Bailey Thompson

622. The Chairperson: The Committee will be briefed by the Ulster Farmers' Union (UFU) on the Goods Vehicles (Licensing of Operators) Bill. Members received an update on the Bill at the meeting on 11 September, when it agreed to invite oral evidence from the UFU and the Horticulture Forum for Northern Ireland. The Committee also agreed to take evidence from the Department's enforcement and planning officials.

623. At its meeting on 18 September, members subsequently agreed to invite Beverley Bell, traffic commissioner for the north-west traffic area, to brief the Committee on the Bill.

624. Today, the Committee will hold its first oral evidence session, when representatives from the UFU will present their views on the Goods Vehicles (Licensing of Operators) Bill.

625. A copy of the Goods Vehicle (Licensing of Operators) Act 1995, and relevant extracts from the Transport Act (Northern Ireland) 1967, have been added to the master file. It will largely, but not wholly, replicate the Goods Vehicle (Licensing of Operators) Act 1995.

626. I welcome Mr Harry Sinclair, deputy president of the UFU, Mr Gregg Shannon, chairman of the UFU legislative committee, and Mr Chris Osborne, UFU policy officer.

627. Mr Osborne has given the Committee one amendment to the UFU's submission. There has been an omission in its notes, and a line should have been included before the exemption stating that those were the exemptions in place in GB, and not a UFU wish list.

628. Mr Beggs: Can the Committee Clerk clarify whether I need to declare an interest each time as my parents run a family farm and may be affected by the proposed change, and they are members of the Ulster Farmers' Union as well?

629. The Committee Clerk: I will get back to the member on that.

630. The Chairperson: I welcome the representatives from the Ulster Farmers' Union.

631. Mr Harry Sinclair (Ulster Farmers' Union): We have brought along another witness. Bailey Thompson, who is a fruit and vegetable grower from north Down, has come to give a practical view on how the Bill will affect him.

632. The Chairperson: The Committee usually gives witnesses a maximum of 15 to 20 minutes to make a presentation — or less if they prefer — and then members will ask questions.

633. Mr Sinclair: Thank you for the invitation. Our members have already been introduced, except for Bailey Thompson, who is a practising producer.

634. Although the UFU acknowledges the importance of road safety, any initiative is only as good as the drivers who operate the vehicles. In many cases, accidents are caused by the operator, and not through any fault with the vehicle. Chris will explain, first of all, why agriculture is treated differently from other industries.

635. Mr Chris Osborne (Ulster Farmers' Union): As the legislation stands, there is the potential for a lot of agricultural vehicles to get caught up in the legislation — for example, a tractor carrying a trailer. For the purposes of this presentation, they will be described as dual-purpose vehicles and their trailers, which can include 4x4s and Land Rovers. In 2006, 10,586 tractors in classes 40 and 44 were registered, compared to almost 25,000 heavy goods vehicles.

636. Many everyday farm practices will be caught up in the legislation, for example, bringing input onto a farm, which could include fertiliser, manure, and so on — I will not get involved in the detail of waste — and a farmer taking his livestock from one field to another in a trailer pulled by a Land Rover.

637. The UFU has forecast that, if the current proposals were implemented, it would create over 15,000 operating centres — essentially, farms where vehicles would be stored. Harry referred to

the acknowledgement of road safety. The PSNI's statistics for 2007-08 show that there were 9,748 road casualties in Northern Ireland and, of that number, less than 1% involved other vehicles, which includes tractors. Northern Ireland transport statistics for 2006-07 show that 21% of roads are urban and 29% are rural.

638. The Committee will ask why farming should be treated differently to other industries such as haulage. In economic theory, there is the concept of the public good, which is defined as a good that is unrivalled and non-excludable. That public good is provided by farmers. Once that good is consumed, it is immediately replaced, and, for as long as that process is uninterrupted, it will continue. For example, when I will eat a potato, it will be replaced.

639. By securing that particular line, food supply is secured, and that takes care of local needs and export and trade needs. That is why we believe that we should be treated differently. Although we may not have considered it 10 years ago, there is a real prospect of food shortages, especially compared with the past 35 years.

640. Mr Bailey Thompson (Ulster Farmers' Union): The existing legislation governs the weight and width of farm vehicles. Currently, that is heavily inspected by the Health and Safety Executive for Northern Ireland (HSENI), the police, the Department of the Environment and, for fuel, HM Revenue and Customs (HMRC). If legislation is introduced for agricultural vehicles, how will that affect tachographs? One tractor may have four drivers — is each driver expected to fill in a tachograph every morning and carry that during a day's work? That is my concern.

641. Mr Gregg Shannon (Ulster Farmers' Union): A section of the Driver and Vehicle Agency (DVA) is responsible for enforcing legislation that pertains to goods vehicles, buses, taxis, private cars and agricultural vehicles. There is, already, a substantial organisation that — if it does its job properly — covers the safety aspect and ensures that vehicle owners and insurance companies know the regulations. Therefore, the Department's proposal for the Vehicle and Operator Services Agency to undertake that function is unnecessary. That measure will increase costs. What costs can be introduced legitimately? That matter has never been dealt with properly; everybody considers their own costs and assumes that they will continue. The proposal does not consider the increase or decrease in the number of people who need licences, and it does not take cognisance of other people's involvement and whether they are doing their job.

642. There is no competition with hauliers. In the past couple of years, we have had substantial discussions with HMRC about red and white diesel. Red diesel is used for agriculture and off-road purposes only, and in certain other cases. That regulation is enforced strictly by HMRC, with the effect that farmers use vehicles on the road for agriculture purposes only. It is clear that that is outside the remit of goods vehicle licensing, and hire and reward.

643. Furthermore, we are concerned that the proposals, in their current form, would increase bureaucracy and red tape. Although the cost of writing a cheque for £100 for a licence might be insignificant to some operators, the cost of maintaining records — which can be forged — could be expensive. For example, if a fellow just walks around a lorry, and signs off that he has completed its six-weekly inspection, who is to say that he actually did it? The crux of the matter is that, if stopped, the vehicle must be up to standard, and that will not be achieved by someone coming to examine my, Harry's or anybody else's records.

644. This proposal far exceeds the system currently operating in GB. If DOE were asked to report on arrangements in other EU countries, it would be interesting to hear the reply. At a recent meeting, DOE representatives assured me that these proposals are not EU driven. Therefore, why should this country, which must compete on equal terms — perhaps not even equal terms, because of its distance from markets — with all the other food producers, bear extra costs in advance?

645. If the spot checks required by existing legislation were properly carried out — bearing in mind that that legislation is concerned with public safety and not just operator safety, and the cost of carrying out those spot checks is therefore part of normal Government costs for protecting public safety — it would not be necessary for the farming industry to bear those additional costs, which would be applied inefficiently.

646. Mr Sinclair: Transport for hire and reward must be treated differently from transport of necessity and occasional use. Generally, farmers haul their own products; they do not use transport for hire and reward.

647. Gregg mentioned increased bureaucracy and red tape, which, as everyone knows, involves extra costs. The agriculture industry runs on fine margins, and any additional costs must be passed down the line. The last thing that any politician, or anyone else in society, wants is increased food prices, and the proposals would result in additional costs being passed along the system. That would be the only way to pay for complying with the new legislation, and that is the last thing that the industry wants, which is why we are calling for the exemption of all vehicles involved in agricultural activities.

648. Mr G Shannon: It is tremendously important to note that agricultural vehicles are not on the road for 12 months in a year. Silage trailers are used perhaps for three days over a six-month period. Combines are used, at most, for a couple of months in a year. All such vehicles would require exemptions. Why spend time producing those exemptions, when existing exemptions serve the same purpose?

649. The Chairperson: We hear what you are saying: as with most things, a bit of common sense is required.

650. Mr T Clarke: I welcome the Ulster Farmers' Union to the Committee. The witnesses have touched on the nub of the matter, although they did not go far enough. The Bill is bureaucracy gone mad. From the start, I have totally disagreed with it.

651. Harry did not mention a matter that I raised concerning agricultural contractors, and there is an argument that such work should be treated as hire and reward. However, if we look at the casualty and injury statistics related to farm vehicles, it is clear that those injuries do not come about because a vehicle is not parked in a locked yard. The Department is attempting to create something for which there is no justification. There is no reason for it. We have received injury statistics, but those injuries did not happen because a vehicle was parked in the wrong place; they relate to road-traffic injuries. Consequently, I cannot understand how legislation requiring farmers to have a licensed yard would make the roads any safer. As you said in your submission, the MOT test that we have here is good; vehicles must be brought up to the required standard, and they either pass or fail. That goes far enough towards meeting operational safety requirements. This legislation is bureaucracy gone mad, and I support you on that.

652. Mr G Shannon: I am glad that someone sees things the same way as we do.

653. I could talk for hours, if necessary, on recoupment of full costs, because nobody has defined what they are. In fact, in that situation, every Department wants to recoup full costs. Farmers want to recoup full costs for their agricultural produce. However, they do not get them. When they look for that, the first question that they must ask is whether they can effectively reduce the cost of what they do and produce the same result. The Bill, as we see it, does not begin to deal with that issue.

654. Mr Ford: I want to ask you about a reference that you made in your earlier remarks. What is the position under the Goods Vehicles (Licensing of Operators) Act 1995 — the equivalent legislation — in Great Britain as it relates to agricultural vehicles?

655. Mr Osborne: GB has full exemptions.

656. Mr G Shannon: It has four pages of them.

657. Mr Ford: At the end of your submission dated 22 September, under the heading 'Operational Considerations', you have listed the matters that you believe should be exempted. Does that follow broadly the list of exemptions that are available in GB, apart from the fact that you have listed them on less than half a page, rather than on four pages?

658. Mr Osborne: Yes.

659. Mr Ford: It seems to me that there are other issues that you have not entirely acknowledged. Your submission is written for the fellow who puts a pallet of manure on the trailer behind his Massey Ferguson 35 and potters two miles along the road from his neighbour's field to his own land. However, a certain number of such vehicles are used to do similar work to that which is done using lorries. It may be useful to examine exemptions in that area under operational considerations. It will be difficult to find exemptions on a wider basis than that which the Department will accept, because that would create a gaping hole whereby people might sell their lorries and replace them with fast tractors.

660. Mr Osborne: Very much so.

661. Mr G Shannon: We have already agreed the matter with HMRC. It accepts that people who carry out contract work are on the road more often than the man, of whom you painted a good picture, who tows a pallet of manure. He still carries agricultural produce from one guy's field to his farm or storage area out of necessity. These days, the size of farms requires farmers to go on the road. However, a tractor is not the type of equipment that would be used for hire or reward in the broad sense, like the 24,000 lorries that move stuff about in Northern Ireland.

662. Mr T Clarke: Gregg is saying that fast tractors do not go to the Continent and lorries do not lift silage.

663. Mr G Shannon: In fact, fast tractors have been well and truly stamped upon by HMRC; quite rightly, in our view. Put it this way: we are here to argue for our exemptions. There are good economic reasons why they should be made. For a while, everyone was chasing everyone else up and down roads because fast tractors carried everything. HMRC then stopped the use of red diesel. Red diesel was all that made fast tractors economical. When its use was stopped, fast tractors disappeared.

664. Mr Ford: That was the further point that you made in your submission when you referred to HMRC policy. Do you and HMRC agree fully on what is red diesel allowable and what is not at this point in time?

665. Mr G Shannon: At this point in time, yes.

666. Mr Osborne: In our eyes, yes. We relay that to HMRC. On occasion, it approaches us and asks our view on what constitutes —



667. Mr Ford: My understanding is — at the risk of mixing metaphors — that there are still a few grey areas between the red and the white.

668. Mr Osborne: Yes, but our users are always fully aware of what they are entitled to use.

669. Mr G Shannon: The matter is always open for discussion, Mr Ford.

670. Mr Sinclair: Generally, those grey areas are on the borderline of agricultural activity. Ultimately, the Ulster Farmers' Union represents farmers and agricultural activities. If people venture into other activities, they do so at their own risk. We feel that they jeopardise the entire industry.

671. Mr Ford: Do you consider the HMRC rules as appropriate guidelines on how the DOE might apply this particular piece of legislation?

672. Mr G Shannon: I think that that is putting things slightly back to front. HMRC runs its own show, and it will approach us and tell that a certain vehicle should not have the advantage of using red diesel. As Harry said, if it is not for agricultural activity, we would not support it.

673. Mr Ford: The point I am making is that if the Committee advised the Department that agricultural activity should be exempt, it would be easier to use existing rules to determine that exemption.

674. Mr T Clarke: It would be easier to throw it out. The Bill is a waste of time.

675. Mr Ford: You have lost the principle of the Bill, Trevor.

676. Mr T Clarke: The principle of the Bill is road safety, and the Department claims that the Bill will prevent road accidents. No one can convince me that parking vehicles in a secure yard will make roads safer. The whole Bill is a piece of nonsense and should be scrapped as soon as possible.

677. Mr G Shannon: We were not surprised to learn that 70% of vehicles that were checked were not up to standard. However, checks had not been conducted prior to that occasion. If checks had been ongoing, that 70% figure would be useless — it is only a spot check. Spot checks should be conducted regularly. After an MOT vehicle test, the standard of the car is not questioned for the next 12 months unless it is involved in an accident. The whole Bill is loose.

678. Mr Beggs: Large numbers of hauliers are unfit to be on the road, and the Bill must tighten existing regulations. However, the farming industry does not contribute to many road accidents, and, therefore, the numbers seem disproportionate.

679. Is a detailed breakdown of those other vehicles available? How many are steamrollers? How many are other vehicles unconnected to the farming industry? A breakdown of the number of agricultural vehicles would be useful.

680. The Chairperson: If that breakdown can be provided.

681. Mr Beggs: A letter from the Department indicated that the Bill will include powers to exempt certain vehicles and that the regulations will be provided for scrutiny. Has that been provided? Has it already been agreed to exclude —

682. The Chairperson: Mr Osborne's letter outlined that DOE had assured the UFU that, because only enabling powers are involved, exemptions will be dealt with at the subordinate stage and, at that time, the UFU's views will be considered. Therefore, the process has probably not reached that stage.

683. Mr Beggs: I have experience of the rural community. One of my neighbours frequently uses his tractor to cross the road from one part of his farm to the other — that is the extent of his road usage. It would be draconian to create operator licences to enable people to cross the road. Furthermore, given the statistics that have been provided to the Committee, it is unnecessary.

684. The Department has been talking about tractors; 4x4 vehicles are used infrequently to travel to a market or abattoir, and most farms do not use those vehicles every week. Has the UFU discussed with the Department whether it intends to include 4x4s in the operating-licence criteria?

685. Mr Osborne: My understanding is that 4x4s may be included. We have not spoken to the Department — that is based on reading the proposed legislation and, if we do not speak up, those vehicles could be included. The UFU is asking that if 4x4s are being used for agricultural purposes — that is, a dual-purpose vehicle with a trailer — they should be exempt.

686. The Chairperson: To give a quick synopsis, is the UFU saying that it would prefer that agricultural activity be exempted in line with GB?

687. Mr Osborne: Yes; we could have said that in one sentence.

688. The Chairperson: I am just trying to capture the mood of what has been said.

689. Thank you all very much for your time.

## **2 October 2008**

Members present for all or part of the proceedings:

Mr Patsy McGlone (Chairperson)  
Mr Cathal Boylan (Deputy Chairperson)  
Mr Roy Beggs  
Mr Trevor Clarke  
Mr David Ford  
Mr Tommy Gallagher  
Mr David McClarty  
Mr Ian McCrea  
Mr Alastair Ross

Witnesses:

Mr Colin Eve  
Mr Robin McKee      Horticulture Forum for Northern Ireland  
Mrs Bernie Cosgrove  
Mr Richard Lee  
Mr John Martin      Department of the Environment  
Mr Simon Kirk

690. The Chairperson (Mr McGlone): I welcome Mr Robin McKee, the chairman of the Horticulture Forum for Northern Ireland, and his colleague Mr Colin Eve, who are here to give evidence on the Goods Vehicles (Licensing of Operators) Bill. Gentlemen, you will have 10 or 15 minutes to make your case, after which members will have an opportunity to ask questions and elicit any further information if required.

691. Mr Robin McKee (Horticulture Forum for Northern Ireland): For members who are not familiar with the Horticulture Forum for Northern Ireland, it is a consultative committee that was set up by the Department of Agriculture and Rural Development to represent apple, mushroom and vegetable growers, and nurserymen, landscapers and gardeners. The forum represents mainly small businesses, many of which are family businesses.

692. I thank members for taking the time to listen to our views on the Bill. I emphasise that all members of the forum fully acknowledge the need for a Bill to increase road safety, and they already adhere to the current legislation, the MOT and PSV monitoring, by keeping their vehicles roadworthy. Colin will now make a presentation to the Committee on our views.

693. Mr Colin Eve (Horticulture Forum for Northern Ireland): To avoid drastic note-taking, I will leave copies of the presentation for the Committee. The current legislation allows for exemptions for the agriculture, horticulture and forestry industries. At the time the legislation was brought in, those exemptions were introduced with good reason, because we are not hauliers. Our vehicles are not on the roads daily, and we do not make a living from haulage. The majority of the forum's members may have their vehicles on the road for a small percentage of the year and, through carrying out their tasks, inadvertently fall into the category of carrying goods for reward. Some examples are: the apple grower who uses a vehicle to transport his harvest for eight weeks a year; the farmer who cuts and collects a neighbour's silage once or twice a year, and the landscape gardener who cuts the grass and prunes the shrubs for Mrs Smith and removes the cuttings to a registered waste centre.

694. In no way can those activities in our industry be used to imply that we are the same as hauliers, nor can it be claimed that our activities on the road are a risk to road safety. According to PSNI statistics, collision casualties resulting from other road users, including tractors, is less than 1% in any of the last five years. That is a strong indicator that the current regulations work.

695. The Road Haulage Association is arguing strongly for all-in legislation. Its argument is that some companies that should currently be operating under an operator's licence are not, thereby endangering lives on the road. I cannot emphasise strongly enough that those lawbreakers should not be confused, or grouped, with those industries that work legally and safely within the current legal exemptions. Our members are not lawbreakers.

696. The association's concerns are already addressed in current legislation that provides for the prosecution of those companies that break the law. However, the truth of the matter is that, with only approximately 20 enforcement officers in Northern Ireland, it is not the lack of legislation that allows individuals to continue breaking the law, but a lack of manpower on the ground to catch them.

697. It has been quoted that the preferred number of enforcement officers is 50, and we suggest that drawing in new industries, such as horticulture, farming and forestry, under the legislation is intended not to improve road safety but to spread the cost of enforcement. The problem with that plan is that by adding all those industries, an increase of enforcement officers from 20 to 50 will be completely lost. The implementation of the new legislation, without including exemptions similar to the current ones, will mean that every single one of the approximately 15,000 farmyards will become an operational centre, as will all premises of

landscapers, gardeners and growers. The percentage increase of the population to be policed would far outstretch the percentage increase of law enforcers.

698. Given that the current number of law enforcers is stretched and unable to catch the lawbreakers, what chance would they have when required to police virtually everyone? The individuals who dare to operate illegally, daily, will simply disappear into the massive sea of bureaucratic visits and policing of all the new operational centres. Surely, it makes more sense to increase the number of law enforcers from 20 to 50 in order to enforce current legislation.

699. We are wary of the Department's suggestion that this legislation will cost so little to our members that it is not worth worrying over. The amount quoted to the Horticulture Forum, and probably to the Committee, is approximately £47.62. That quote is indicative of how loaded this new legislation is to the advantage of the haulage industry, and to the disadvantage of those represented by the Horticulture Forum.

700. The figure is based on those companies that have 10 vehicles with a cost of £2,381 for a five-year licence. That does amount to £47.62 per vehicle per annum — a figure which is frequently bandied about as being the cost of a tyre, and not very much at all if someone's vehicle is out each day making money from hauling. However, our members are not hauliers, and do not fall into that category. Some will fall into the category of three vehicles, but the majority fall into the category of one vehicle, costing them £152.20 per vehicle — a vehicle which they may use for only one month of the year or even less.

701. There are those who believe that £152 does not sound very much, but the additional and real cost will not stop there. There is additional record keeping, auditing, additional vehicle maintenance requirements — despite the fact that we are already paying for annual MOTs and PSVs — and the required proof of sufficient financial resources.

702. For haulage companies, all those requirements are already part and parcel of their daily administration. Indeed, the majority are already required under current legislation. To haulage companies, therefore, the cost and impact is minimal. For our industries, it is all new, and additional to the costs and overheads under which we are already straining.

703. According to statistics from the Federation of Small Businesses, Northern Ireland is unique in its very high percentage of small businesses, particularly small, family-run businesses for which a large and experienced administrative team is an unknown luxury. The cost of this proposed legislation to our members is by no means simply the cost of a new tyre every year. Those extra costs constantly add to the bureaucratic noose.

704. The Goods Vehicles (Licensing of Operators) Bill research paper of May 2008 states that the impetus for change comes from the freight industry, whose concerns include the "extent of illegal operations" and the "need for more and better enforcement". They are losing business to illegal operators. Their concerns may be justified, but why are our industries, which are entirely unlike the freight industry, being asked to contribute to the cost of responding to those concerns? Our industries do not ask for the freight industry to share the cost of legislation affecting us.

705. If more and better enforcement is needed, why is the freight industry seeking to increase the numbers of operational centres out of all proportion? If you cannot find a needle in a haystack, you do not make the haystack bigger.

706. It is claimed that Northern Ireland has much weaker freight licensing enforcement powers than GB. Statutory agencies have complained about the standard of Northern Ireland vehicles crossing to GB. Farmers do not go over to GB in order to bring in their neighbour's silage, and

gardeners and landscapers do not take the boat over to England and Scotland in order to landscape Mrs Smith's garden. It is not the vehicles belonging to our industries that are raising those concerns.

707. With regard to road safety, according to PSNI statistics, collisions and casualties resulting from other road users, including tractors, amounted to less than 1% in any of the last five years.

708. On the subject of environmental standards, the Bill research paper states that:

"Present licensing arrangements offer no effective safeguards against operators who pay no attention to the environmental standards of their operating centre".

709. By all means change legislation in order to give enforcement officers that facility, but how can that be achieved by creating in excess of 15,000 more operating centres? Law enforcers will be overwhelmed, the cost to decent law-abiding people will be increased, and lawbreakers will be hidden in the sheer volume of operating centres.

710. The members of the Horticulture Forum for Northern Ireland welcome effective legislation that brings about road safety. However, the proposals will not achieve that by roping in our industries, and we are being rounded up and herded in to reduce the financial burden of addressing the dissatisfaction of the haulage industry.

711. The Chairperson: Thank you very much for your presentation. Do members have any queries?

712. Mr I McCrea: The views of the horticulture industry have been made very clear. Obviously you will raise some of the relevant issues directly with the Department, but we will also include them with the other matters that we wish to raise. There are important issues concerning whether horticulturalists should be included in the scope of the Good Vehicles (Licensing of Operators) Bill, or even — taking account of Trevor's opinion — whether the Bill should be passed at all. You have probably added to my colleague's desire to see the Bill fail. I welcome your presentation; it provides some more food for thought on the issue.

713. Mr Boylan: Thank you for your presentation. I understand that, if the Bill is to be passed, you would like there to be exemptions, but you must realise that the hauliers should not carry the entire burden. The purpose of the Bill is to achieve road safety, and a balance must be struck. I speak from a rural point of view, and 70% of road fatalities occur on rural roads. I take on board the points that you make about the industry, but, at the end of the day, it is for the Committee to scrutinise the Bill and ensure that it can achieve its aims. You have made it clear that you would like there to be exemptions, but currently the road hauliers are carrying the entire burden. Can you respond to that?

714. The Chairperson: I should mention that last week the Committee heard a presentation from members of the Ulster Farmers' Union (UFU), who requested that there be a range of exemptions to the Bill more or less equivalent to the exemptions in Britain. I have sympathy with your view, and you make many of the same points made by the UFU, because we are dealing with more or less the same issue — agriculture — although in a different form. Are there exemptions in GB that apply to horticulturalists; people growing apples, or mushrooms, or whatever the case may be? Are there exemptions over there that could read across here? Perhaps it is unfair of me to ask that; you may not know.

715. Mr McKee: There are exemptions for Land Rovers and trailers, etc; those would cover quite a range of vehicles. However, there are a number of details that are unclear. A landscaper, for example, may have a van with a small trailer attached; we are unsure whether that would be

exempt. There are also a lot of small 7.5-ton lorries; we are not sure whether those would be exempt.

716. The Chairperson: I am thinking specifically of people engaged in horticulture in Britain. What are the exemptions there? Perhaps you do not know. The UFU, last week, made a strong case for a range of exemptions for people engaged in farming. Are there a number of exemptions in Britain that could simply be applied here, or, if not, why should the law be different here? Take some time to think about that, and if there is any information that you can offer, please do.

717. Mr Boylan: That is the point that I was making. You have mentioned apple growers working eight weeks a year, and so on. Have you thought about the issue of exemptions mentioned by the Chairman?

718. Mr Eve: We have discussed exemptions. Primarily we would like to see a total exemption for the local horticulture industry; that would be our main concern. There are exemptions based on the distance from the operating base. I believe that, currently, operators working within 50 km of their base are exempt. If there are to be exemptions, we would like to see those transferred across. There are other minority details concerning, for example, a landscaper taking topsoil to and from sites. I think that there is legislation being passed by the EU; topsoil is currently classed as a waste product.

719. The Chairperson: That is the responsibility of the Northern Ireland Environment Agency (NIEA).

720. Mr Boylan: You mentioned enforcement in your presentation, and, obviously, there is a need for more enforcement; the question is how that enforcement can be generated. We have heard a number of presentations, including from the road-haulier groups, and they are calling for more enforcement. How can that be achieved?

721. Mr McKee: Do you mean how can it be financed?

722. Mr Boylan: That will be part and parcel of it, if the Bill is to be passed. That issue must be taken on board as well.

723. Mr Eve: I do not understand why the current enforcement officers — I think that there are 20 of them —

724. Mr T Clarke: They do not understand either.

725. Mr Eve: Currently, there is no effective enforcement; generating new road-haulage operational centres is not going to achieve any more enforcement.

726. Mr Boylan: We are not disagreeing with you, and that is why we are challenging the Bill. There can be exemptions in place that will apply to the horticulture sector but, if there is going to be enforcement, we need to ensure that it is effective.

727. Mr T Clarke: I am totally opposed to the Bill, and I do not see how it is going to do what it is meant to do. Keeping slow-moving tractors in an operating centre or charging a fee for an operator's licence is not going to make the roads any safer; I cannot see how the Bill is going to do that. We all want to see an improvement in road safety, but every time I read the Bill I get more apprehensive. People will be charged for having a certain number of vehicles, which must be kept in a special yard, and, after someone has invested money, the Department can review

that yard every five years — I have major reservations about that. I support, initially at least, the call for the agriculture and horticulture sectors to be exempt; I would go further than that, however. I think that other members of the Committee know my view.

728. Mr Ford: In your presentation you talked about people who inadvertently fall within the regulations, and the Committee has great sympathy for the man who puts his neighbour's hedge trimmings into a trailer behind a tractor. Last week, I was talking to the Farmers' Union about what might be regarded as a red-diesel exemption; if something can be legitimately done with red diesel in a tractor then the question arises as to whether that should be exempt. It seems to me that once you start talking about landscape contractors travelling around a fair bit in 7.5-ton lorries, then you are into a completely different style of use. Although we could all agree on the exemption for the low-key, local, tractor-based activity, the Horticulture Forum seems to be trying to make the case that the 7.5-ton lorries used by its members are different from everybody else's. I do not see that point.

729. Mr Eve: Landscapers are part of the Horticulture Forum, but we represent —

730. Mr Ford: I am looking at that particular sector and I cannot see how it can easily fall within, what could be broadly termed as, an agricultural exemption.

731. Mr Eve: The landscape industry is probably more commercial than the other industries that we represent. I apologise that I keep going back to the same point, but the landscape companies that are operating perfectly legally today and are maintaining their vehicles, generally tend to be small companies. The cost of the licence is relatively OK; however, the issue is the administrative burden on those small companies and the bureaucracy that comes along with that licence.

732. Mr Ford: Within half a mile of me there are two businesses in adjacent yards: one is a landscape contractor who employs four or five men; the other is a single-manned meal and fertilizer business who does a lot of haulage on his own account. Why should the landscape contractor be exempt when the fellow carting meals and manures is clearly not going to be exempt?

733. Mr Eve: Regarding the chap who is carrying the meals and manures, that is his daily haulage business, Monday to Friday. Generally, a landscape contractor — if he is sowing out a lawn, pruning a bed or building a deck at the back of somebody's house — is not a road haulier.

734. Mr Ford: Nonetheless he is at times hauling quite significant loads in a vehicle of substantial size. If he were merely running a tractor around the townland, I could see what you are talking about.

735. Mr T Clarke: Surely, the authorities have a comprehensive list of all vehicles. If enforcement procedures in the past were right, you could go to any vehicle and carry out a spot check. An MOT or PSV is only as good as the day you get it — we are all aware of that. If you drive the vehicle down the road and something falls off it, and if you take it back in again, it will not pass the PSV or MOT test. A proper enforcement regime in Northern Ireland should have a database and be able to check those vehicles. If vehicles are not roadworthy, they should be stopped. However, operating centres are created to provide some other form of mechanism. That is totally wrong. The mechanism is already there. An MOT or PSV certificate is accurate only for the day of the test. There is nothing to prevent enforcement officers from spot-checking vehicles. How often have any of us been stopped on the road within the last few months or have witnessed spot checks on lorries? Yet, here we are, bringing in a Bill to try to —

736. The Chairperson: I hear what you are saying, Mr Clarke, but I am anxious to clarify one point. We all know that there are different people involved. The people in the agriculture sector — represented by Mr Clarke — are only one category. However, to tease out Mr Ford's point, we all know people who are engaged in laying lawns, cutting, clipping, and so on, and we all know that trailers are attached to small lorries or vans for those operations. You can clearly see that there is a distinction between those two types of operation. We are trying to establish whether there is some sort of clear read-across that is consistent. We will ask the Department about that, and if it can supply us with that detail without too much difficulty, so much the better.

737. I like what we are hearing from the Horticulture Forum because you represent an interest that is slightly different to all the other cases presented to us. I want to know how this aspect has been handled in Britain.

738. Will you clarify for the Committee your response to Mr Ford's question about people involved in landscaping, and so on?

739. Mr Eve: The Bill has been driven by the haulage industry. The average landscape gardener is not a haulage company and should not bear the same burden of administration that hauliers pay for running lorries. To turn that around, if another 20,000 or 25,000 operators' licences are issued, those companies may legally haul goods on the road. That is probably not good, competitively, for the haulage industry.

740. The Chairperson: I do not think that that point follows. Because those firms are defined as such does not mean that they will engage in the same activity as the freight people.

741. Mr Eve: They could, though.

742. The Chairperson: The basis of your argument until now has been that they are doing something different to the freight companies.

743. Mr Eve: Yes; that is why I say that the current situation should not change. We do not see why growers of mushrooms, apples or vegetables, or landscape gardeners should be brought under the same umbrella as the haulage industry.

744. The Chairperson: I accept that point. However, we are teasing out the point, and we need a little more —

745. Mr Ford: The argument that Mr Eve has just made could be made by anyone hauling goods on his own account. The point of the Bill is to bring those hauling goods on their own account under the same licensing regime that those who do so for hire or reward are already under. That is my difficulty. Certain types of vehicles could be exempted: a slow-moving tractor, involved in agricultural operations and using red diesel may be identified as distinct. However, a certain section of your members' vehicles are no different from those operated by others who come within the scope of the Bill. That is assuming that the Bill goes ahead — Trevor may kill it off completely.

746. In those circumstances, I am trying to see how you can create a case for all your members, as distinct from those who seem to be quite close to what is being done by other people who come within the scope of the Bill.

747. Mr Eve: We need to go back to our industry, back to the Horticulture Forum.

748. Mr Ford: When you have another paper, please send it in.



749. Mr T Clarke: There is another way to ask that question, Chairman.

750. The Chairperson: Is this a follow-up question?

751. Mr T Clarke: Yes. David asks how the distinction will be drawn. You could turn the question around. The figures from the 2005 road freight compliance survey show that some 44% of vehicles were not roadworthy; 18% were guilty of tachograph/drivers'hours offences; 2.4% of loads were overweight; motor tax offences were running at 3%; and 2% of drivers were not properly insured. How will the Bill change that?

752. Mr Ford: You will need to ask the Department that question.

753. Mr T Clarke: I look forward to that.

754. Mr Ford: Given that the Assembly approved the Second Stage of the Bill, I thought that we had accepted its premise.

755. The Chairperson: We have a long list of questions to ask officials from the Department, including the enforcement officers who will give evidence to the Committee after this session. The Horticulture Forum representatives are welcome to stay to hear their contributions.

756. Mr Beggs: The Bill has appropriate balance. Do you want a blanket exemption for the horticulture industry? Multimillion-pound companies such as Emerald Lawns and Monaghan Mushrooms, although not in our jurisdiction, have a large number of employees who transport goods by road every day. Do you accept that there is a risk associated with carrying heavy goods? Do you accept that a blanket exemption for your industry is not feasible because the risk is there?

757. Mr Eve: The companies that you mentioned use HGV lorries.

758. Mr Beggs: If there were an exemption for the entire horticulture industry, that would apply to them. Is that what you are asking for?

759. The Chairperson: I do not think that that is what they mean.

760. Mr McKee: No. Of course horticulture companies that use HGV lorries should be subject to the legislation.

761. Mr Beggs: How will that distinction be drawn?

762. Mr McKee: All lorries that weigh 7.5 tons or less should be exempt. Vehicles that require the driver to hold only a normal driving licence should be exempt. However, vehicles that require the driver to hold a HGV licence should be subject to the new legislation.

763. Mr Boylan: I want to come back to the matter of enforcement and road safety — and I thank Mr Beggs for introducing an all-Ireland element to the discussion; it saved me from doing so. Road hauliers feel that they are carrying the burden of enforcement. We must strike a balance. Some of the points that you have raised about exemption have merit. Overall, we must address that issue as well as the section on enforcement.

764. Mr Eve: Given the size of the horticulture industry, it will not generate much revenue under the new legislation. I would have thought that the other industries that you are going after would make up the bulk of your finances.

765. Mr Boylan: In your case, you are fighting for your members.

766. The Chairperson: Mr McKee, Mr Eve, thank you very much for your time. You are welcome to stay to hear evidence from the Department. If you have any further information please forward it to the Committee.

767. I now welcome Bernie Cosgrove, John Martin and Richard Lee from the Department of the Environment's Driver and Vehicle Agency. Thank you for attending. Obviously, you did not hear what was said beforehand. It is a pity that you were not present to hear the issues that members raised. Would you like to start your presentation?

768. Mrs Bernie Cosgrove (Department of the Environment): First, I apologise on behalf of Brendan Magee, chief executive of the Driver and Vehicle Agency, who is unable to be here because he is out of the country on business. I thank you for inviting us to appear before the Committee.

769. We have scrutinised the Goods Vehicles (Licensing of Operators) Bill closely. We broadly support the enhancements and measures that the Bill will introduce, particularly in levelling the playing field between hire-and-reward operators and own-account operators. The Bill will also give us additional enforcement powers to tackle non-compliance in the industry.

770. The Chairperson: Is that the end of your presentation?

771. Mrs Cosgrove: We are willing to answer any questions that members may have.

772. The Chairperson: It is a pity that you were not here earlier. If you had been, you would have heard representatives of the industry expressing their concerns about enforcement.

773. Mr T Clarke: I will go straight for the kill: what difference will the Bill make to enforcement practice?

774. Mr John Martin (Department of the Environment): The Bill will give us additional enforcement powers in both the hire-and-reward sector and the own-account sector. The own-account sector is not licensed, and, therefore, it is not subject to the same regulatory requirements as the hire-and-reward sector. The Bill will enable us to acquire more information from the own-account sector.

775. The Bill also proposes to introduce a requirement for operators to keep maintenance records. Currently, operators are not required to keep maintenance records for their fleet, and we have found that quite a few operators do not maintain their vehicles. Indeed, our fleet compliance survey indicated that upwards of 40% of those vehicles were not roadworthy. The new requirement means that operators will be obliged to keep records and ensure that vehicles are maintained throughout the year, rather than just once a year for the vehicle test.

776. The current provisions for the suspension and revocation of operators' licences — as outlined in the Transport Act (Northern Ireland) 1967 — are too weak to properly regulate licensing. The Bill proposes to bring our licensing into line with that in GB, where the traffic commissioners have additional powers to regulate the industry in cases of non-compliance.

777. Mr T Clarke: Do you feel that the Driver and Vehicle Agency is adequately resourced to tackle enforcement?

778. Mr Martin: No, we are not adequately resourced to deal with enforcement. The problem is a combination of a lack of sufficient resources and the inadequacy of the regulation regime.

779. Mr T Clarke: Forgetting the regime for one moment, are you adequately resourced to enforce licensing in Northern Ireland?

780. Mr Martin: Currently, as we stand, no, we are not.

781. Mr T Clarke: You are not adequately resourced at the moment. You will be even more inadequately resourced if you are granted more powers; the problem will become twofold.

782. Mr Martin: We are trying to align our regime with the GB regime. We bid for additional resources for goods-vehicle enforcement under the comprehensive spending review (CSR) process last year. Those resources would enhance our ability to deal with some of the enforcement issues, but they have not come into play yet. However, resources alone are not enough; we need a much tighter regulatory regime to deal with people who continually ignore the legal requirements.

783. Mr T Clarke: The industry is concerned that current enforcement is inadequate. I do not know whether that concern was raised today, but I have certainly heard it in the past. We should not be going from A to Z so quickly. People who use the roads have said that the enforcement is inadequate. Indeed, I cannot remember the last time that I saw vehicles being stopped. I am greatly concerned that enforcement is not adequate at the moment. We are trying to get to the point at which it is excellent, but we do not even have a good standard of enforcement.

784. Following on from that, there is the issue of vehicles that are not roadworthy. We have statistics here about illegal operations: 44% of vehicles were not roadworthy; 18% were guilty of tachograph offences; 2·4% were found to be overweight. What difference will the Bill make to those statistics? If enforcement is not happening at the moment, that will not change.

785. The Chairperson: I wish to have a little more clarity about that issue. What potential percentage increase is there likely to be in the number of vehicles that fall within the remit of the Bill?

786. Mr Martin: The own-account sector, which is unlicensed, makes up approximately 75% of the fleet in Northern Ireland. The other 25% comprises the licensed fleet — the vehicles that fall within the licensing regime. We have been working with our counterparts in GB. The level of non-compliance is much lower in GB, but that is not solely because of the enforcement action that is taken at the roadside, where the vehicle is stopped and the person prosecuted. There is a much more robust licensing regime in GB to back up enforcement. That means that if people are found to be non-compliant on a regular basis, they will lose the right to carry out their business as a licensed operator. It is a combination of effective roadside enforcement and a licensing and regulatory regime to back that up.

787. The Chairperson: To go back to my point, what is the anticipated increase in the number of operators that will fall within the remit of the licensing regime set out in the Bill? Is it a 75% increase? You mentioned a 75-25 split. Do you anticipate a 75% increase in the number of enforcement officials? We have heard today from one area of the industry that there is currently no effective enforcement here.

788. Mr Martin: We do not envisage a 75% increase in enforcement staffing. Seventy five per cent of the fleet does not fall within the licensed sector. However, those vehicles are still used on the roads, and we will continue to stop those vehicles in order to determine their roadworthiness

and vehicle weight. We still encounter those vehicles at the roadside despite the fact that there is no licensing regime to regulate them. We stop those vehicles and deal with issues as we encounter them.

789. Mr I McCrea: What resources are currently in place? How many enforcement officers are there, and how many should there be?

790. Mr Martin: The total staff complement of the section is 28. Under the CSR process, we bid for resources for an additional 33 members of staff. Not all of those staff would be dedicated to goods vehicle enforcement, but we are talking about a 100% increase in the staffing complement in order to put us on a par with our counterparts in GB. The bid was approved in its entirety because of the issues in the industry.

791. Mr Gallagher: We are all trying to improve vehicle safety on the roads. The problem is that there may be an operator who regularly has four or six heavy vehicles on the roads that are not compliant, and which pose a risk to the safety of other road users. We are trying to arrive at an agreement about a Bill that will deal with such problems and achieve the objective of vehicle safety.

792. You propose to include in the new legislation certain operators who might do some seasonal lawn mowing or hedge cutting, usually for a very small return. Those people could now be regarded as operators and as running operator centres. In addition, there is the licence, the costs, and the additional bureaucracy involved in complying with the new arrangements under discussion. The range of operators covered by the Bill seems unfair. What exemptions might be possible, and what is the situation in Great Britain? Is there anything that we might learn from the experience in Great Britain?

793. Mr Martin: From our perspective, and from our knowledge of the GB licensing regime, exemptions are provided that are worth considering. However, we want to ensure that there is a level playing field for anybody who operates a vehicle on a commercial basis to carry goods for either hire and reward or for their own benefit. The procedures could be worked back from the starting point to see whether certain sectors of the industry would be worthy of an exemption. However, the underlying requirement is that, irrespective of whether people are in the licensing regime or not, they must still maintain their vehicles and comply with all the other legal requirements.

794. Difficulties would arise if vehicles or operators were outside the licensing regime. What action could be taken against them to allow them to continue to operate within that sector? In other words, if someone is continually non-compliant and completely ignores the legal requirements about roadworthiness, etc, that could cause danger to other road users, should that person be allowed to continue in the business? That is where the weakness is in the current system: if people completely ignore the legal requirements there are no effective licensing sanctions that can be used against those operators to take them out of the industry. The difference between the system here and the system in GB is that the authorities there have the autonomy to suspend or revoke an operator's licence. That is why the GB's level of non-compliance is much lower.

795. Mr T Clarke: I disagree, John. You referred to a level playing field and the weakness in the system. The weakness lies with the enforcement. The current legislation allows for a proper enforcement regime, and there are fines to support that. However, the DVA is not conducting its role properly. It is unfair to blame the industry because it is not comparable to that in England.

796. With respect to the level playing field, the land border with the Republic is another difference between Northern Ireland and England. Operators in the Republic can come and

exploit Northern Ireland because the Republic will not have the same licensing regime as it is hoped to introduce here. You want fairness in the system and yet you are creating unfairness. The operators here will be at an unfair disadvantage to those in the Republic of Ireland.

797. The Chairperson: The point about the relocation of industry was raised before.

798. Mr Martin: In respect of Mr Clarke's point about the enforcement responsibilities, the unfortunate fact is that when we prosecute people, the fines may not necessarily be a deterrent. We have lists of operators who have been prosecuted on countless occasions — well into double figures — but those who operate those types of fleets seem to view the fines as a running expense and a cost that must be borne. Some operators have a horrendous list of offences, both in the own-account sector and, maybe fewer in the hire-and-reward sector, but, obviously, effective enforcement has not been able to deal with that. We are taking cases to court and getting prosecutions. We are taking unroadworthy vehicles off the road. However, that is not acting as a deterrent.

799. In our discussions with GB, we are asking why that is the case, and why the operators continue to operate despite the fact that we are taking them to court regularly. What is missing in Northern Ireland is an effective licensing regime to back up enforcement at the roadside. Quite a number of people have been prosecuted for a lot of offences through our process of prosecuting at the roadside, but it is not acting as an effective deterrent. People's attitudes to compliance will change if the prosecutions are fed into the licensing regime and result in the suspension or revocation of a licence.

800. Mr T Clarke: Chairman, can we be provided with the statistics for the enforcement cases that have been taken in the past five years, the convictions, and the number of those that were duplicate or triplicate?

801. The Chairperson: We can certainly get that.

802. Has the relocation of industry come up as an issue — or, perhaps, I should ask the Planning Service about that? Through your correspondence or any of your dealings with the industry, have you been given cause to believe that there will be displacement of industry as a result of potential enforcement?

803. Mr Martin: The hire-and-reward sector is subject to the enforcement regime from a licensing perspective and on the roadside. We have not seen any great displacement of the industry to Southern Ireland as a consequence of that. It is not necessary to be based in a particular location to be part of the hire-and-reward sector, but people who run quarries or building-supply businesses in the own-account sector cannot really operate from another jurisdiction.

804. The Chairperson: They can operate from another jurisdiction. We heard this argument before, particularly in relation to issue of rates and industrial deregulation. Businesses, especially in Derry, can just go down the road to one of the big industrial estates in Letterkenny. That is business; that is how those businesses can operate to cut costs.

805. Mr Martin: I am not saying that it would not be a problem, but, up to now, we have not seen any evidence of that, and I do not know whether it will happen. The hire-and-reward sector is licensed currently, and we have not seen much evidence of that. I cannot predict whether it will be the case in the future.

806. Mr Boylan: The question of how this will be enforced keeps raising its head. You are talking about 75%; but there is an issue about the 3.5 ton vehicles. A large percentage of those

vehicles will be operating from home. There should be a level playing field, but, perhaps, tractors should be exempt. If this legislation progresses, somebody will have to pay for it, but it should be the same across the board. How should we deal with the actual enforcement? Will there be a database of the people who have paid? Will there be a manned mobile unit on the side of the road? We are talking about 3-5-ton vehicles and big vans that are operating from homes. How will you enforce the legislation and ensure that every operator and vehicle is licensed.

807. Mr Martin: Under the proposed regime, vehicles up to 3.5 tons — the like of builders' vans, for instance — will be exempt.

808. Mr Boylan: I know that, but there are bigger vans than 3.5-ton twin-axled vehicles. How will the issue be addressed, realistically?

809. Mr Martin: Recently, we purchased new equipment, including automatic number-plate recognition equipment. Four or five years ago, our main focus was on checking high numbers on vehicles. However, we found that we were focusing more on checking vehicles than on checking vehicles that had offences. We reduced the number of vehicles that we check and try to focus our attention on vehicles that are non-compliant; we target our resources at the most non-compliant.

810. Over the past 12 to 18 months, the number of non-compliant vehicles that we have detected has increased, despite the fact that the overall number of vehicles that we checked had reduced dramatically. The percentage of the vehicles that we have seen has increased as well. We are more effective now in targeting the non-compliant operators. Any information or intelligence that we have on a non-compliant operator is fed into our database, and that enables us to target the vehicles as they travel along the road.

811. Mr Gallagher: My point about providing details on vehicles that had been apprehended has already been raised.

812. Mr Beggs: The purpose of the legislation is to try to improve road safety. That is the main reason why the legislation is being proposed. Mention was made of potential displacement in an attempt to avoid some aspects of the legislation. Are you talking to your counterparts in the Republic of Ireland in order to avoid the risk of an increased amount of accidents or poor vehicle maintenance because of the difficulties that could arise with operators in that part of the world.

813. Mr Richard Lee (Department of the Environment): We run a lot of joint operations, both with the Road Safety Authority in the South, and with the Garda Síochána. We have regular contact with those bodies; it is not the case that we sit alone and do not have intelligence from our colleagues in the South.

814. Mr Beggs: Is similar legislation being proposed in the Republic of Ireland?

815. Mr Lee: I am not aware that similar legislation is being proposed on operator licensing.

816. Mr Beggs: Therefore, a single operator who wanted to avoid the legislation could displace his location.

817. The Chairperson: An operator could, for instance, move from Newry to Dundalk.

818. Mr Beggs: Given that the legislation is concerned with road safety, are you pressing that issue with your opposite numbers in the Republic of Ireland?

819. Mr Martin: Colleagues in the Department of the Environment have had several meetings with our counterparts in Southern Ireland to discuss that. A few more meetings have been scheduled to try to tease out the issues and identify whether an enhanced regime will be introduced in the South.

820. The Chairperson: I thank the witnesses for their time.

821. The next briefing will be from the Department of the Environment's Planning Service on the Goods Vehicles (Licensing of Operators) Bill. I welcome Mr Simon Kirk, who has been sitting at the back and taking in everything.

822. Mr T Clarke: Chairman, the need for a level playing field has been mentioned. The Department has provided a comparison of the fees for Great Britain, Northern Ireland and the Republic of Ireland. A licence for an operator with 10 vehicles costs £2,381 in Great Britain, £3,150 in Northern Ireland and £772 in the Republic of Ireland. That is, supposedly, a level playing field.

823. The Chairperson: Mr Kirk, thank you for your attendance today. A number of issues were raised initially on the implications for planning. Will you provide a brief overview of that?

824. Mr Simon Kirk (Department of the Environment): The Planning Service would only be involved if someone proposed to establish a new haulage business, or if they used a site that was not authorised. Once a haulage operator is operating from an established centre with the benefit of planning permission, or because it has established-use rights, there is no issue for the Planning Service.

825. Mr T Clarke: Chairman, can we cut to the chase? That is nonsense.

826. The Chairperson: I appreciate that Trevor is anxious to speak, but we will wait until Mr Kirk is finished. Please continue.

827. Mr Kirk: If an operator were to park a vehicle at a dwelling overnight, that, on its own, would not constitute development.

828. Mr T Clarke: Can I have that in writing? A lot of people would love to have that written down.

829. The Chairperson: You will have it in writing, because the Committee meeting is being covered by Hansard.

830. Mr T Clarke: Brilliant stuff.

831. The Chairperson: Trevor, please let us hear what the man has to say.

832. Mr Kirk: That is the essence of what Planning Service has said. If a haulage business is operating with the benefit of planning permission, there is no issue for Planning Service.

833. Mr T Clarke: That is missing the point.

834. The Chairperson: I know, but do you have something further to add?

835. Mr Kirk: No, I have nothing further to add.

836. The Chairperson: We will hear what the point is.

837. Mr T Clarke: Under the new legislation, a small operator with a medium-sized van that is 3.5 tons would need an operating centre. What if he is operating from home? What will the Planning Service's view be on that arrangement?

838. Mr Kirk: The parking of a vehicle —

839. Mr T Clarke: No, he is running a business from his home. The operating centre is establishing his business from his residential property. What is the Planning Service's view on that?

840. Mr Kirk: There are certain instances in which a person can run a business from home — as long as the principal use remains as a dwelling house and no material change has been made to part of the curtilage or the dwelling. Parking and running a vehicle from home does not constitute a business.

841. Mr T Clarke: Chairman, could I get that in writing? I want that in writing from the Planning Service, because that is utter nonsense. I know of cases in which owners of small businesses have run businesses from their homes, and the Planning Service has taken enforcement cases against them to prevent them from doing so. They have had to move their business and establish proper premises. Therefore, what you are saying today totally contradicts what has happened in the past.

842. The Chairperson: Mr Kirk, let me put our concern to you. Say, for example, a self-employed man who works in the haulage business parks his lorry at the side of his house. At the moment, all he is doing is parking his lorry at the side of the house and perhaps writing out a few invoices from inside the house. The concern is that, under the provisions of the Bill, his home could be classed as a business.

843. Mr T Clarke: It would be classed as his operating centre.

844. The Chairperson: Yes, it would be classed as his operating centre. Therefore, in the Planning Service's eyes, the use of his home would change: it would no longer be a place to park the lorry but an operating centre or a business. Can you give the Committee an assurance that that would not happen?

845. Mr Kirk: We are talking about a material change in the use of land. It is a matter of fact and degree. Simply parking a vehicle in your driveway overnight does not constitute —

846. Mr T Clarke: Do you see this title "operating centre"; that is an establishment. That is nonsense, Chairman.

847. The Chairperson: Hold on a minute, Trevor.

848. Mr Kirk: It is not nonsense.

849. Mr T Clarke: It is utter nonsense.

850. The Chairperson: Hold on just a wee minute. I want to get this matter clarified; just bear with me a minute.

851. Mr Kirk: Sorry, Mr Chairman.



852. The Chairperson: Under current planning law, that is the case — parking a vehicle at the side of your house is no problem. The issue being raised is that, under the proposals in the Bill, the house would become an operating centre, and that that could be interpreted as a business as opposed to a private residence. Thus, that proposal would have important consequences. The Committee is seeking an assurance from the Planning Service and the other wing of DOE that the term “operating centre” will not automatically be interpreted as a business. That is what we want clarified.

853. Mr Boylan: Let me put it another way — and Simon, I have your notes. A large number of vehicles are over 3-5 tons. A driver may park his vehicle at his house, offload the goods, put them in a garage overnight and reload them in the morning. Where does the Planning Service stand on that issue? Would it class that activity as operating a business from home? Clearly, that could happen. From what you have told us, I understand that it is alright if the driver leaves the goods in the vehicle overnight and drives away the next morning. However, on some occasions, the person may have to offload the goods in the garage, yard or wherever. In those cases, would they need to register a change of use of their building or garage under the terms of the new legislation?

854. Mr Kirk: It is sometimes difficult to establish that a change of use has occurred. It is a matter of fact and degree. In a case where goods are occasionally being taken off the vehicle and put in the garage, it might be concluded that change of use had not taken place.

855. I must point out that anyone who is subject to enforcement action will clearly have the right to an appeal before the Planning Appeals Commission. The first ground on which anyone will challenge us is that the development does not require planning permission. If we say that a man is just parking a vehicle at the side of his house, but we have decided that there has been development because there is some other licensing operation, the appeal would fall.

856. Mr T Clarke: I declare an interest in this issue, because I had an enforcement case taken against me for parking cars in my yard. I lived in the dwelling for eight and a half years and parked cars in the yard for eight and a half years, but an enforcement case was taken against me for doing so.

857. The Chairperson: What was the case based on?

858. Mr T Clarke: I was parking vehicles in my yard that were then taken on to auction houses, but what is the difference between that and someone using a van for their business and parking it at their house? It is still an operating centre.

859. The Chairperson: We need written clarity from Planning Service in the context of the operating centre and the potential for it being interpreted by a planning official as a meaningful change of use from a residence to a business. That is the key issue.

860. Mr Kirk: If someone is living in the house, it remains a dwelling. Are you asking what would happen if part of the curtilage changed? In other words, what would happen if there were a partial change of use?

861. The Chairperson: No, I am not asking that. We have been involved with councils long enough to know the situation. If another wing of the Department decides that a dwelling is an operating centre for the purpose of that business, somewhere along the line, a planning official could interpret that as an operating centre for business, when it is supposed to be residential. That would bring people into an area where they do not want to be. Therefore, that issue must be verified.

862. Mr Boylan: It is vital to clarify whether goods stored on a property would definitely mean that the building is being used for a business. The issue relates to the operator's licence and the need to have an operating centre. I would like you to clarify the issue relating to storage and movement of goods from operating centres.

863. Mr Kirk: I will clarify that. I can point to pages of case law, but it will very much depend on fact and degree, the amount of times that it happens, the size of the goods and where they are being stored.

864. The Chairperson: I appreciate all that. The nub of the matter is that it will boil down to some planning official deciding how an operating centre impacts on the interpretation of whether a property is used as a dwelling.

865. Mr Kirk: If the Bill becomes law, we will clearly have to brief and give guidance to our staff.

866. Mr T Clarke: Not guidance, because guidance is interpreted in different ways by different councils. Guidance does not work for Planning Service, because the Minister sent guidance notes to Planning Service relating to Planning Policy Statement 14 (PPS 14), but it did not understand them either, because everyone interpreted them differently. Guidance does not work.

867. The Chairperson: The Committee needs clarification on the key issue of the operating centre and the potential for impact in interpretation of planning law, from tipping the balance between residential and business. Committee officials will be in touch with departmental officials on the matter. That is really the nub of the issue.

868. Mr Kirk: I would like to make one final point: even if it was a business, if it has been established for a period of time, it is lawful.

869. Mr T Clarke: The issue also relates to how the Department would count that.

870. Mr Kirk: It is simple. It is four years for a building and 10 years for change of use of land.

871. Mr Boylan: There will potentially be numerous businesses operating in the countryside because of this Bill

872. Mr T Clarke: Is it 10 years for a business?

873. Mr Kirk: No, it is four years to enforce against operational development of a building and 10 years for change of use of land.

874. Mr T Clarke: I parked vehicles at my yard for eight and a half years, and I still lived in the property.

875. The Chairperson: I am sure you have a fair idea about the issue here, Mr Kirk. We would be grateful for written clarity on it, but I am not sure whether you can provide it in isolation; you will certainly have to liaise with your departmental colleagues on the operating-centre issue. Thank you for your time.

## **9 October 2008**

Members present for all or part of the proceedings:  
Mr Patsy McGlone (Chairperson)

Mr Cathal Boylan (Deputy Chairperson)  
Mr Roy Beggs  
Mr Trevor Clarke  
Mr David Ford  
Mr Tommy Gallagher  
Mr Ian McCrea  
Mr Alastair Ross  
Mr Peter Weir

Witness:

Mrs Beverley Bell North Western Traffic Area

876. The Chairperson (Mr McGlone): The Committee, today, holds its final evidence session on the Goods Vehicles (Licensing of Operators) Bill and will hear from Beverley Bell, Traffic Commissioner for the north western traffic area. The Committee has heard the views of the Ulster Farmers' Union (UFU), and last week, it heard evidence from departmental enforcement officers and planning officials, as well as from the Horticulture Forum.

877. A copy of Mrs Bell's written submission on the Good Vehicles (Licensing of Operators) Bill is included in members' packs. It makes reference to the requirement in statute for Traffic Commissioners to produce an annual report. Members have also been provided with a copy of the Senior Traffic Commissioner's annual report 2006-07, which include statistics on goods vehicle operator licensing. An electronic copy of the report has also been issued to members.

878. Tom Wilson, Freight Transport Association, has forwarded a paper regarding the function of an independent regulator for the licensing of goods vehicle operators, which is included in the pack.

879. I welcome Beverley Bell, Traffic Commissioner for the north western traffic area. It is good to see you. You are very welcome indeed. Thank you for making a submission to the Committee. You have around 15 minutes in which to make a presentation. We are flexible and will not press you to stick rigidly to the time limit. There will then be a question-and-answer session with members.

880. Mrs Beverley Bell (North Western Traffic Area): I hope that this will not be like the European Court where the microphone is switched off after 15 minutes.

881. The Chairperson: No, but I think that that is a good idea. I can think of a few cases where that would be very helpful and a few cases where an electric shock could stimulate witnesses into giving more information.

882. Mrs Bell: I could use that for some of the solicitors who appear before me. I would love to be able to shut them up after 15 minutes. There is no danger of my speaking for too long, I assure you.

883. Thank you very much for inviting me. I love coming over here, and I love your Building; it is fantastic. I welcome the opportunity to speak with you and possibly engage in some debate, rather than make a formal presentation. I will say a little about my background: who I am, where I am from, what I do, and how I approach regulation.

884. My first point is that I have two factors: one is aggravating and one is mitigating. I will let you decide which is which. I am not a civil servant, but I am a lawyer, so I will let you decide

which is aggravating and which is mitigating. It is important, as far as I am concerned, that the regulation that I do is independent and is not linked to the Civil Service.

885. I used to be a solicitor in private practice doing prosecution and defence work, criminal work, and transport law. That is where I first became interested in transport law. I was appointed in 2000. At that time, as I have mentioned in my written submission, the north-west traffic area had suffered from under-regulation for a long time, for a number of reasons. My job was to improve and increase the standards of the operators in the north-west traffic area. Having done so over the last seven or eight years, we are now moving on to the promotion of best practice. We have upped the skills of operators in making sure that road safety and fair competition are not jeopardised.

886. I am sure that when the Committee scrutinises a piece of legislation, it questions the purpose of the legislation, why it is being examined, and why it is being brought into play. That is what I talk to operators about when they see me at public inquiry. I tell them that my job is never about red tape; it is about the promotion of road safety and fair competition. Although I tend not to get too passionate in my work, it really is the driving force behind everything that I do, and everything that the Vehicle and Operator Services Agency (VOSA) does. I welcome debate on road safety and fair competition.

887. An aside to that is the environmental protection aspect of the legislation. We examine that when we look at operating centres. I will not talk about that in great detail in my presentation, but I want to flag it up and if you want to ask questions around the issues of environmental protection and operating centres, then I will happily do what I can to inform you how we implement that in the north-west traffic area.

888. The other key point for me is what we say to operators, and what operators say back to us, which is that ours is regulation with a light touch. I say that that is absolutely fine, but it is not with a soft touch — more on that later.

889. Another key feature included in my written representation is that I regard — and I speak for my fellow commissioners here — exercising of discretion as key to my role. I came over about five years ago when I first became involved in looking at what happens here, and spoke to some civil servants about regulation: how they regulate; how they grant licences; and how they take licences away. They asked me how that could be done without exercising discretion. My answer was the same then as it is now — I do not think that that can be done without discretion. It is a matter of how that discretion is exercised. That leads me to look at the separation of those powers.

890. I am completely naive as far as politics is concerned, and that is absolutely right, as my job is non-political. The commissioners and Government regard it as essential that we are not part of any political process, interference, pressure, or influence. For that reason, the licensing authorities — let us remove the word “commissioner” for the moment — have the respect and confidence not only of the industry but, most importantly, of the Government. We are currently going through a process with regard to the implementation of the Local Transport Bill [HL], and commissioners have appeared before the parliamentary Transport Select Committee. In a recent debate, Rosie Winterton, the Transport Minister, spoke about the high regard in which the Government hold Traffic Commissioners. Our independence of Government and the respect that we have from the industry puts us in a very strong position.

891. I have spoken about regulation in the north-west of England, but Traffic Commissioners regulate in generally the same way right across Great Britain. We adopt a two-pronged strategy, which I call the carrot-and-stick, or enforcement-and-education, approach. We try to both enforce and educate.

892. At public inquiry yesterday morning, I dealt with two operators who had not been not been doing what they should under the terms of their licences. One of the operators did not bother attending — which is always a bad start to a public inquiry — so I took his licence away from him. The other operator did attend the inquiry because I had recently taken his vehicles off the road for a few days. We were able to resolve matters — he is back on the road and everything is as it should be. That is an example of the enforcement aspect of our regulation.

893. However, education is also key to our regulation. Yesterday afternoon, I made a presentation to around 170 operators from all over the country to alert them to the new initiatives that are being introduced by VOSA and the European Parliament and to ensure that they are complying with what is required.

894. As I said in my introduction to those operators, commissioners can suffer from their press. We are reported in the trade magazines 'Commercial Motor' and 'Coach and Bus Week', and it can seem as though we are harsh or strict and wanting to take action against operators. The advantage of engaging with the industry — and attending meetings such as this one and the Select Committee — is that people can see us as individuals who are committed to promoting road safety, fair competition and, just as importantly, making operators' jobs easier.

895. In my annual report last year, I wrote that the work of operators and commissioners is similar in some respects — we can both run things properly with the right staff and systems. It is only when those systems and procedures go wrong that difficulty arises. If our system goes wrong, it might mean that an operator gets a licence a week late. However, if an operator's system goes wrong, a wheel may come off the vehicle and someone could be killed.

896. There is something that I had not appreciated was such an issue here, and that is the use of commercial vehicles for criminal activity. I have been talking to the police in the north-west traffic area about that, and having done a bit of research, I see that there are some big issues regarding the criminal activity that surrounds some specific types of commercial vehicles. A quality operator-licensing scheme — whether own account or hire and reward — would go a significant way to addressing that criminal activity.

897. Those are the key issues that I wanted to flag up to the Committee. However, I am more interested in debate than formal presentation, and more interested in answering the Committee's questions and hearing what members think is good and, perhaps more importantly, what is bad about Traffic Commissioners.

898. Mr Beggs: Thank you for your presentation and for coming to give us the benefit of your experience. In your written submission, you indicated that you have become increasingly frustrated by the illegitimate haulage industry's attempts to circumvent your orders and by its continued unsafe and unfair competition. One of the ways in which they do that is to operate from a Northern Ireland or Republic of Ireland base. Can you give us more information about the sort of things that have been happening, and what experiences have you had on your patch of vehicles with poor safety standards?

899. Mrs Bell: Do you mean with regard to vehicles operated from here?

900. Mr Beggs: Yes.

901. Mrs Bell: The Freight Transport Association and the Road Haulage Association have already provided statistics for unsafe vehicles in the UK. However, I can tell you that, in the north-west traffic area, when VOSA targets vehicles from Northern Ireland or the Republic, its hit rate for prohibiting vehicles and drivers is substantially higher than for operators based in the north-west.

902. Heysham docks provide another example on my patch. When operators that are licensed by me attach trailers that have come from Northern Ireland to their tractor units, the chances are that those trailers will be in such poor condition that the operators will immediately incur a prohibition. Consequently, before allowing such trailers to operate on a vehicle that I have licensed, operators in my patch employ mechanics at the docks to submit them to a safety inspection.

903. Mr Beggs: Have your efforts to drive up industry standards had an impact on road-safety figures for accidents involving heavy goods vehicles?

904. Mrs Bell: It is not for me to justify my existence, but others who work with me tell me that there has been a significant improvement in the state of the fleet and in the culture of compliance by operators, and that is the key.

905. When I started eight years ago, I was worried because I was the youngest, and the first female, commissioner, and I thought that operators might think that I was just a sappy girl. Therefore, in order to hit the ground running — being reasonable, of course, and, given that I am a lawyer, going through all the necessary legal procedures — I took away a few licences just to show them who was boss so that they would sit up and take notice. I did not revoke licences just for the sake of it, but I did take robust action, because it was important for the operators to be aware that the relevant body — whether a commissioner, a licensing authority or a Government agency — was prepared to take such action.

906. Moreover, if you look at the report, the statistics for the number of licences that I and my colleagues revoked speak for themselves, and that is what makes the operators sit up and take notice. Operators can be prosecuted by VOSA, or your equivalent, until the cows come home, but that means nothing. However, they can be given a fine of a couple of hundred quid for a defective brake, and I can take the vehicle off the road until the brakes are mended. That is what they listen to.

907. For me, it is not just about banging a drum; it is about winning operators' hearts and minds. Generally, they grow to understand that it is not good customer service to say that goods cannot be delivered because an examiner has put a vehicle off the road and that it must remain parked up until its braking system is sorted out. Maintaining a safe and efficient fleet improves operators' bottom line and enables them to get on the road and do their business.

908. Mr Beggs: You said that you have recently been advised that commercial vehicles are sometimes caught up in illegal activity. If an operator has a track record of illegal activity, presumably that is grounds for removing the licence, which, in turn, prevents the abuse of vehicles for such activities.

909. Mrs Bell: Absolutely. A couple of years ago, I had a case involving an operator from Liverpool, and I was concerned that his business was a front for illegal drug smuggling and money laundering, and — joy of joys — I saw on television that he got nine years. That is a good example of somebody using his business as a front for illegal activity.

910. Mr Ford: I welcome you as well. Your written submission states — and you have just re-emphasised it — that the key to effective regulation is to grant discretion to the regulator. Do you believe that you have greater discretion than a civil servant doing the same role would have, and if so, why?

911. Mrs Bell: I am not subject to influence— be it good, bad or indifferent — from a line manager. I am free to make the decisions that I feel are appropriate, subject to the checks and

balances that apply when I sit in a quasi-judicial capacity. That is so different from the way in which a civil servant would work. That is why there is a real value in what we do as regulators.

912. Mr Ford: How do you liaise with VOSA regarding your almost parallel responsibilities?

913. Mrs Bell: We do it all day, every day in many and different ways. I will give some examples. In most cases, VOSA staff deal with the checks and balances of a licence application, such as whether the person has the licence fee, a certificate of professional competence (CPC), and so on. Once the groundwork is complete, I sign off on the case. It might take the civil servants a long time to conduct the admin work, whereas it takes me only a short time to sign off on a case. I have complete trust and faith in what they do. That is the nature of our relationship. I trust them, and they trust me.

914. I spend a large part of my time dealing with non-compliant operators — the naughty boys. In those cases, the civil servants might have only a small amount of work to do, and I will do the lion's share. They set out the reasons why an operator is bad and hand the case over to me. I then deal with the case through an inquiry, a hearing or an interview in my office.

915. Does that answer your question, or do you want some more detail?

916. Mr Ford: No, that is a good start, because the next question I was going to ask is what exactly you mean by "public inquiry".

917. Mrs Bell: I am sorry; my apologies. Most of my time is spent in a courtroom-type setting. It is great fun; you must come and watch. I come in, everyone stands up, I go into formal mode, and then they all sit down. I hear evidence from VOSA witnesses about, for example, an incident in which a wheel came off an operator's vehicle but fortunately nobody was killed. Then I hear from the operator about why it went wrong and, much more importantly, what has been done to put it right. The public inquiry is the mechanism by which I decide what to do with the licence.

918. If an operator has a licence for 20 vehicles, I must decide whether it should be allowed to continue to operate those vehicles or whether its licence should be reduced to 10 or five vehicles, or whether the vehicles should be taken off the road completely, or whether the drivers should undergo training.

919. It is not my job to put operators out of business — a common misconception; it is my job to make them comply. I do that in a number of ways. I am not a judge, because I have an interest in the outcome of the proceedings. I want to get operators back on the straight and narrow; I want to make them comply. The sort of orders that I might make day in, day out, are that drivers must be trained to perform daily walk-round checks or that they must be trained in the tachograph regulations. I probably spend around four days a week in public inquiry, hearing from the operators and their solicitors.

920. Mr Ford: You said that you do not have power to compel attendance at the inquiry. Nevertheless, you go ahead and make your determination.

921. Mrs Bell: The question I ask myself is this: if I do not meet the operators, how can I possibly conclude that their operations are safe and legal to continue? Operating licensing is based on trust. I grant a licence on the basis of promises that are given to me. I must meet the operators to ascertain whether I can trust them. If they are not there, I cannot question them and find out.

922. Mr Ford: What staff, as opposed to VOSA staff, do you have to carry out those functions?

923. Mrs Bell: There are two types of staff. However, all the staff who work for me are VOSA staff.

924. Mr Ford: Are they with you on secondment?

925. Mrs Bell: No; I do not know how to describe it, but the Government sort it out and all the staff are from VOSA. There are two groups of staff. The first group is the 50 or so licensing staff based in Leeds, who are very efficient. I work electronically with them, because I am 50 miles away, and they cover the whole of Great Britain. The second group is the 10 staff in my office. It is their job to deal with compliance issues, so they prepare the cases for public inquiry and do other preparation. In many cases, we might send operators warning letters to tell them that we have marked their card, that they are on our system and that we know that they have done something wrong. We then check in a year that everything is in order.

926. Mr Ford: Are appeals against your decisions to a court?

927. Mrs Bell: There is an appeal process, and appeals are made to the Transport Tribunal. However, that will be replaced by the upper tier, because we are having a shift.

928. Mr Ford: What percentage of your decisions are appealed?

929. Mrs Bell: Far too many — the percentage of successful appeals is tiny compared to the amount of work that I do. It is in the statistics. From about 180 public inquiries every year, three or four of my decisions are overturned. If I did not want my decisions to be appealed, I would not be so robust — I would just get operators to agree not to be naughty again. However, because I am not afraid to take robust decisions, I do not mind those decisions being appealed. I do get it wrong sometimes — as a woman, I do not mind admitting that.

930. The Chairperson: We are all human.

931. I want to pick up on a couple of points. Who regulates you? If you tell an operator that all of his or her drivers must go on a training course, how do you ensure that that happens?

932. Mrs Bell: They provide evidence. I am regulated in two respects. First, as I said to Mr Ford, if I make a mistake in a public inquiry, when I have my judicial hat on, the Transport Tribunal, or the upper tier, will correct me. When the new legislation is passed, I will be appealed on a point of law. Second, as a Traffic Commissioner and a licensing authority, I am accountable to the Secretary of State for Transport, which is the equivalent of being accountable to the Department here. That is why we publish our annual report — it justifies what I do. If the Select Committee or the Secretary of State ask for proof that I am effective as a regulator and that I am doing my job properly, I can give them the annual report.

933. The Chairperson: That happens once a year. However, if you want advice on how to pursue a matter, who do you contact?

934. Mrs Bell: We have regular dialogue with the Department for Transport and VOSA. We have tripartite meetings on a quarterly basis. Therefore, if I wanted to implement a new initiative that I am piloting in the north-west, I would contact a senior civil servant in the Department for Transport and the chief executive of VOSA to ask their opinion.

935. I would proceed only if I had their buy-in, because, although I am not a civil servant, I am paid by, and accountable to, Government. Therefore, I must work with them, and follow and inform their policies.



936. The Chairperson: So, although you direct your initiatives, they comply with Government policies on matters such as training.

937. Mrs Bell: Yes.

938. The Chairperson: Will you elaborate on that point? How do you ensure that that happens?

939. Mrs Bell: There are two ways. I might, for example, request that driver training be done by a recognised third-party provider, such as FTA or RHA, and I would then simply ask for evidence. Consequently, if FTA sends me certificates to demonstrate that drivers have done the course, then that is fine; it reduces the administrative burden on, and the cost to, the operator.

940. Similarly, if I have allowed a license to continue, but I have not asked for any undertakings, I would ask VOSA, the enforcement agency, to go back in six to 12 months to check, and I can stipulate whether that inspection should be announced or unannounced. The beauty of operator licensing is the continued relationship between the operator and the enforcement authority.

941. Mr T Clarke: I, too, welcome you. I am a little alarmed by your response to a question asked by Mr Beggs. You said that trailers coming from Northern Ireland are more likely to be unsafe. I am one of the Committee members who are against the Bill, because I do not understand how having an operator centre would address those problems. Those have nothing to do with such centres or the Bill, but arise from the process through which trailers must go. If trailers possess an MOT or PSV certificate, how do so many leave Northern Ireland and go to England in an unsafe state?

942. Mrs Bell: First, it is not operating that promotes road safety but operator licensing, based on the operator's repute, financial situation, professional competence and his undertakings. Operating centres are a separate matter; granting a licence makes an operator safe.

943. VOSA has a brilliant slide — which I now wish that I had brought — to demonstrate the MOT standard, which is the absolute minimum for a vehicle to comply with the construction and use regulations. On the day that a vehicle undergoes its MOT, it has had the bare minimum of maintenance. When an operator carries out regular safety inspections of a vehicle, during which a mechanic crawls all over it to check that everything is OK, its standard of roadworthiness should be much higher.

944. Consider the following: the standard at which a vehicle should be on the day of its safety inspection is considerably higher than on that of its MOT inspection. Every time the vehicle then goes out on the road to deliver its goods, that standard decreases a little, gradually getting worse until, at the end of six weeks, it reaches MOT standard. At that point, the vehicle undergoes another safety inspection, and the standard goes back up to that which was achieved six weeks previously. If, as you suggest, the vehicle merely achieves the MOT standard and then goes on the road, it starts at the bare minimum standard — only just complying — and therefore, over that time, wheel nuts become loose and the vehicle's physical condition will deteriorate. Eventually, it will become an unacceptable risk to road safety —

945. Mr T Clarke: I do not buy into that —

946. Mrs Bell: Please let me finish.

947. Mr T Clarke: Allow me to make my point; this is going nowhere.

948. Mrs Bell: The vehicle becomes an unacceptable risk to road safety, and that is when collisions happen, and a fatal incident or a serious injury occurs. That is what operator licensing is about. As I said, I wish that I had brought that slide, although I can certainly email it to you.

949. Mr T Clarke: Having had a motor background and having worked in that environment, I know that someone crawling under a trailer to conduct a visual check will not achieve that big difference in roadworthiness.

950. Mrs Bell: It will.

951. Mr T Clarke: I beg to differ. I have worked in the motor industry for —

952. Mrs Bell: Where is your evidence?

953. Mr T Clarke: Where is your evidence to the contrary? To take that point further: you said that there have been occasions when wheels have fallen off lorries that have already complied with all the other regulations. So where is the evidence that the gap of six weeks has worked? The evidence seems to point to the contrary — the fact that the wheel fell off suggests that it did not work. They have bought into all this —

954. Mrs Bell: Sorry, you will have to speak more slowly, Mr Clarke — it is the accent.

955. The Chairperson: You will have to clarify that point. We started by talking about how a vehicle from Northern Ireland might be in poor condition compared to the vehicles in GB, which are kept to a higher standard because of the inspection process there. Your point is that those cursory, or more detailed, inspections should, naturally enough, improve road safety.

956. Mrs Bell: It “will” improve road safety, not “should”.

957. The Chairperson: I said that, naturally enough, it should improve road safety. The way I see it, that almost makes a case for a more frequent MOT or PSV rather than an increased —

958. Mrs Bell: They are two different things; one is a test and one is an inspection.

959. The Chairperson: I appreciate that. However, my point is that, if there is already a test to ensure that a minimum standard has been met — and officials here would argue that it ensures that slightly more than the minimum has been met — you are taking us in the direction of a more frequent MOT or PSV. We have all put vehicles through MOT and PSV tests and the likes, and we know the scrutiny under which they are placed. The basis of the argument that I am hearing is that we should move to having more frequent MOT or PSV, as opposed to six-week inspections.

960. Mrs Bell: But would that not be an unacceptable burden on the industry?

961. The Chairperson: Of course it would.

962. Mr T Clarke: Sorry, Chairman, a visual inspection will not tell a person whether the trailer is roadworthy — how can a visual inspection determine whether the brakes are up to an adequate standard?

963. The Chairperson: Can you clarify that point? I am not expecting you to answer as a mechanic —

964. Mrs Bell: Well, thank God for that, because I do not have the mechanic's detailed knowledge, and I would not profess to — unlike Mr Clarke.

965. The Chairperson: Can you talk us through how that approach has worked, based on your own experience?

966. Mrs Bell: It has worked because the vehicles are now in a much safer condition than they were previously.

967. The Chairperson: I appreciate that — as a result of the inspection.

968. Mrs Bell: Yes, they are in a much safer condition as a result of the regular safety inspections and the driver daily walk-round check. As far as I am concerned, the two are the foundation stones of operating licensing. The driver daily walk-round check is a good way of ensuring that a wheel will not come off. The point of the safety inspection is that, for example, the braking system might need some work or parts replaced because of wear and tear. I am interested that a Committee member does not agree that regular safety inspections — which I have always regarded as accepted policy — improve the safety of a vehicle. I am just worried that the rest of the Committee —

969. Mr T Clarke: You are making a big difference between —

970. The Chairperson: Just a minute, Trevor.

971. Mr T Clarke: Chair, let me clarify this —

972. The Chairperson: Hold on a minute.

973. Mr T Clarke: This point is directed to me.

974. The Chairperson: I know the point that you are making, Trevor, because I was about to pick up on it. The point is that there is a difference between the type of inspection that Mrs Bell has just described and the type of inspection that a mechanic would undertake, for example, to check if the brakes are defective. Such an inspection involves taking off the wheels and cylinders, and so on. Is that the sort of the inspection that those people carry out?

975. Mrs Bell: Yes. Perhaps Mr Clarke and I are at odds on the difference between the driver daily walk-round check and the regular safety inspection.

976. The Chairperson: Yes; could you expand on that point, please?

977. Mrs Bell: Let me explain what we expect in Great Britain. Every day, in an attempt to win drivers' hearts and minds, I ask them "Have you checked your nuts this morning?" They all laugh at me, but it gets the message across. [Laughter.] I am a woman working in man's world; I have to win their hearts and minds.

978. The driver daily walk-round check is a vital part of operating licensing, and it involves the driver physically walking around the vehicle. To return to the example that we were talking about earlier, Mr Clarke: the driver will check that the wheel nuts are tight and in the right place, and that the windscreen wipers and lights are working, and so on. We expect that check to be done every day, and, as I say, we ensure that training is provided, and so on.

979. The other issue I talked about was a proper safety inspection where the vehicle goes into the garage, and the mechanics — the spanner men — look at the vehicle and conduct a full safety inspection. They have a sheet with all the IM numbers, which are the different parts, to ensure that the braking system works, that the tachograph is sealed, and so on, and that inspection is carried out every six weeks. Perhaps we were at cross-purposes. That is what I referred to when I talked about the six-week difference.

980. The confusion may have arisen when I was talking about the mechanics being employed at the docks. Mechanics can only do so much at the roadside; they cannot possibly do as much as they can with the proper safety inspection over a pit.

981. There you are: we sorted it.

982. Mr T Clarke: I have a follow-on question about the so-called safety inspections. Why do the nuts come loose and the wheels still fall off, if people have been bought into the system on the mainland?

983. Mrs Bell: Generally, because the drivers have not done their daily walk round their vehicles to check them, which is why our job is proactive and tries to get them to check their vehicles in the first place.

984. The Chairperson: That is the training that you referred to earlier. If an incident were to happen and, as a consequence, it came before you, would that be the sort of instruction that you would ensure goes through the process?

985. Mrs Bell: Yes. We could talk for hours about wheel loss, but I do not want to get hung up on that subject.

986. The Chairperson: God, no.

987. Mrs Bell: It was a bad example. We will use a defective braking system, which is much more likely to happen.

988. Mr Boylan: Over here, vehicles go through a test centre and the driver has a PSV certificate that lasts for a year, which is what Mr Clarke referred to. There is a big difference between checking for defective tyres, defective lights, etc, and a proper check. That point has been clarified. Is that the main issue of the commissioner? The vehicle is sound only on the day that it is tested. Do we need a PSV certificate every six months or after so many thousand miles?

989. Mrs Bell: It is not for me to say what you should do. In Great Britain, we have an undertaking from the operator that says that the vehicles will be subjected to regular safety inspections at a specified interval. We have a graph, and inspections will depend on the size of the vehicle, the type of journey it does, and the number of miles it travels. A 38-ton articulated lorry trundling up and down the motorway every day may need checking every six weeks, whereas a farmer carrying his goods to market may need checking only four times a year. We tailor inspections to the size and weight of the vehicle and the type of journey.

990. The Chairperson: A big issue that has arisen in the evidence gathered so far has been how exemptions have been made for agricultural vehicles and vehicles involved in horticultural activity. What are those exemptions and how do they work?

991. Mrs Bell: In Great Britain, we have several exemptions that are related mainly to the use of the vehicle, rather than the type of vehicle: in other words, the type of operation. Those vehicles

tend to be used for emergency provisions, such as fire brigades and ambulances. We have a general exemption for agricultural tractors used in certain circumstances. You may, or may not, be aware that the Department for Transport is reviewing exemptions. We have found — and you may have found it here — that once a piece of legislation comes into force, operators try to find a way to circumvent it.

992. Some agricultural vehicles are being developed in such a way as to fall between two stools, and the use of a fast-track is a good example. A vehicle that we see as a tractor — with big tyres and a farmer driving it — is a fast-track, which is also used as a commercial-goods vehicle.

993. We have real difficulties with a fast-track vehicle that tows a trailer in which goods for commercial gain are carried. That must be licensed.

994. The Chairperson: Therefore, the exemptions should be based on the how the vehicle is used?

995. Mrs Bell: The exemptions should be based on use. However, from my experience, care must be taken to ensure that it can be tied up tightly, so that the operators and the lawyers cannot find a loophole to avoid compliance.

996. Mr Gallagher: Thank you for your presentation. You described the criminal side of the issue as significant.

997. It was not clear whether you were implying that vehicles from Northern Ireland are used by gangs involved in criminal activity. If that is the case, will you provide some examples?

998. My second question deals with the third component, the Republic of Ireland — Britain being the first and Northern Ireland being the second. Are vehicles based there also used by criminal gangs?

999. Do you co-operate with the regulators in the Republic of Ireland to ensure that vehicles used in the trade are safe when vehicles that are based there come to your attention?

1000. Mrs Bell: First, the problems that the north west traffic area faces in tackling criminal activity, such as fuel laundering and fuel duty evasion, probably mirror those that you face. For obvious reasons, I cannot deal with specific cases by name; however, the information that we received from the enforcement authorities is similar to that included in the representations from the Freight Transport Association about criminal activity and illegal fuel. That is a big issue in the north west traffic area, especially in the metropolitan areas of Liverpool and Manchester. I can say that because I am from Liverpool. There are big issues surrounding the laundering and trafficking of fuel to the north west traffic area. Given that our licensing regime is based on principles of repute or fitness of own-account operators we are able to take more action. We see that as a big problem; we also see it as a big security issue.

1001. With regard to the Republic of Ireland, the north west traffic area and other traffic areas experience similar problems to you. Although we have the co-operation of the enforcement agency, we are concerned that the regulatory regime is not on a level playing field. Who is the regulator? How does he or she regulate? Does he or she regulate in the same way?

1002. Perhaps this is not as relevant for own-account operators, but my concern as a commissioner is that many operators work in Europe and it is therefore important that the regulators throughout Europe adopt a common approach. That is probably a few years down the

line. We have the co-operation of the regulators in the Republic of Ireland; however, we differ in how we regulate.

1003. Mr Boylan: Obviously operating centres will be affected by own-account operators. Although Northern Ireland comprises large rural areas, I am concerned about the people who operate from home and choose to park their vehicles on the footpath outside their homes in residential areas. Will you provide some examples of how to address the issue of people operating from their homes in residential areas? How did you address the issue of planning for operating centres in the north west traffic area? There will be difficulties there with road safety and such.

1004. The Chairperson: I will expand on that. Last week, one of the major issues concerned operators who would be defined under the legislation as operating — for want of a better word — from their own homes, for example, self-employed lorry operators parking outside their residential property. There was some concern about the Bill's definition of an operating centre that could have planning implications for the person so defined. Therefore, we are trying to get a handle on whether, in your experience, there have been planning implications.

1005. Mrs Bell: First, we do not have to consider the planning position and necessarily be bound by it. We are mutually exclusive, so if I define somewhere as being an operating centre, the planners do not have to accept it as an operating centre. They can do what they like, so we are not necessarily going to dovetail. That is because the tests are, quite rightly, different. Our definition of an operating centre is a place where a vehicle or vehicles are kept when they are not in use. Therefore, the centre is basically a place where vehicles go for a rest. Were I to have brought props today, I would have brought a pair of scales, because we have to balance the competing needs of the operator to go lawfully about its business with the competing needs of residents to the quiet and peaceful enjoyment of their properties. That is why I continually talk about discretion. Operators and residents must peacefully co-exist, and, in many cases, they have done so, even though someone is parking his or her commercial vehicle on a road. However, in other cases, they have not peacefully co-existed, and that is where we come in as the licensing authority to try to resolve the issue. It goes back to my regulation with a light touch but not necessarily with a soft touch.

1006. We have those competing needs; furthermore, we have the overarching aspect of road safety, therefore, when we examine an operating centre, we always look at the impact on road safety if a vehicle were parked there. We try to find or designate a safe place for the operator; for example, a truck stop. In rural areas, we allow farms to park a vehicle if there is space, provided that the vehicle can enter and exit in forward gear. In urban areas, we try to find a regional distribution centre, a truck stop, or a lorry park, where vehicles can be kept when they are not in use.

1007. Mr Boylan: I understand what you are saying, but it still does not explain the matter, because there are complaints here about existing operating centres. For example, what would happen in the north west of England if someone were to operate a truck for 10 years and then buy a house in a residential area and park it on the footpath, as it was the only place that they could operate from?

1008. Mrs Bell: We would not allow that.

1009. The Chairperson: Perhaps parking on the footpath would be the issue there, but what would happen if that vehicle were parked in the designated space associated with the dwelling?

1010. Mrs Bell: If someone were to operate a seven-and-a-half-ton truck, we would look at the parking area and decide whether the operator could enter and exit the space in forward gear.

1011. Mr Boylan: There is not a chance of that happening in a residential area. I do not see a problem with that, but those people will need planning permission. Are they directed to the nearest industrial estate?

1012. Mrs Bell: We would have a look at the surrounding areas. I want you to understand why we do that.

1013. We prefer not to do that, to avoid putting an unnecessary burden on operators, especially when — as in Northern Ireland — those own-account operators have been in business for years, during which time they have, perhaps, parked their trucks on a road or a pavement. Other than for environmental reasons, such as ensuring that people are not awoken at 3 am by the noise of reverse-gear buzzers, the only reason that that is specified is because in urban areas the issues appear to involve large operators. An example would be an operator with a 24-hour regional distribution centre next to a row of houses. The issues around several thousand own-account operators are not the same.

1014. Mr Boylan: Yes — but twin-axle Transit vans that may not fit on a drive in an average residential estate have been discussed.

1015. To return to the rural issue; permission is not generally granted here for businesses in rural areas. The problem is that parking a vehicle may be facilitated, but how is the issue addressed of changing the designation of a garage in order to enable it to be used to store and distribute goods?

1016. Mrs Bell: We are not bothered about the planning laws. We are simply bothered. I am speaking to two members at the same time —

1017. Mr Boylan: Yes, but if we do that over here there is a bother for planning.

1018. Mr T Clarke: I think that may be unfair —

1019. Mrs Bell: I am sorry, Mr Clarke, your accent is delightful but please speak a little more slowly? [Laughter.]

1020. Mr Weir: I am from North Down, which sometimes sees itself as being half-way between England and —

1021. Mr T Clarke: It is unfair in the sense that the Committee is not getting both perspectives. Last week members heard from a planning perspective; today the viewpoint is totally different. Therefore, Mrs Bell, you cannot give the Committee the answer it seeks.

1022. Mr Boylan: I totally understand that.

1023. Mrs Bell: I am sorry. I tried.

1024. Mr Clarke: That is the problem that members will face, Chairperson.

1025. Mrs Bell: It is an important point.

1026. The Chairperson: For clarification; the real point made last week was in relation to operating centres, about which Mrs Bell may inform the Committee through her wider experience with local authorities. The nub was whether there was a correlation between the definition of an

operating centre and a local authority's interpretation of an operating centre as an accepted business.

1027. Mrs Bell: When I said that they were not mutually exclusive, I meant that whatever Traffic Commissioners do does not in any way fetter the discretion of the planning authority. I believe that is how it should be.

1028. The Chairperson: Absolutely.

1029. Mr T Clarke: That is what worries members.

1030. Mr Boylan: That is the problem.

1031. Mrs Bell: Why is that a problem?

1032. Mr T Clarke: It is a problem because the Committee accepts and is happy that someone will be granted permission to set up an operator's centre, but the Planning Service will refuse permission because it deems that same operation a business. Therefore, a small operator in Northern Ireland is burdened with an additional expense.

1033. Mrs Bell: Do you mean the expense of having to apply for planning permission?

1034. Mr T Clarke: No — the operator will not be granted planning permission.

1035. The Chairperson: That is the problem.

1036. Mrs Bell: I do not know Northern Ireland's planning laws. However, in the north west traffic area of Great Britain operators need not apply for planning permission. Therefore, I do not know what the situation might be in Northern Ireland.

1037. Mr T Clarke: That must be clarified.

1038. The Chairperson: What I am trying to elicit is how you, Mrs Bell, define an operating centre. I want to know whether any local authority, upon designation of an operating centre, decided that that operating centre required planning permission as a business. Has that not happened?

1039. Mrs Bell: No it has not.

1040. The Chairperson: That is very good. Thank you for that.

1041. Mrs Bell: And similarly, if an operating centre has planning permission for commercial use, we must accept it as an operating centre.

1042. May I just do the hearts and minds thing? The overarching issue of road safety is the only reason that there is an environmental aspect to deal with, because the legislation is drafted in a way that strikes a balance between residents and operators, which is right. However, it also deals with that road safety risk. I have a reputation in the north western traffic area for being strict. I do not know why, but it does not bother me, so long as I am known for being fair.

1043. I am haunted by the case of 12-year-old Gerald Byrne. One day, he was walking home from school and bent down to tie his shoelaces. As he did, a 38-ton truck reversed out of a depot and reversed over him; then it drove forward and killed him. That happened nine years



ago, and the case is still outstanding. It haunts me, because it was avoidable; there is no way that anybody should have allowed a 38-ton truck to go in and out at that particular location. Perhaps, a 2.2-ton or 3.5-ton van would be permitted to use the location, because they carry a more manageable and acceptable risk.

1044. In our capacity as commissioners, we are asking what size and weight the vehicles are and what areas are required for them to turn. The requirements for a 38-ton truck are entirely different from those for a 3.5-ton truck. The Committee must be aware of that when they scrutinise the Bill: look at the area and consider whether there is a risk. If there is a minimal risk, there is no difficulty, but you will have to look at it again if there is a bigger risk.

1045. The Chairperson: Thank you for attending this morning's Committee meeting. It has been a lively and informative exchange, and you have answered a lot of our questions.

1046. Mrs Bell: Was it helpful?

1047. The Chairperson: It was helpful, and very good of you.

1048. Mr Boylan: Have you done your checks?

1049. Mr T Clarke: [Inaudible.]

1050. Mrs Bell: I am glad that we clarified that, because it would have been awful if we had been speaking under a misapprehension. Thank you very much.

## **16 October 2008**

Members present for all or part of the proceedings:

Mr Patsy McGlone (Chairperson)

Mr Cathal Boylan (Deputy Chairperson)

Mr Roy Beggs

Mr Trevor Clarke

Mr David Ford

Mr Tommy Gallagher

Mr David McClarty

Mr Ian McCrea

Mr Alastair Ross

Mr Peter Weir

Witnesses:

Mr Donald Armstrong

Mr John Brogan      Department of the Environment

Mrs Gillian McIntyre

1051. The Chairperson (Mr McGlone): The Committee has concluded its evidence sessions on the Goods Vehicles (Licensing of Operators) Bill and will soon begin its clause-by-clause scrutiny.

1052. Witnesses appearing before the Committee today are Donald Armstrong, head of the driver, vehicle and operator policy branch, and John Brogan and Gillian McIntyre, both of whom are members of the Department of the Environment's (DOE) Goods Vehicles (Licensing of Operators) Bill team. They are very welcome again.

1053. Mr Donald Armstrong (Department of the Environment): Thank you for your welcome. I am sure that you have noticed that we have aged quite a bit over the past few months.

1054. The Chairperson: Have you? Not a bit of it.

1055. Mr D Armstrong: It feels that way.

1056. I will give a brief overview on which we will take questions. Our departmental Assembly liaison officer, Una Downey, has provided the Committee with the Department's response to its query about the particular regulation-raising clauses in the Bill. There are quite a few such clauses, which I will summarise.

1057. First, the Bill allows for commencement Orders to commence, repeal, amend or modify the Bill — once enacted — through affirmative resolution as contained in clause 56. Secondly, one regulation will be made under affirmative resolution. For example, clause 27(3) deals with the period between reviews. That has been set in the Bill at five years, but there is provision to change that by affirmative resolution.

1058. All the other regulations in the clauses are subject to negative resolution and are subject to consultation as set out in clause 57(11). They would also be subject to SL1 proposals being brought to the Committee.

1059. In general, the regulation-making powers correspond with those that have been created by the GB Goods Vehicles (Licensing of Operators) Act 1995, of which members have a copy. Those powers are also in the Transport Act (Northern Ireland) 1967, and they generally replicate what is already in place in other legislation.

1060. However, there are some cases in which, following recommendations from GB and the Office of the Legislative Counsel (OLC) when the Bill was being drafted, we have moved powers from primary into subordinate legislation. I will give the Committee one example of that.

1061. The particulars that a person must supply when they apply for a licence are listed in section 8 of the Goods Vehicles (Licensing of Operators) Act 1995. Details that pertain to the information that must be supplied under section 8 are contained in schedule 2 of that Act. We have replicated section 8 of the GB Act in clause 7 of our Bill. However, we have moved the detail from the schedule into regulations. That is a slight change. The reason for that is that it makes it easier to update and amend legislation as appropriate. That approach has been adopted with OLC agreement, and it relates generally to the administration of the licensing process and function.

1062. When the former Minister gave approval for the Bill, three options were considered. The first was to do nothing and to leave Northern Ireland's system as it is. The second was to replicate exactly what happens in GB. The third — the one that the Minister chose and with which we have proceeded — is to replicate what happens in GB but to allow for local variations because of differences that occur in Northern Ireland due to its rural environment, and the number of small businesses and so on.

1063. That approach is facilitated by the fact that the Bill contains regulation-making powers. During the two years after the Bill has been enacted, the Department will be able to take on board representations, such as those that we have already heard — on exemptions, operating centres, and so on — when it makes regulations. Therefore, the Department's response to the industry is that, through those regulations, it will have greater freedom to tailor the final outcome into something that pleases and helps everybody, rather than having to stick to something rigid.

1064. Much of the work on goods-vehicle licensing — and on public-transport licensing, for that matter — is set out in EU directives. In order to transpose those directives into Northern Ireland law, legislation must be changed. There are severe difficulties in processing and timing in achieving transposition dates. EU directives are much easier to transpose if regulations exist already. I accept that there are many regulation-making clauses in the Bill that will provide the flexibility that is needed to respond to the industry and to the directives, and they will, hopefully, create a Bill that is easier to work with and is as up to date as possible.

1065. The Chairperson: Do members have any queries on that aspect of the process? Do you want to ask a question, Trevor?

1066. Mr T Clarke: I will wait until the next Stage to say no to the Bill.

1067. The Chairperson: I have several questions and points on which I would like clarification. Clause 20 sets out the conditions for the issue of licences. Is there any particular reason why those conditions are so broad? Clause 20(1)(d) uses the words:

“for any other prescribed purpose.”

1068. Mrs Gillian McIntyre (Department of the Environment): There are specific occasions when conditions can be attached, for example, to improve road safety or to ensure that every operation when a vehicle leaves an operating centre and joins a public road is safe, and when there are environmental issues or declarations of convictions. The Department wants to include that generality in order to enable it to respond to the wide range of industries that exist and the situations that can occur. The aim of operator licensing is to try to bring as many people as possible into the regime, and the Department intends to achieve that by attaching conditions for certain circumstances, for example, for general road-safety purposes. It also enables conditions to be attached for small operators that differ from those that are attached for larger operators.

1069. The Chairperson: Am I right in saying that any additions or amendments to the legislation would be subject to negative resolution?

1070. Mr John Brogan (Department of the Environment): Those are subject to negative resolution at the moment; as Donald said, most of the regulations will be subject to negative resolution.

1071. The Chairperson: Is there any other way of doing it?

1072. Mr D Armstrong: Affirmative resolution could be used. However, that process is much slower and would tie up the Assembly for what is a relatively administrative piece of work. Nevertheless, I would be happy if the Committee wished to make some of the regulations subject to affirmative resolution.

1073. Mr Beggs: I assume that there would be a relatively short delay only in changing from negative resolution to affirmative resolution. Would that, therefore, not be a more appropriate method of dealing with the situation, in case some unforeseen difficulties arise with negative resolution, given that such wide powers would exist under the primary legislation?

1074. Mr Brogan: Across Departments, the convention is that most regulations are subject to negative resolution. However, there are occasions when regulations must be subject to affirmative resolution; for example, regulations under clause 27(3) may be made by affirmative resolution. The Office of the Legislative Counsel advised that any regulations that are made

under clause 27(3) will be subject to affirmative resolution because they will amend existing primary legislation by substituting five years with three years, six years, or whatever.

1075. It has been the convention to leave other regulations to negative resolution. However, the Department is easy about it, and if the Committee is anxious about clause 20(1)(d), by all means the subordinate legislation that it, or any other clause can make, can be passed by affirmative resolution.

1076. The Chairperson: I have a query about clause 57(8), where a contravention of a provision is declared to be an offence. Will you clarify why the Department needs — or feels that it needs — those additional offences? How would the Department exercise that power?

1077. Mr D Armstrong: Clause 57(8) refers to the level of fine.

1078. The Chairperson: It refers to the contravention of the provision of regulations.

1079. Mr Brogan: That will apply only to those regulations that list an offence. It is in the Bill that the punishment or penalty for that offence would, in this case, be on summary conviction to a fine not exceeding level 3. It is a case of setting the actual offence and the penalty in primary legislation. It makes it consistent throughout the Bill that all penalties for offences are contained on the face of the Bill. However, the description of that offence may be contained in the regulation.

1080. The Chairperson: Would it not be appropriate to make that subject to affirmative resolution?

1081. Mr Brogan: Generally, the OLC looks towards negative resolution to ensure that the Assembly is not clogged up with —

1082. The Chairperson: I am sorry, what is the OLC?

1083. Mr Brogan: The OLC is the Office of the Legislative Counsel — the agency that drafted the Bill. I wish that I could draft the Bill, but no, such work is left to the Office of the Legislative Counsel. That body comprises barristers, so we rely heavily on its legal advice. We do not ask for certain conditions; we rely on the advice of the OLC, and such reliance ensures that there is consistency across Departments.

1084. Mr D Armstrong: Clause 57(8) is not, in itself, a regulation-making power: it is a statement of an offence. It would not be subject to resolution.

1085. The Chairperson: Would it not?

1086. Mr D Armstrong: No; clause 57(8) is a statement that there is an offence under the regulations resulting in a fine not exceeding level 3. It is not a regulation-making power in itself.

1087. Mr Beggs: What is level 3?

1088. Mr Brogan: Level 3 is a fine up to £1,000.

1089. Mr Ford: The point is that clause 57(8) creates criminal offences on the back of regulations that may themselves only be subject to negative resolution, rather than offences being created on the face of the Bill. That is where the issue of an affirmative resolution is more significant.

1090. Mr D Armstrong: I understand that. Are you suggesting that all the regulations be subject to affirmative resolution? If so, that would create a business issue.

1091. Mr Ford: No. Clause 20(1)(d) allows the Department to attach conditions to a licence:

“for any other prescribed purpose”.

1092. However, when that is read in conjunction with clause 57(8), it seems to be a fairly open-ended deal for the Department. If criminal offences are then created on the back of those regulations, the legislature should do something about it.

1093. Mr D Armstrong: Are you suggesting that clause 57(8) reinforces the case for the regulations under clause 20(1)(d) to be subject to affirmative resolution? There are other regulating powers in the Bill that are not as open.

1094. Mr Ford: I am not suggesting that anything in the regulations that is clearly spelled out in the Bill and the schedules should be subject to affirmative resolution. However, where things are open ended, we have to guard our end of the process, regardless of what OLC tells the Department.

1095. The Chairperson: The Committee will communicate its views directly with the Department on broad points and await its response. We can then deliberate on them.

1096. Mr D Armstrong: I accept that there are some broad issues to be considered.

1097. The Chairperson: OK, the Committee can communicate its views with the Department instead of going through them today.

1098. Mr Boylan: I have some questions about the operating centres, which is an issue on which Donald loves to answer questions. From a road-safety perspective, one would not want an operator to reverse his or her vehicle out of a driveway. What does the legislation say about that? I will not ask about the planning issue; that is a separate matter.

1099. Mr D Armstrong: Are you asking for the definition of an operating centre?

1100. Mr Boylan: Yes, and about how to overcome the issue of driving into and out of an operating centre that is someone's home.

1101. Mr D Armstrong: The legislation requires that an operating centre is listed on an operator's licence. By definition, the operating centre is the place where a vehicle is normally kept when it is not in use. To be fair, the term “operating centre” is a slight misnomer, because it implies that it is a centre from which people are operating. Instead, it refers to the place where vehicles are stored or kept when they are not in use. That could refer to a quarry, for example, which is an operating centre in the literal sense of the term, but it could also refer to — as Mr Boylan suggested — the side of a house where someone parks their vehicle at night.

1102. There is no proposal in the legislation to specify the standard of an operating centre — that will be at the discretion of the person who makes the decisions. In GB for example, one of the Traffic Commissioners, Mrs Beverly Bell, who gave evidence to the Committee last week, spoke of a guideline where a vehicle must enter and exit an operating centre in forward gear — that is not in either primary or subordinate legislation, but it is a guideline that would be applied in a discretionary manner. For example, it may be easy to drive a 4-ton transit van in and out of an operating centre in forward gear or to reverse it out, but a 40-ton or a 44-ton vehicle is a

completely different proposition. Therefore, discretion is exercised, but there will be no specification in legislation stating, for example, that someone must enter and exit an operating centre in forward gear.

1103. Mr Boylan: I am trying to get a definition of what type of vehicle is over the 3.5-ton limit. Perhaps the Department could provide some information on what types of vehicles are over the limit, for example, a Luton van. I ask that because the issue will affect 75% of the industry, who are all own-account operators, which is a substantial number.

1104. Mr D Armstrong: Would it be helpful if we provided the Committee with photographs of vehicles that are in ruled in and out of scope because of their weight?

1105. The Chairperson: Yes, that would be useful. How can we get around the misnomer of the term "operating centre"? The term "operate" is a derivative of the verb "to work". The problems with the Planning Service and other difficulties are created by that misnomer.

1106. Mr D Armstrong: The operating centres of the majority of businesses will be the place from which they operate and carry out their loading and unloading. Haulage companies and big companies, such as the Henderson Group, will operate from such a centre. "Operating centre" becomes a misnomer when an individual drives a vehicle home and parks it at the side of his or her house at night. In such cases, the house is not an operating centre, because there is no storage at home, and that may have planning implications. The home is merely a place where they park their vehicle, and that is when the misnomer begins to have an effect.

1107. That is why we have provided a definition, so far as the Bill is concerned. If the Committee wants to think of another way of describing the place where a vehicle is kept when it is not in use, we will consider that. Thus far, we have been comfortable with the term "operating centre", which is also used for the hire-for-reward sector.

1108. The Chairperson: Perhaps you could come up with a few ideas from the thesaurus.

1109. Mr Boylan: I do not know whether a clearer definition or an alternative to "operating centre" is required.

1110. Mr D Armstrong: Do you want a clearer definition or a different title?

1111. Mr Boylan: Perhaps a different terminology is required.

1112. Mr T Clarke: I did not intend to comment on this today, because the Committee knows my view on the issue, and it has not changed, and nor will it. One of your earlier submissions to the Committee stated that you would review what you deemed as a suitable operating centre, and you referred to such a review. It was suggested that if someone made a complaint about an environmental issue, for instance, a review would be instigated sooner. I am concerned about that and about what it will mean for someone who parks their 3.5-ton vehicle at the side of their home.

1113. Mr D Armstrong: That is a difficulty, and it was highlighted by the presentation that was made last week by one of the Traffic Commissioners. It is safer to park a 3.6-ton vehicle at the side of a house than it is to park a 40-ton vehicle. Those are two different situations. That is a huge range of vehicles for which to tie down into legislation. That is why it is left to the discretion of the Traffic Commissioners in GB and why we feel that discretionary powers are necessary.

1114. Mr T Clarke: That leads to another good point. Are we looking at another job-creation service in Northern Ireland? Will there be another commissioner in Northern Ireland to legislate for that in the future?

1115. Mr D Armstrong: We are not talking about legislation for that role. As the Committee has heard, there are independent traffic commissioners in GB. While preparing the proposals with the OLC, we sought to have the legislation provide the facility to provide for a traffic commissioner in Northern Ireland. That was refused to us, and, at that time, the Minister said that the issue of a traffic commissioner for Northern Ireland should be left to a different forum. We have freight, buses and taxis. The issue of an independent regulator to look over all those areas should be considered in the round, and not merely in relation to goods vehicles.

1116. That leaves us with two options. First, we can let the existing Driver and Vehicle Agency (DVA), which currently regulates the hire-for-reward sector, take on board the function and leave it within the agency. Secondly, we can separate the function and have a regulator appointed in the Department, but separate from the agency, to have the same the powers and carry out the same functions of the Traffic Commissioners in GB. The Bill allows us to do that.

1117. There are pros and cons for each option. For instance, DVA is already up and running with the system for hire or reward bolted on. The disadvantage of that is that the administration — the prosecutor, judge and jury — are all in the same organisation, and that could be viewed as being unsatisfactory and not sufficiently independent. Alternatively, the traffic commissioner role could be carried out separately, and, should the Government decide to introduce an independent traffic commissioner in the future, it would be easier to transfer that function.

1118. We have to work through that. We have taken views from industry and considered what the best process would be, but we do not have a final solution. An independent traffic commissioner is not envisaged in the legislation, and we have not been allowed to do that.

1119. The Chairperson: Do you want to leave that for another day, Trevor?

1120. Mr T Clarke: Yes.

1121. Mr Ford: I was interested by Donald's phrase:

"we have not been allowed to do that"

1122. in relation to an independent traffic commissioner. I presume that he means that the previous Environment Minister instructed the Department not to do that.

1123. Mr D Armstrong: The previous Minister instructed us to proceed with the legislation without including a traffic commissioner. However, when discussing the drafting of the legislation with OLC, we asked whether they would allow the legislation to provide for a traffic commissioner should any future Minister decide that one was required. The OLC was unhappy to include that provision in the legislation, and it stated that it was cleaner to keep it as it was.

1124. The Minister decided that the traffic commissioner should be considered in the round over freight, taxis and buses. The OLC was happy to work with that decision.

1125. Mr Ford: The Committee has made no formal decision on the evidence that Mrs Bell gave last week, but some of us were impressed by what she said. It could be argued that instituting a traffic commissioner for freight — who could subsequently assume other responsibilities — would provide a good indication of what would be the appropriate course of action to take.

1126. Mr D Armstrong: That is a valid argument. Including the own-account sector in Northern Ireland's freight industry makes that industry significantly bigger than was initially envisaged. Indeed, the freight industry could become even bigger, depending on the number of exemptions that are granted. It could also be argued strongly that the freight industry in Northern Ireland is of a sufficient size to warrant a traffic commissioner. Scotland has a traffic commissioner, and the freight industry in Northern Ireland is bigger than that in Scotland. Your argument is valid, but that provision is not contained in this legislation.

1127. Mr Ford: I presume that that provision would not be beyond the Long Title of the Bill, because it concerns the licensing of operators. I assume that if the Committee were minded to propose amendments, and the Assembly accepted them, they would be competent.

1128. Mr Brogan: We enquired about that possibility, but we were advised by the Office of the Legislative Counsel that the constitution of traffic commissioner would warrant completely separate legislation.

1129. Mr Ford: With respect, I am not asking for your advice about what is convenient for the OLC and the Department. We need to establish the ambit of the Bill as it currently stands.

1130. Mr D Armstrong: All the powers of the GB Traffic Commissioners are replicated exactly in the Bill. The discussion now is about where those powers should be exercised: in the agency; separate from the agency but within the Department; or outside the Department. The Bill provides the opportunity to adopt either of the first two approaches, but not the third.

1131. Mr Ford: It is the Bill as it currently stands that does not make provision for the third approach.

1132. Mr D Armstrong: That is correct.

1133. Mr Weir: You have received advice about the approach that should be adopted, but you have not been advised that it would be legally impossible to make provision for the implementation of a traffic commissioner for freight, for example. Is that a fair comment?

1134. Mr D Armstrong: Yes.

1135. Mr Weir: As Mr Ford and Mr Clarke said, the Committee may suggest amendments to the Bill to allow for a traffic commissioner. You have not been advised that that could not be done. You have merely been advised that that would be legally incompetent and that separate legislation would be necessary if there is to be a traffic regulator. You made that point in response to David Ford, but I want that to be clarified.

1136. Mr Beggs: Why can the Bill not make that provision? I am not necessarily suggesting that it should be made now, but the Bill should provide ability for that provision to be made in secondary legislation. Has the judgement been based on the fact that the Minister is not minded to go down that route?

1137. Mr D Armstrong: I cannot comment on whether the OLC took the Minister's view into account when advising us not to include that provision in the Bill.

1138. Mr Beggs: In general, does the OLC take the Minister's view into account?

1139. Mr Brogan: The judgement was made on the basis that the Bill would have to make provision for the traffic commissioner's terms of employment — that is, the hiring and firing. In



GB, the traffic commissioner system is contained outside of the Goods Vehicles (Licensing of Operators) Act 1995. From a purely legislative point of view, it would be more appropriate for a traffic commissioner to be instituted under stand-alone primary legislation. It should not be attached to the Goods Vehicles (Licensing of Operators) Bill, which purely concerns licensing and does not — in any shape or form — involve the powers of an individual traffic commissioner.

1140. Mr Beggs: I understand what you say about wanting to use separate legislation to institute such a commissioner. However, would any provisions be required in the Bill to make that mesh in more easily, should that be the route that is taken?

1141. Mr Brogan: If a decision were made to institute a traffic commissioner, it would be a simple matter of amending the Bill to allow the powers that are invested in the Department to be invested in a traffic commissioner, and he or she would take over that role. It would not be impossible. It would be a straightforward procedure, but another Bill would be required.

1142. Mr Beggs: Could that provision not be added now, so that the Department would not have to amend the primary legislation, should a traffic commissioner be required in the future?

1143. Mr Brogan: We could consider that, and I will certainly seek advice on it.

1144. Mr I McCrea: We are talking about the Goods Vehicles (Licensing of Operators) Bill. However, you are referring to buses and other types of transport. Surely a separate Bill would be needed to incorporate the other two types of transport.

1145. Mr Beggs: My point is that where possible, we ought to avoid having to come back and initiate, or amend, primary legislation. We are spending a great deal of time discussing the matter now, and a subsequent amendment could follow a similar line. If that provision were in the Bill, it would be a matter of an amendment, which would be much easier.

1146. Mr Brogan: The Bill has the power to create an Order and propose a draft Order that would amend the Bill. That can be done. That power is not used often, but we can seek advice as to whether it could be used in such a situation.

1147. Mr Beggs: I look forward to hearing your advice.

1148. The Chairperson: The Committee will write to the Department to seek agreement to having some of the powers in the Bill changed from being subject to negative resolution to being subject to affirmative resolution in accordance with the comments that have been made by the Examiner of Statutory Rules.

1149. Thank you for your time.

## **23 October 2008**

Members present for all or part of the proceedings:

Mr Patsy McGlone (Chairperson)

Mr Cathal Boylan (Deputy Chairperson)

Mr Billy Armstrong

Mr Roy Beggs

Mr Trevor Clarke

Mr David Ford

Mr Tommy Gallagher

Mr Ian McCrea

Mr Daithí McKay  
Mr Alastair Ross  
Mr Peter Weir

1150. The Chairperson (Mr McGlone): We will now move to the Committee's consideration of the Goods Vehicles (Licensing of Operators) Bill. We have completed taking evidence on the Bill, and will proceed with clause-by-clause scrutiny after recess. If extra meetings are necessary, we will use them. Members have been provided with a paper that outlines the various issues that were raised during the evidence sessions, by organisations through written submissions and by members through deliberations on the Bill.

1151. Members should note that the issues paper produced by the Committee staff lists the issues raised against the relevant clauses of the Bill. The departmental Bill team has provided assistance in identifying the relevant clauses, and has provided a departmental response to each issue in the paper provided. A copy of the Department's response of 16 October 2008 to the Committee's request for details of enforcement actions taken over the past five years has been provided for information.

1152. I will run quickly through some of the issues that we will be considering. Members should take time between now and the next meeting in order to be satisfied that all the issues that they have raised have been included; there will be an opportunity to make additional points where appropriate.

1153. Mr T Clarke: Before we start, were we not still to receive an update from the Planning Service on those matters?

1154. The Chairperson: We are still waiting for that. We have not had any communication back yet. We have moved to our consideration of the Goods Vehicles (Licensing of Operators) Bill. The Assistant Clerk tells me that a response has received, and will be included in the papers for our next meeting.

1155. Mr Ford: The general issues that are outlined at the front of the table of responses include matters that are of concern to me. We had some discussion about the traffic commissioner. When will we have the opportunity to further engage the Department on issues such as that? They are not covered in any of the clauses of the Bill as currently drafted.

1156. The Chairperson: We will have to raise that issue with the Department.

1157. The Committee Clerk: They will be present at the next meeting, and will have something to say about those general comments.

1158. Mr Ford: Will they make comments on the general issues?

1159. The Committee Clerk: They have led me to believe that they will.

1160. Mr Ford: Will you lead them to believe that we expect them to do that?

1161. The Committee Clerk: Yes.

1162. Mr T Clarke: Could you go slightly further? We do not necessarily want to hear comments. We have heard this fluffy talk before about guidance. I would like to see some sort of policy that backs up the guidance that we have been given in the past.

1163. The Chairperson: OK. I will run through the issues briefly. Clause 1 deals with the types of vehicles that will be subject to operator licensing. It includes the 3-5 ton weight threshold and provides for exemptions. Members may wish to consider the possibility of requiring secondary legislation-raising powers in the clause to be subject to draft affirmative procedure.

1164. Clause 6 deals with the definition and use of operating centres. Clause 11 is concerned with objections to operating centres during the application process. Clause 12 relates to the determination of applications for operators' licences, including the power to prescribe a date when stricter professional competence requirements could be attached to restricted licences.

1165. Clause 20 allows for the Department to add further conditions to licences over time. The Examiner of Statutory Rules recommends that the Committee consider requiring the broad secondary legislation-raising power at clause 12 (1)(d) to be subject to draft affirmative procedure.

1166. Clause 27 deals with the frequency of review of operating centres. Members should note that secondary legislation-raising powers under clause 27 (3) are subject to draft affirmative procedure.

1167. Clause 56 provides for powers to amend, repeal or modify statutory provision. With agreement from the Committee last week, the Department has been asked for more information on how it envisages exercising those powers, but members should note that any Orders under this clause will be subject to draft affirmative procedure.

1168. Clause 57 creates additional offences relating to the Bill. At last week's meeting, the Committee asked the Department to provide details on the level 3 fine, confirm that the additional offences created were necessary and indicate how they will exercise those powers. The Examiner of Statutory Rules recommends that the Committee requires clause 57(8) to be subject to affirmative procedure.

1169. Clause 60 provides for commencement dates for bringing certain clauses into operation. The Examiner of Statutory Rules has drawn the Committee's attention to the degree of overlap between clause 60 and clause 56 and notes that orders raised under this clause appear not to be subject to any Assembly proceedings.

1170. It would be useful to have this synopsis emailed to members, because it will add some focus to their consideration.

1171. Mr I McCrea: Some of the pages are running into each other.

1172. The Chairperson: I noticed that.

1173. Mr I McCrea: For instance, page 10 runs on to page 11, and some words are missing.

1174. The Chairperson: We will try to get another copy emailed to members.

1175. Mr Beggs: I want to return to how we finished the last discussion. I accept that there was a lack of transparency, but I think that most members would accept also that there was considerable evidence of special scientific interest in the area. If we say that the whole process is flawed, it may well be disregarded and put to bed.

1176. The Chairperson: We did not say that the whole process was flawed; the consultation element based on the complete information provided to the local residents was flawed.

1177. Mr Beggs: We moved over that quickly, and there was not much opportunity to comment. It struck me that the Department could park the whole area and say that it does not want to do anything in this area, because it has been negated by the Committee. It is right to state that there were flaws in the process, and a lack of transparency, but we need to say that there were significant areas of scientific interest in the area.

1178. Mr T Clarke: How did you find that without the information?

1179. Mr Beggs: There is a whole series of reports there. We will be belittling ourselves if we rubbish everything and leave it parked.

1180. The Chairperson: We did not rubbish everything. We rubbished the consultation element of the process and the lack of information that was provided.

1181. Mr Beggs: We made no comment on anything else.

1182. The Chairperson: We did not need to. We are working on the presumption that everything else is correct, and it is hoped that it is.

1183. Mr T Clarke: I would not work on that presumption. I believe that the opposite is true. I believe that it should not be designated until they make a proper case and go through the correct process. What is the point of going through a consultation process that is flawed? How can one support such a process? We should not support the designation until — [Interruption.]

1184. Mr Beggs: I am not saying that we should be supporting it; we should not leave it as if we believe there were no areas of interest there.

1185. The Chairperson: We can get the scientific evidence, and, if needs be, we can follow it up with further briefings from officials.

1186. Mr T Clarke: I could not support the designation as it stands until all those issues are ironed out.

1187. Mr Beggs: I am comfortable that there was a lack of transparency, but there are significant areas of interest in the area.

1188. The Chairperson: There probably are, as there are everywhere else. Trevor is saying that the whole process is inadequate, because the consultation element was incomplete.

1189. Mr T Clarke: In fairness to the landowners, they have asked for that document on more than one occasion — to enable them to make their presentation.

1190. The Chairperson: We have bounced over some items of business. We will return to that issue under any other business.

1191. A synopsis document on the Goods Vehicles (Licensing of Operators) Bill is being passed round the Committee.

## **6 November 2008**

Members present for all or part of the proceedings:  
Mr Patsy McGlone (Chairperson)

Mr Cathal Boylan (Deputy Chairperson)  
Mr Roy Beggs  
Mr Trevor Clarke  
Mr David Ford  
Mr Tommy Gallagher  
Mr David McClarty  
Mr Alastair Ross  
Mr Peter Weir

Witnesses:

Mr Donald Armstrong Mr John Brogan  
Mr Simon Kirk Department of the Environment  
Mrs Gillian McIntyre

1192. The Chairperson (Mr McGlone): Present today are Donald Armstrong, John Brogan and Gillian McIntyre from the Department of the Environment. I ask them to join us at the table. There are about 10 minutes before we must suspend proceedings for the Remembrance service. That should allow enough time for an overview.

1193. Mr Donald Armstrong (Department of the Environment): I suggest that we handle the discussion by, first, examining some of the papers that were provided to the Committee: the planning paper, the parking paper, and the paper on in-scope and out-of-scope vehicles. Afterwards, we can move to the clause-by-clause scrutiny of the Bill and deal with issues as they arise. I am conscious of what Mr Ford said about general issues. Simon Kirk is here to observe the discussion with regard to planning issues. It seems prudent that rather than have Simon return to the meeting after it is suspended, we deal with planning matters first. Therefore, the paper that you were sent on planning —

1194. The Chairperson: So, you expect the planning issue to be sorted out in 10 minutes, Donald?

1195. Mr D Armstrong: Well, we can try.

1196. The Chairperson: Simon, I invite you to come forward and sit at the table.

1197. Mr D Armstrong: I want to make a comment about planning. At our previous meeting, there was confusion about what the term "operating centre" means. We have considered the matter, and because it will be difficult to change the term from "operating centre", it appears that we are stuck with it. However, we can redefine "operating centre" so that it is abundantly clear to people what the term means. Therefore, an operating centre would be a place from which a vehicle works and is kept overnight, or simply where a vehicle is kept overnight. An operating centre can, therefore, be a depot where vehicles come in and out and are kept. Equally, an operating centre can be a place where a vehicle is parked off-road and where nothing else happens, for example, at someone's house. We must keep in mind that an operating centre can be either of those places, which are distinctly different in character. That affects how planning is dealt with.

1198. The Chairperson: I know that Mr Clarke will want to comment on that issue. I have considered that definition, and although it is a bit more expansive than the previous definition, I do not believe that it deals with the planning issue. In essence, the place from which a vehicle works can be instantly equated to a business, which brings us back to the definition of "operating", and the definition of "operate" is "work". I am, therefore, a wee bit concerned.

Although you have clarified the term for the Department, in doing so it may make the term more expansive and, therefore, more difficult to define for planning purposes.

1199. Mr D Armstrong: I hope not.

1200. Mr Simon Kirk (Department of the Environment): I do not think so, to be honest. We clarified our position, which, in summary, is that there are no operational planning issues about drivers who simply park their vehicles at their properties overnight. Although a number of my colleagues in the enforcement sections have cases in relation to unauthorised haulage depots, none has cases in relation to single vehicles, and none of them expects any enforcement action.

1201. The Chairperson: Are there any cases concerning multiple vehicles?

1202. Mr Kirk: Although I have no details, a number of cases involve the investigation of unauthorised haulage depots from which more than one vehicle operates and in which more is going on than drivers simply parking their vehicles at their properties at night.

1203. Mr T Clarke: We are as clear now as we were a few weeks ago. It is as black as closing one's eyes. My experience of the Planning Service is that unless it is in black and white for everybody to understand, the woolly conversation that we have just had is as useless as a lot of the other conversations that we had with the Planning Service in the past. I am not content with that description. At its last meeting, the Committee asked for a paper from the Planning Service to outline the position exactly.

1204. The Chairperson: We received a response, but it raises further issues.

1205. Mr Beggs: There are existing Planning Service regulations that clarify where businesses can operate. What, if anything, does this proposal change about the single-owner operator?

1206. Mr Kirk: From a planning point of view, it does not change anything. People parked commercial vehicles overnight at their properties before this Bill existed. Enforcement action has not been taken against a single vehicle being parked. We may have taken enforcement action against unauthorised haulage depots that operate more than one vehicle —

1207. The Chairperson: Can a haulage depot be defined as a location that operates more than one vehicle? Does a single location that operates two vehicles qualify as a depot?

1208. Mr Kirk: It becomes less clear cut, because the specific nature of the site would have to be considered. I presume that a number of cases involve owner-drivers who operate from rural locations. If a part-time farmer has a part-time haulage business, he might be able to park two vehicles inside a large farm complex without a material change of use taking place. However, in a residential area, it is unlikely that somebody would be able to park two vehicles within their curtilage without, for example, hard-coring part of the garden or changing the use of part of the site.

1209. The Chairperson: I am sure that everyone in this room can think of a family enterprise in which a father and a couple of his sons are engaged. If that involves more than one vehicle, we know what that means, and that gives me cause for concern.

1210. Mr Beggs: I presume that that is a relevant issue before any new legislation is implemented. The discussion is, therefore, about the effectiveness of existing regulations rather than what is being discussed in this Bill. Is that correct?

1211. Mr Kirk: That is correct.

1212. Mr T Clarke: Are we saying that people who are already involved in such operations are fine, but anyone who wants to start a new operation cannot?

1213. The Chairperson: He is not saying that. The issue concerns those operations that have not been drawn to the attention of the Planning Service.

1214. Mr Boylan: We are still faffing about with the issue. The issue is whether a business is operating from home, whether Planning Service perceives that, and whether a van or other vehicle is used. That is where clarification is needed. The Department is making the mistake of thinking that someone is just getting into a vehicle and driving to work. There could be a perception that someone is operating a business from home — for which planning permission is required.

1215. Mr Kirk: Planning permission is not always needed in order to operate a business from home.

1216. Mr Boylan: That is why the Committee needs clarification on this matter, so that Planning Service will not misconstrue the issue. The question is whether a business is being operated from home, and, in rural areas, that does not happen; it is not allowed. Existing businesses are established, but any new businesses — and there will be a lot of them — will need licences.

1217. Mr Kirk: The key issue in Planning Service is whether there is a material change of use if a business is being run from home. If there is no material change of use then no development has taken place and, therefore, planning permission is not required. That is set out in the report. When trying to assess whether someone is running a business from home, the Department will find out whether planning permission is needed in order to run that business from home.

1218. The Chairperson: Yes. Those are the questions.

1219. Mr Boylan: The fact that they will require a licence under which to operate.

1220. Mr Kirk: That is a separate consent. There are a whole range of consents; for example, one might require planning permission or building control. A licence may be required under one statutory regime, but that does not necessarily mean that planning permission will have to be applied for automatically.

1221. The Chairperson: We know that; we all come from areas where such situations exist. However, the issue is whether an operator's licence will directly result in a read-across to Planning Service. You have already drawn us into the territory into which we knew that we would probably be drawn. One single vehicle operating from an operating centre is not really a problem. However, problems emerge once it goes beyond one vehicle when, potentially, operators could face the situation of enforcement and such issues that cross our desks every day. That is the issue.

1222. Mr Armstrong: Planning rules for land use already exist and thousands of people are already complying. The legislation that we are bringing in should not make any material difference to that process.

1223. The Chairperson: I beg to differ. The Department will have formally designated operating centres. There is, potentially, a read-across of names and addresses to DOE Planning Service for

formal designation — and I would be surprised if there were not. That draws us into other issues and difficulties that some members would potentially see as being a problem in rural areas.

1224. Mr Armstrong: Is Planning Service's contention not that its decisions on land use are made irrespective of what designation is on the land? The fact that there is none on it now, and that there will be one on it in the future, does not make any difference as to how it designates the land.

1225. The Chairperson: No.

1226. Mr Armstrong: Are you looking for Planning Service to say simply that because a place is designated, an operating centre will not, in itself, make any change in relation to planning?

1227. The Chairperson: No.

1228. Mr Weir: Leaving aside the operators, all of us will, at some stage, have had various complaints from constituents about so-and-so operating a business from home or whatever, and for which they clearly do not have planning permission. Will there not be confusion when Planning Service points out that it is perfectly OK for so-and-so to operate, when the person who is complaining says that that person has an operating centre, so how does that not constitute a business that needs planning permission? That person will also be able to point out that someone else has an operating centre — albeit in different circumstances — that requires planning permission. The situation will, potentially, cause a lot of confusion for operators and for those who complain. People will have difficulty explaining the difference.

1229. The Chairperson: I knew that this issue would take us into another area, and it is one that we will have to revisit.

1230. I am aware of the fact that members will be leaving the meeting at 10.35 am to attend the service. A break of three quarters of an hour will allow people to concentrate their minds, as that issue will prove to be quite a sticking point. The Committee will reconvene at 11.30 am.

Committee suspended.

On resuming —

1231. The Chairperson: I almost said that we should start where we finished; however, we were not finished. We shall return to the issue that was being discussed. Have you had a chance to give it any further thought?

1232. Mr D Armstrong: Yes, for an entire hour.

1233. The Chairperson: Have you come to any definite conclusions?

1234. Mr D Armstrong: The issue that you want to resolve is whether designating a place as an operating centre will have a planning impact, or is a planning concern. Simon can respond to that factual query. The designation of operating centre is already in place for the hire-for-reward sector in Northern Ireland, and has been for many years. As Simon mentioned earlier, it has not had any impact on planning. It is already established and working in legislation. Therefore, in fact, the proposal is not new; it is simply an extension of that definition to the own-account sector. The current definition is in place and works well. We propose that we explain more clearly the definition of an operating centre. Simon can comment on that point in order to satisfy the Committee on the designation's impact on planning.



1235. Mr Kirk: Perhaps, if you seek specific details, we should provide a written answer. Are you saying that because premises are designated as an operating centre, you feel that, automatically, we will take enforcement action?

1236. The Chairperson: It is not that that will happen automatically, but that there would be read-across that could have implications or consequences for planning, albeit not in every case. You touched upon that when you mentioned moving from single to multiple vehicles, which would flag up issues with Planning Service straight away. I read your letter and considered the circumstances to which it refers. It outlines questions, rather than potential solutions. I understand that every individual case must be considered on its merits or demerits. Our concern is that a form of read-across exists.

1237. Mr Kirk: If someone did something that was unauthorised or about which we had concern, it would not matter whether that person had an operating licence. We would still investigate the matter. Every year, we receive many thousands of complaints that must be investigated. Therefore, if someone did something that was potentially unlawful under planning legislation, we would investigate the matter, regardless of what is contained in the Goods Vehicles (Licensing of Operators) Bill.

1238. Mr T Clarke: When Donald defined an operating centre earlier, he used the words "working from". Many people "work from" premises, but it is not defined as an operating centre. At the minute, they are only parking at the residence. However, once that building is defined as an operating centre, they would be deemed to be working from it. The Planning Service may want to look at some drivers who park at their homes, but, at the moment, there is very little that it can do. However, once we use Donald's term "working from" and define the premises as an operating centre, it becomes, in effect, a place of business. I have serious concerns about that.

1239. Mr D Armstrong: Let me clarify the matter: my suggestion was that we amend the definition of operating centre to mean the base or centre from which a vehicle normally operates and/or is normally parked when not in use. Therefore, it would not necessarily mean that the vehicle is operating from the premises — it may be operating from there, or it may simply be parked there when not in use.

1240. The Chairperson: Did you say "and/or"?

1241. Mr D Armstrong: Yes. The vehicle is operating from the centre and it is parking there, or it is just parking there. So, there are two meanings within that one definition.

1242. Mr T Clarke: That makes it worse.

1243. Mr D Armstrong: It should not make it worse in the sense that it is an operating centre, and a person can park there but not be working from it. Would the Committee be satisfied if the Planning Service were to say that because a place is designated as an operating centre, that in itself would have no planning impact, nor would it influence planning as regards land use?

1244. Mr Weir: I am trying to bridge the gap. I appreciate your comment about what the Planning Service could say, but what is to stop wording of that nature, however it is phrased, on the face of the Bill?

1245. Mr D Armstrong: As far as planning is concerned?

1246. Mr Weir: Whatever way you want to phrase it, a line could be included in the Bill to say that that the granting of an operator's licence will not have any implication for the Planning Service.

1247. Mr D Armstrong: I am not sure that we could do that within the competence of a goods licensing Bill.

1248. Mr Weir: I do not know whether there is a form of words that could be used. Given some of the concerns that have been raised about this issue, I do not believe that people would feel that a letter of comfort — for want of a better expression — from the Planning Service would be sufficient. Something much more explicit is needed.

1249. The Chairperson: We will have to park the issue. We will not resolve the planning matter today. Could the Department try to find a more satisfactory form of wording that would resolve the problem? My feeling is that we will not get past the matter today.

1250. Mr Weir: Whatever the solution, it must be legislative. With the best will in the world, the head of the Planning Service can say such and such, but in a year's time somebody different could be in charge and could decide that the service no longer holds that view. Therefore a statement from the Planning Service does not carry much weight or offer much reassurance in this case. Whatever is done by whatever formula must be reflected in an amendment to the Bill. There should be some written assurance on the matter.

1251. Mr Ford: It would be ideal if the matter could be dealt with in the Bill. Given the nature of the Bill, I can see where problems might arise, but the Minister should make the matter explicit in a statement when introducing the Bill. As I understand it, statements that are made in the Assembly when legislation is being considered have more force than a circular from the Planning Service. That might be a solution to the problem.

1252. Mr Beggs: I support that idea. It would be particularly pertinent, given that the Minister has responsibility for planning as well as road safety and vehicles.

1253. The Chairperson: It would be helpful if, between yourselves, you could come back to the Committee with some sort of resolution to the problem, or options for a resolution. Simon, I know that you have to leave now; thank you for attending.

1254. Let us move on to the document on general issues, unless there is anything else?

1255. Mr D Armstrong: We were to deal with two further papers before that: the first on the parking issue and the second on vehicles that are out of scope or in scope of the legislation.

1256. The second paper aims to give the Committee an idea of which vehicles are covered by the legislation and which are not. There are several issues to consider, such as what is the gross weight of a vehicle that has an unladen plated weight, and so forth. We examined the Bill, which matches the current legislation in GB and contains the guidance principles currently used in Northern Ireland for the hire-for-reward sector.

1257. Any vehicle weighing over than 3.5 tons is in scope of the legislation. When a trailer is attached to a vehicle, it becomes a combination. If that trailer's unladen weight is under 1020 kgs, that weight does not count towards the overall weight of the combination. Therefore, a trailer of up to 3.5 tonnes could pull a trailer that has an unladen weight of under 1020 kgs. If that is not the case, the combined weight of trailer and vehicle come into the scope of the

legislation. On that basis, we provided for the Committee a series of photographs of vehicles that are either in scope or out of scope to give members an idea of what the legislation covers.

1258. However, it is complex, as members will probably agree. We have been trying to simplify that, and one of the amendments that we are considering would facilitate much simpler regulation. To put something simpler on the face of the Bill would be a huge risk. Therefore, we propose to amend the Bill by removing schedule 1 and replacing it with something much simpler.

1259. Another issue that has arisen is that the current GB legislation does not comply with EU directives on trailers under 1020 kgs. I spoke with officials in GB yesterday, and they propose to amend that legislation, but not until further EU regulations have been introduced. It would probably not be prudent for us to go ahead, knowing that a change is due and that the figure of 1020 kgs is not up to EU standards for the hire-for-reward sector.

1260. Mr Beggs: You said that you are not satisfied with the current definition of a small goods vehicle, but you said that the effect of changing it might be that a considerable number of additional vehicles that do not come under the legislation in other parts of Great Britain would do so here.

1261. Mr D Armstrong: That is currently the case here.

1262. Mr Beggs: You seem to be dissatisfied with the fact that, according to the GB definition, many escape the legislation and that has led you to propose amendment No 1 in the provided document. Is that correct?

1263. Mr D Armstrong: The legislation is very woolly, and it is difficult to interpret it on the roadside. One has to run to check whether a trailer is plated or unplated and whether the weight on any plate is a laden weight or a gross weight. There is much complexity involved.

1264. Mr Beggs: You stated that a considerable number of vehicles will be out of scope of the GB definition. Is Northern Ireland, therefore, to be used as a guinea pig for adjusting that definition? The regulations must be widened, but there is a danger of widening the net too far and creating too much bureaucracy. There is a balance to everything, so I am trying to gather further information on how much wider this proposed amendment is compared with the legislation in England.

1265. Mr D Armstrong: We want to ensure that people are clear on whether they are in scope or out of scope. At present in Northern Ireland, it does not matter whether the combination is under 1020kgs. Any combination over 3.5 tons is in scope, and that is much more restrictive. However, enforcement officers have been applying that standard because the other one is so restrictive. We must consider something that enables us to allow the small cars that pull trailers, and so forth, to be out of scope, because we do not want everyone to be caught up in the legislation.

1266. The Chairperson: That would be very difficult. How can the weight of a vehicle, travelling on a road with a trailer behind it, be determined? That vehicle would have to be stopped and weighed, and that is unrealistic.

1267. Mr D Armstrong: It is a very difficult and unwieldy thing to handle. Currently, the GB standard is being used, even though it does not apply here. Therefore, the Department wants to introduce a simpler mechanism.

1268. Mr Beggs: If I am reading this correctly, the Department is proposing to remove it from schedule 1 in order to create greater flexibility. Do you propose that any subsequent amendments or changes to that definition be enacted through affirmative resolution? I am conscious that greater flexibility gives more power to the Department, and I feel that it should be subject to affirmative rather than negative resolution.

1269. Mr D Armstrong: I have no problem with it being affirmative. That is not a big issue for the Department. The issue is that if it remains in the schedule, when the Bill is subsequently passed, it will tie us down.

1270. The Department needs more time to examine what is the best solution for Northern Ireland. Furthermore, we need to examine what Europe requires in relation to the hire-for-reward sector, and then apply that. The Department's view is that it is inappropriate for it to remain in its present form in schedule 1. We require more time to work on it. It is possible to understand what that is saying, who it includes and who it excludes, but it is very hard to work with. Indeed, we have been working with it for a number of years, and it is still hard to grapple with. We need to simplify it a lot.

1271. Mr Weir: In relation to the European changes, presumably you will have a rough idea of those changes even if you do not know their precise nature. Perhaps that provides another argument for ensuring that there is some flexibility, so that when those changes are made that they can be more easily incorporated into the legislation.

1272. Mr D Armstrong: The provision currently contravenes a European directive. That is one change that should be made. Furthermore, Europe is currently introducing a regulation that will tighten things up in this area, and it hopes, through that EU regulation, to remove a vast number of exemptions from the hire-for-reward sector. We must see what is to be introduced and, as you say, move on and allow ourselves the flexibility to respond to that.

1273. Mr T Clarke: Clause 1 states that if a vehicle is used for hire or reward in connection with a trade or business an operator's licence may be required. I am aware that the whole idea of this is road safety, but are you saying that it is unsafe for vehicles that are 3.5 tons or more?

1274. Mr D Armstrong: No. I was not making a road-safety comment. In fact, I have not made a pro or —

1275. Mr T Clarke: I thought that it was the nature of the whole —

1276. Mrs Gillian McIntyre (Department of the Environment): Why is it set at that threshold?

1277. Mr D Armstrong: Why is the 3.5 ton threshold set?

1278. Mr T Clarke: No. Are you saying those vehicles that are 3.5 tons and above have more serious implications for road safety?

1279. Mr D Armstrong: No, I was not saying that. The 3.5 ton threshold is set in different ways. That threshold applies to tachographs and other legislation relating to the carrying of goods, and 3.5 tons is the appropriate weight at which to set it.

1280. Mr T Clarke: Transit vans do not have tachographs.

1281. Mr D Armstrong: Those under 3.5 tons do not.

1282. Mr T Clarke: Or those at 3·5 tons.

1283. Mr D Armstrong: A 3·5 tons transit van does not require a tachograph. However, vehicles over 3·5 tons do require one.

1284. Mr T Clarke: My problem is that I do not believe that this is being introduced for the right reasons; I think that the Department is trying to catch all those smaller vehicles, for the wrong reasons. By doing so, it is leaving a complete industry that does not have to be licensed. Therefore, are we saying that it is safe if you are not doing it for hire and reward, but unsafe if you are?

1285. Mr D Armstrong: The EU legislation deals only with the hire-for-reward sector; it does not deal with the own- account sector. However, it is a fact that heavier goods vehicles have a worse safety record than other vehicles.

1286. The letter of 24 October 2008 is a response to the question about parking goods vehicles in residential areas. There is no legislation about parking goods vehicles that is specific to residential areas. In the letter, we set out what we could find in relation to parking goods vehicles and other vehicles on the road, including parking at night.

1287. Under the Road Traffic (Northern Ireland) Order 1995, it is an offence — with certain exceptions — to park a heavy goods vehicle on a road verge, a central reserve or a footway. A heavy goods vehicle is defined as one that is over 7·5 tons. There is no general offence that prevents non-heavy goods vehicles from parking on footways, except where there are clearways.

1288. Over and above all of that, as far as parking on the road is concerned, it is an offence to cause a vehicle to wait on a public road, except in a lay-by or a designated parking area within 15m of its junction with any other road. Unfortunately, I once came foul of that law — I did not realise that it is an offence to park within 15m of a road junction.

1289. The Road Vehicles Lighting Regulations (Northern Ireland) 2000 state that a vehicle's lights must be on if the vehicle is parked on a road between sunset and sunrise —the exception for goods vehicles is if the vehicle is parked in an area in which the speed limit is 30 mph or less. Those are all of the roadside-parking restrictions that we found.

1290. The Chairperson: We now move to the overview document. The cover letter is dated 31 October 2008. There are a few issues, some of which we touched on earlier. Mr Ford and Mr Trevor Clarke raised issues, and I also have a few. Let us deal with paragraphs G1 to G4 in the table of general issues raised in relation to the Bill.

1291. The Ulster Farmers' Union (UFU) raised the issue about extra-regulatory impact. That is covered in G1, which states:

"The use of agricultural vehicles will be examined in the context of determining vehicles or functions that will be exempt from the requirements".

1292. I realise that this issue will come up later, but at what point will we have the list of vehicles that are exempt and, more importantly, the activities from which they are exempt?

1293. Mr D Armstrong: We have already started work with various stakeholders, including the UFU, to identify cases or justifications for exemptions. They will obviously have to be provided before the regulation stage is reached, because the Bill only provides the power to exempt. Currently, we do not have a timetable for producing proposals that detail what will be exempt

and what will not. Obviously, that must be done before the regulation stage is reached, but we do not have a timetable. It is one of the things that we have already started work on.

1294. The Chairperson: That is important. Members recognised that that is a major issue.

1295. Mr D Armstrong: I accept that, Chairman.

1296. The Chairperson: G2 states that: "Road freight licensing is not a tax measure".

1297. Where did that come from?

1298. Mr D Armstrong: It came from a point that was made by some people who attended the briefing sessions. They said that road-freight licensing was just a way for the Government to drag in more stealth taxes. The phrase "stealth tax" was used at a number of those briefing sessions. Regulation and tax are two different things. Road-freight licensing is not a tax because no revenue goes to the Government. All the moneys that are lifted through fees are used in the administration of regulation, because the administration and the cost must balance out.

1299. The Chairperson: We knew that it would not be, because it cannot be.

1300. Mr D Armstrong: That was where it was raised by people who asked whether this was a stealth tax by Gordon Brown.

1301. The Chairperson: Does any member have an issue with page 4 of the summary of general issues? If not, are there any issues related to page 5? If not, we move to page 6. Do members have any issues in respect of page 6?

1302. Mr Ford: Yes, I have issues in relation to G15 and G16 on page 6. I am fairly sure that the Department's representatives heard me say a fortnight ago that the Committee expected to hear from the Department on the issue of a traffic commissioner. I am upset that the Committee has heard nothing other than a fairly dismissive response that fails to address widespread concern in the Committee, particularly since we heard from Mrs Bell. I want to hear a bit more detail from Donald or whoever as to what the Department's current position is, particularly as they no doubt listened intently to what the Committee said on previous occasions.

1303. Mr John Brogan (Department of the Environment): I was not aware that the Department was expected to respond in writing.

1304. Mr Ford: I will happily accept a verbal response.

1305. Mr Brogan: If the Department receives a request, it will respond in writing within a few days. However, I will try to answer the concerns.

1306. The Bill itself is exclusively a licensing Bill that contains all the powers that a traffic commissioner in GB would exercise. The appointment of a traffic commissioner conventionally lies in a separate, dedicated legislation. The Department is considering the possible impact of the appointment of a traffic commissioner in order to deal with not only the licensing of goods vehicles but with taxis and bus operators. It remains to be seen whether those deliberations will lead to a separate piece of legislation on the appointment of a traffic commissioner.

1307. The Department considers that it would be inappropriate to legislate for the appointment, the constitution and other requirements for the post of a traffic commissioner within the Goods Vehicles (Licensing of Operators) Bill.

1308. Mr Ford: Will John explain why he uses the term “inappropriate”? Is he saying legally inappropriate, or departmentally and conveniently inappropriate? Bear in mind that the long title of the Bill is: “A Bill to make provision concerning the licensing of operators of certain goods vehicles.”

1309. Therefore, a traffic commissioner is entirely within the competence of the Bill. A traffic commissioner might have a role in relation to buses, taxis and other operators, but the key problem is goods vehicles, and that is the area in which the traffic commissioner is most needed.

1310. The Chairperson: As a follow-up to Mr Ford’s question, has the Department been given particular direction on the issue of a traffic commissioner?

1311. Mr D Armstrong: Before the Bill was drafted, the Department had set in train a programme to investigate how to manage the operator licensing of taxis, buses and freight. An independent traffic commissioner is only one option that might be considered. It may well be that the course proposed in this Bill is appropriate. Therefore, without prejudicing the outcome, the Department considers the role of an independent traffic commissioner as just one possible consideration. We have not progressed that far.

1312. The concentration has been on getting this Bill completed. The Taxis Bill is finished, and we are working on bus regulation in conjunction with the Department for Regional Development. In terms of competing for resources, the traffic commissioner is a programme of work that has not progressed that far. There was not a pressure on the Department to appoint a traffic commissioner. The Department removed the measure from this Bill in order to move the Bill forward, after which all the issues will be considered in the round. It may be — and we will come back to the Committee on this — that an independent traffic commissioner is not the best way forward for Northern Ireland. Therefore, the Department cannot presume to put that measure in the Bill.

1313. Mr Beggs: Should the Department come to the conclusion that a commissioner is the way forward, will the Bill have to be amended? Is there sufficient flexibility, in your opinion, to enable that to happen without having to re-legislate?

1314. Mr Brogan: The Department consulted the Office of the Legislative Counsel (OLC) at the outset of the drafting of the Bill. As far as I know, the Bill could simply be amended to the effect that any reference to “the Department” is changed to “traffic commissioner”. The Bill gives traffic commissioners the necessary powers to deal with operator licensing.

1315. Mr D Armstrong: During the drafting of the Bill, the Department suggested the inclusion of a clause that would apply if a traffic commissioner were appointed. However, it was recommended that we omit that.

1316. Mr Boylan: I have concerns about independent challenges to operators and how the Department will implement the legislation. Donald mentioned the possibility of examining that issue in case there is ever an independent challenge. I am concerned that the Department is regulating all of this; there must be scope for another body — which may or may not be a traffic commissioner — to handle some of the regulation. That matter must be considered.

1317. Mr D Armstrong: The Department’s biggest concern was that those in charge of the enforcement and prosecution would be too close to those taking the decisions. As I outlined at the previous meeting, the Bill offers two options. The agency, in its current form, can deal with that entire area or we can separate those functions. If we do the latter and it is subsequently decided that an independent traffic commissioner is the best option, it will be much easier to transfer. However, if the agency assumes sole responsibility now, the administrative transfer will

be much larger. Although the Department and the agency are, in a sense, legally one entity, there is some separation. We would prefer to separate the Department and the agency's roles.

1318. Mr Boylan: During your discussions with operators, did they raise concerns about the need for an independent challenge? I am concerned that the same people are implementing, operating and legislating.

1319. Mr D Armstrong: The agency will be responsible for enforcing legislation on the ground. The Department — rather than the agency — will make decisions about the traffic commissioner. During the briefing and consultation process, much of the industry was happy with the Driver and Vehicle Agency, subject to that body having more resources for enforcement. The general tenor was that the roles should be separated; there was not so much emphasis placed on independence. However, the Bill outlines the provision for appeals to the upper tribunal, which is a distinct UK-wide body that reviews the decisions of traffic commissioners and will review the Department's decisions. We hope that the Department's structure allows for management of the regulation to be separate from the agency.

1320. Mr Ford: John and Donald have made reasonable responses that suggest the legislation could be amended relatively easily. However, the blunt reality is that the timescale for getting legislation, especially new legislation, through any legislature can be extremely extended.

1321. Mr Gallagher: Especially if we do not have one.

1322. Mr Ford: I was going to resist making cheap points about the lack of a functioning Executive.

1323. Can Donald tell me what the current timescale is for consultation on the possibility of appointing a traffic commissioner? Can you consult your crystal ball and tell me that if the consultation process concluded that a traffic commissioner was a good idea, how long would it take to legislate for that?

1324. Mr D Armstrong: Given that we are examining resources, that is a tough question.

1325. Mr Ford: At least I was smiling when I asked.

1326. Mr D Armstrong: It has taken two or three years to reach this stage with this Bill. Therefore, it will take another two to three years to introduce more primary legislation. A fair bit of work must be done to examine the possibilities and options.

1327. Mr Ford: Although the departmental team is constrained by a number of factors in what it can say here, the Committee could take an entirely other view, namely that doing something about a traffic commissioner is sufficiently important that it should be done now, rather than wait for a minimum – and I think that you are an optimist – of three years.

1328. Mr D Armstrong: The Department would be very happy to hear such a recommendation from the Committee.

1329. The Chairperson: David, are you formalising that into a proposal?

1330. Mr Ford: It remains my belief, based on evidence given to the Committee, that a traffic commissioner could exercise positive functions, starting with the freight industry and, potentially, adding buses and taxis later. That is within the scope of this Bill, and the Committee should



consider its own amendments to that effect; even if officials — who are being as helpful as they can — are unable to agree with us this morning.

1331. The Chairperson: Mr Beggs and Mr Ross wish to comment. Is your point about this issue, Roy, because Alastair has indicated that his point is?

1332. Mr Beggs: My point is not about this issue – it is slightly ajar from it.

1333. The Chairperson: I want to tease out this matter first of all, if that is ok, so I will take Alastair's point first.

1334. Mr Ross: We need to be cautious about going down this route. Beverly Bell, Traffic Commissioner for the north western traffic area, was impressive when she gave evidence to the Committee on 9 October, 2008. However, for years we have said that we want devolution in order that we could take control of matters and have power in local hands. Some people now seem to want to give that power away to quangos and independent commissioners. We need to be cautious, and ask whether we really want to do that.

1335. At least if the Department retains control, it is more accountable to the Committee and the Minister. We need to be very cautious about moving to a stage where we want suddenly to give power away to independent bodies or quangos, whether on environmental governance or the issue of a traffic commissioner.

1336. Mr Gallagher: That is especially true if four or five traffic commissioners are needed.

1337. Mr Boylan: I certainly agree with what Mr Ross said.

1338. The Chairperson: Mr Beggs indicated that he wanted to speak. I am getting conflicting messages.

1339. Mr Boylan: My point is about the same issue. I have no objection to what Mr Ross is saying, but there must be an independent body within the Department in order to ensure that the operators have an opportunity to challenge decisions. I am not saying that, down the road, a traffic commissioner is the person to do that job; I am just saying that operators must have the opportunity to challenge if necessary. Donald alluded to such a body, and there is scope there for consideration. However, I am not advocating a traffic commissioner.

1340. Mr Beggs: I could say something about a traffic commissioner but I do not know enough about the subject. Detailed work needs to be done on the matter. However, with regard to the legislation before us: will the Department not need extra time in order to amend the primary legislation when that separate piece of work is completed?

1341. Mr Brogan: The inclusion of even a reference to a traffic commissioner would require the Bill to define the commissioner. If a commissioner does not exist, the role cannot be defined.

1342. The Chairperson: The Committee needs more information and detail about the rolling function of a traffic commissioner and any process that would be needed if it were to be incorporated into the legislation.

1343. Mr Ford: I wanted to try to be helpful by avoiding discussing this matter. In fairness – and following from what the Chairperson said – if the Committee did not give formal notice that it wanted a formal response last time, the Department's response here refers to the consultation. If we had papers that provided the full detail of that consultation, which could be considered

alongside the evidence that we received from Mrs Bell, the Committee would be in the position to consider that in detail.

1344. The Chairperson: And better informed, anyway.

1345. Mr Ford: Perhaps somewhere between Alastair Ross's view and mine, the Committee could decide whether a traffic commissioner is appropriate.

1346. The Chairperson: If we may move to page 7 of the general issues document.

1347. Mr Beggs: Issue G21 states that bringing all vehicles over 3.5 tonnes into the system would lead to a more equitable cost base for licensing because, at present, only the "hire and reward" sector pays. I would like further information about the second sentence of G21, which states: "As this accounts for about 20% of the vehicles, the economies of scale of bringing the other 80% into the scope would ensure a fairer distribution of the costs."

1348. What accounts for that 20%?

1349. Mr D Armstrong: If one looks at the size of the industry in Northern Ireland, 20% of that industry is in the for-hire-or-reward sector. The other 80% accounts for the percentage of unlicensed vehicles in the industry.

1350. Mr Beggs: Thank you.

1351. The Chairperson: The Committee will now consider, page by page, the key issues that were raised about various clauses in the Bill. Do you want to say anything by way of introduction before we begin, John?

1352. Mr Brogan: Perhaps I should outline what clause 1 is designed to do, after which we will examine the issues. Clause 1 is fundamental to the Bill because it establishes the general need to hold an operator's licence. The clause will require the for-hire-or-reward and own-account sectors to hold licences. Clause 1(2) sets out circumstances in which a licence will not be needed. In effect, Clause 1(2) details those vehicles that are exempt from the requirement to hold an operator's licence.

1353. Clause 1(2)(a) is the subject of our first proposed amendment, and deals with the use of small goods vehicles, which are, essentially, those with a plated weight below 3.5 tonnes. In its present form, clause 1(2)(a) refers to the use of a small goods vehicle within the meaning given in schedule 1. As was said earlier, however, we were proposing to drop schedule 1 in favour of an amendment, and insert a new sub-section (2)(a) to provide the Department with the power to prescribe those combinations of articulated vehicles that are out of scope of the Bill. That was done in relation to the DALO letter prescribing the photographs.

1354. Mr Beggs: In defining the type of vehicles that may lie within or beyond the scope of the Bill, will you take into consideration timing issues? People with vehicles that they are currently using may need time in order to ensure that they comply with any legislation. Therefore, time may be required to allow for precise boundaries to be defined and adjustments to be made.

1355. Mr Brogan: That is a good point and one that we have considered. The Department wants to adopt as pragmatic an approach as possible to the introduction of the new licensing scheme. Clause 57 of the Bill deals with transition arrangements for the introduction of the new licensing system. It is only fair that the Department examines the issue that Mr Beggs raised, so that we

can adopt a pragmatic approach. That will avoid a big bang-type scenario when the legislation comes into effect on a Monday morning.

1356. Mr Beggs: Thank you.

1357. Mr Brogan: Other exemptions include clause 1(2)(d) which refers to the use of a vehicle of any class specified in regulations. I believe that there was an issue with regard to negative and affirmative resolution of that matter. At this point, perhaps it is appropriate to talk generally about the affirmative and negative resolution issue, which appears in another DALO response.

1358. The Chairperson: Please continue, Mr Brogan. Members may raise any queries about clause 1 after you have finished.

1359. Mr Brogan: Since our last meeting, we took further legal advice on the issue of certain regulation-making powers. That advice is on the first page of the most recent letter to the Committee clerk.

1360. The Chairperson: Is that the letter that was tabled today for members' information?

1361. Mr Brogan: Yes.

1362. The Chairperson: It is dated yesterday, 5 November, 2008. To which paragraph are you referring?

1363. Mr Brogan: Paragraph 3, under the heading "background". The advice was to the effect that there is often no right and wrong answer, and that it is a matter for agreement between the Department and the Committee. The letter also states that we need to be careful. The Department hopes to bring forward a composite set of regulations that are in line with those operating in Great Britain. We will have to avoid having certain regulations subject to affirmative or negative resolutions.

1364. The Chairperson: What are the ramifications of that, in layman's terms?

1365. Mr Brogan: They must be all affirmative or all negative. However, we could, perhaps, split that composite set and lift certain elements of it and subject it to affirmative resolution and allow the bulk to go through under the negative resolution procedure. If all the regulations are subject to affirmative procedure, we will have to go through the whole process again for even a minor technical amendment in a few years' time, and that will take up a lot of Assembly time.

1366. The Chairperson: Are you saying that we will have to go through the whole procedure again if the regulations are subject to affirmative resolution now? Forgive my ignorance on this matter, but the legal advice that was sought by the Department says that there is often no right or wrong answer on the matter for agreement between the Department and Committee. Therefore, whatever suits a particular situation — be it affirmative or negative — can be used. Is that what you are saying?

1367. Mr Brogan: That is correct.

1368. The Chairperson: How will a pick-and-mix approach, so to speak, affect additional changes or amendments that are sought in the future? Will the Department adopt the same pick-and-mix approach?

1369. Mr Brogan: We could have a set of regulations that contains operational and administrative arrangements — for instance, the application process involved in licensing. The Assembly may not be interested in that, but the Committee would. If that was subject to affirmative resolution and the Assembly looked at it when it was brought into operation, even the most minor amendment would result in an affirmative procedure being adopted in the future. Once affirmative, it is always affirmative.

1370. The Chairperson: I will call on the expertise of the Bill Office Clerk at this point. Is any aspect of that difficult or procedurally fraught for the Committee?

1371. Bill Office Clerk: The letter dated yesterday provides the legal advice that was sought by the Department. It states that: "It was, however, pointed out the need to avoid different elements of a composite set of regulations being subject to different resolution procedures which could potentially prevent the regulations being made."

1372. That shows that in some circumstances it would not present that difficulty. I suggest to the Committee that if you still feel that you want something by affirmative resolution, the Department could look at it and see whether it will cause a difficulty in the future, and examine a wording that would, perhaps, help the Committee if it decides that something should be subject to affirmative resolution.

1373. The Chairperson: That is probably the best idea; it is sound advice. Depending on what matter we are addressing, you can advise us on whether the approach that we plan to adopt would create a major obstacle further down the line.

1374. Mr D Armstrong: If you were attempting to develop a set of regulations for, for example, licensing of operators, and those regulations were subject to both affirmative and negative resolution, the management of which is complex, there might be a problem with workability.

1375. The Chairperson: Although that might be complex, would it be impossible?

1376. Mr D Armstrong: It would not be impossible; however, it might be easier to achieve using one method rather than another. If it were all to be subject to affirmative resolution, from then on, everything would be affirmative and subsequent actions might be an unfortunate waste of the Assembly's time.

1377. The Chairperson: Returning to John Brogan, are we finished with clause 1?

1378. Mr Brogan: Unless members want me to deal with each issue individually, perhaps, they would be happy to —

1379. The Chairperson: You have given us a broad overview and, considering the synopsis contained in the written submission or, indeed, any other matter that members might consider to be important, we can discuss those matters with regard to clause 1.

1380. We are considering pages 9 to 12 of the summary of points raised in relation to the Bill. Do members wish to discuss any of those points?

1381. Mr T Clarke: I wish to highlight the matters of concern to the Ulster Farmers' Union (UFU), which are summarised in points 1.2 and 1.3.

1382. The Chairperson: Those points refer to extending the legislation to include vehicles used for agricultural, horticultural or forestry work, and that brings us back to the matter of

exemptions. Consequently, resolving such matters will depend on the extent of the exemptions list.

1383. Mr D Armstrong: The Bill will provide powers to make the required exemptions; however, those exemptions will not appear in the Bill's clauses or schedules, but they will be included in regulations.

1384. The Chairperson: Right.

1385. Mr T Clarke: When might we get to see that?

1386. The Chairperson: Do you mean the framework, Trevor?

1387. Mr T Clarke: I mean the list of exemptions.

1388. The Chairperson: We asked that question earlier; however, for vague reasons, such as pressures of work, the list has not been compiled yet.

1389. Mr D Armstrong: Work on that is ongoing. Obviously, the list of exemptions must be finalised before regulations can be issued. However, if you want, we could produce a timetable for when that might happen.

1390. The Chairperson: We need a timetable, but, surely, it is not such a big problem to list the exemptions. I know that you are planning to engage with stakeholders —

1391. Mr D Armstrong: With respect, that is the single most difficult matter in the whole of the Bill.

1392. The Chairperson: We have a fair idea of the issues and of the activities that would be exempted.

1393. Mr D Armstrong: The Department has consistently said that exemptions will be applied if they are justified. As we liaise and consult with the industry and the various stakeholder groups, including the UFU, we will ascertain which exemptions can be justified and, subsequently, we will produce proposals. Any proposals must undergo public consultation and be brought before the Committee. However, we are some time away from having that list of proposed exemptions. Moreover, given the fact that the EU will be issuing exemption regulations, we must consider the matter carefully, rather than quickly.

1394. The Chairperson: The Committee has a lot of EU stuff before it today, and such legislation does not appear to move particularly quickly. Can you give us a flavour of the proposed EU exemption regulations, and what is the timetable for introducing them? We do not wish to pass a Bill if the exemptions are linked to something that might not happen for four or five years.

1395. Mr D Armstrong: The EU will introduce regulations, rather than a directive, and they are expected to come into force in early to mid 2009. Furthermore, in light of that, the Government in GB are planning to review its exemptions. Although I do not have details with me, we have received indications of the exemptions that are likely to be removed. However, they will apply to only the for-hire-or-reward sector. Therefore, we could end up with separate exemption lists for the for-hire-or-reward sector and the own-account sector, and that is another matter about which members may wish to comment.

1396. The Chairperson: In an attempt to tie the matter down, can we agree that all those measures will affect us? First, when will the pending EU regulations come into force?

1397. Mr D Armstrong: It will be later than that.

1398. The Chairperson: In other words, the issue is floating about in the ether, but it is to be met further down the line. The exemptions issue has been a major factor in our discussions with various sectors, some of whom have a more valid claim to an exemption than others. Aside from planning issues, the issue of exemptions is the major factor in the legislation. We would prefer to get that issue tied down and have clarity on it, rather than take the carte blanche approach, which we are expected to take.

1399. Mr D Armstrong: It is difficult to be tied down to a certain time for coming back to you with proposals for the regulations. I can produce a paper for you on the subject of exemptions that outlines the different factors and their timescales. That paper would be available to the Committee before proposals are brought forward.

1400. Mr T Clarke: How can we move without that? I read that the Department was considering giving an exemption to the likes of Roads Service.

1401. The Chairperson: We will come to that later in the meeting.

1402. Mr T Clarke: I have a problem with an exemption being granted to Roads Service. The legislation is supposed to be concerned with road safety, but Roads Service, the Health Service and other agencies have heavy vehicles.

1403. The Chairperson: Trevor, we will come to that issue later; it is covered by paragraph 1.10 of the summary table of issues.

1404. Mr T Clarke: It is linked to the issue that we are discussing.

1405. The Chairperson: I read the summary table last night, and I marked the issue for discussion.

1406. Mr T Clarke: People will perceive that the legislation is not for Government vehicles, but for everyone else.

1407. The Chairperson: I want to tie down the point about exemptions. Donald, you said that you will produce a paper for the Committee on exemptions.

1408. Mr D Armstrong: I will produce a paper that will outline the EU legislation, and who has, to date, sought an exemption and their grounds for doing so. It is too early to say whether I can tie proposals for that. I need to provide the Committee with information on where we are with that.

1409. The Chairperson: There are a lot of blank spaces, and the Committee has, invariably, been lobbied about those.

1410. Mr D Armstrong: I agree. The issue of exemptions is probably the most difficult issue in the Bill, and it must be resolved.

1411. The Chairperson: Lack of detail on the issue makes it difficult because we have to deal with the theory without the practice.

1412. Mr D Armstrong: The difficulty with exemptions is that everyone feels that they should have one, and everyone can justify having one. On the other hand, the issue is complex and there are many ways of getting around the exemptions that currently exist in GB. We want to prevent that type of wooliness in favour of a clear, workable and enforceable system, with which everyone can agree. It is not an easy situation.

1413. The Chairperson: The Committee is being asked to make a stab in the dark on the issue.

1414. Mr D Armstrong: I feel somewhat under pressure to have to provide you with something so that you are clear. However, I will certainly provide you with a paper.

1415. The Chairperson: We do need that.

1416. Mr T Clarke: We should park our consideration of the Bill until we get that paper.

1417. Mr D Armstrong: The purpose of primary legislation is to introduce enabling powers. The next stage is to produce the regulations within that. The Department intends to follow that staged approach. Already, before the primary stage is finished, we are considering how the regulations will be exercised. That has been ongoing for the past few months, so we are well up to speed.

1418. The Chairperson: That issue has not been dealt with, but we will get more elucidation on it. Do any members have issues relating to page 10 of the summary table? That covers the matter of exemption, which we have discussed.

1419. Mr Brogan: Paragraph 1.7 of the summary table mentions exemption for Crown vehicles, and it has been mentioned that that will include the likes of Roads Service and NI Water. Those bodies will not be exempt.

1420. The Chairperson: Will Roads Service and NI Water, which fall under the category of Crown vehicles, not be exempt?

1421. Mr Brogan: Those bodies will not be exempt from the legislation.

1422. The Chairperson: What Crown vehicles do you propose to be exempt from the legislation?

1423. Mr D Armstrong: We have considered the granting of exemptions by function, rather than by vehicle. For example, an exemption may be made for the function of carrying farm produce. That is the way we are thinking in order to try to find a way around a complex issue.

1424. For example, vehicles that are carrying farm produce such as barley, silage or animals will be exempt. However, vehicles that are carrying sand, stone or building materials — which are not farm produce — will not be exempt, even if they use a large tractor and trailer. That is one example of how a function may be exempt. For example, Roads Service vehicles would be exempt when gritting or carrying out an emergency function on the road but would not be exempt for normal business. The Department is considering whether that type of exemption would be effective. However, those proposals have not been finalised.

1425. The Chairperson: I require further clarification. Has the Department considered the exemption of certain Crown vehicles? Will those vehicles be dealt with by function, too?

1426. Mr D Armstrong: We want to deal with exemptions by function rather than because of a person's profession. That includes farmers, horticultural farming, or whatever the business may be.

1427. The Chairperson: We will proceed to page 11. Trevor Clarke mentioned Roads Service vehicles, and we have established that exemptions for those vehicles will be designated by function.

1428. Mr T Clarke: I do not understand how exemptions for Roads Service vehicles will be dealt with by function. Why is a gritting lorry that carries tonnes of material exempt, yet an operator who carries material for hire or reward is not? I have a problem with that.

1429. The Chairperson: It is difficult to comprehend. Will you clarify that matter?

1430. Mr D Armstrong: Gritting is, in a sense, an emergency operation to provide safety on the roads. There is no choice but to go out and do it. For example, if someone is assigned to a gritting exercise and is required to have a licence to carry out that task, what will happen if that person does not have a licence? It is a potentially serious situation.

1431. Mr T Clarke: Why would that person not have a licence?

1432. Mr D Armstrong: The issue might not arise because if that person is required to have a licence to carry out their other functions, it will cover gritting anyway.

1433. The Chairperson: Gritting lorries, by nature, have a road safety function because they travel on narrow roads and mountainous terrain. My area — and I am sure that it is the same in other members' areas — has many hills and mountains.

1434. Mr D Armstrong: I cited gritting as one function that may be considered as exempt. However, those vehicles have a dual purpose and carry out other Roads Service functions during the day. Those functions will not be exempt. Those vehicles will have a licence anyway, and, therefore, there is no issue with exemption for gritting. We are discussing those matters with Roads Service.

1435. Furthermore, we are discussing issues with the Rivers Agency and the Ulster Farmers' Union. We are considering whether exemptions should apply to functions or to people in their own right. The current exemption system seems to revolve more around exempting people. That is problematic, because if a person is exempt for a specific function, what happens if they carry out a different function that would not normally be exempt? I cited gritting as an example because it is arguable whether or not that function should be exempt.

1436. Mr T Clarke: We mentioned exemptions for normal agricultural practice. What about the contractor?

1437. Mr D Armstrong: For contractors, such as farmers, the produce would be exempt. However, 50% of some contractors' work may focus on farming produce and some may focus on construction work. They should not be exempt for construction work and should not buy that exemption on the back of another one. It is a difficult area, which is why I am hesitant to say that proposals will be finalised quickly. The issue has greatly exercised the industry and the Committee. Moreover, witnesses who provided evidence to the Committee considered it a big issue.

1438. The Chairperson: We will proceed to point 1.16. Do members have any issues?



1439. We dealt with point 1.16 earlier. John, can we proceed to clause 2, please?

1440. Mr Brogan: Before we do so, Chairman, it is prudent that, throughout the process, I highlight any areas where offences can occur. Certainly, under clause 1(5), it is an offence to use a vehicle without an operator's licence. That carries the maximum fine on the scale, which is £5,000.

1441. I must propose the Department's amendments to clause 1 before we proceed to discussion on clause 2. There are two separate amendments, which are, obviously, linked. The first amendment is to leave out the words:

"within the meaning given in Schedule 1"

at clause 1(2)(a), and to insert at line 16 a new subsection (2)(a). I will not read out the suggested wording, because members have copies. In effect, it sets the threshold at 3.5 tons and allows regulations to deal with vehicle combinations and articulated vehicles.

1442. The Chairperson: I want to return to the issue of the relevant plated weight of a vehicle. I speak as a layman. If you spot a vehicle that looks as though it probably fits under that weight restriction — it may be laden or unladen — what would you do? Would you decide to pull the guy in and examine his vehicle?

1443. Mr D Armstrong: You need to ask enforcement officers that question.

1444. The Chairperson: It seems difficult to discern whether a vehicle fits in that category unless it is quite obviously laden heavily with goods.

1445. Mr T Clarke: Does that not refer to any vehicle that is over the 3.5 ton unladen plated weight and that, therefore, it does not matter how much weight is in the back of it?

1446. Mr D Armstrong: It refers to a gross laden weight — a fully laden weight — of 3.5 tons. The Bill refers to "relevant weight". Relevant weight could be the plated gross weight of a trailer; the plated unladen weight of a trailer; or the weight of a trailer that has no plated weight. The legislation deals with many combinations.

1447. Similarly, a vehicle, such as a heavy lorry, can have a plated maximum design weight, which would not be the relevant weight as far as we are concerned because the legal weight is the maximum weight. Furthermore, the gross plated weight for the United Kingdom could be different to that of Germany, for example. Therefore, there is a range of plated weights on vehicles — that is why the term "relevant plated weight" is necessary. Enforcers need to know what the legal weights are in their state. Additionally, they need to know what the unladen weights are that are plated on vehicles.

1448. If you examine the pictures that we provided, there is a trailer, which is out of scope because it is so light, but which carries a van that could weigh a ton. The current system is unsatisfactory on that issue.

1449. The Chairperson: Have members any further comments on that proposed amendment? Do members agree with the amendment as proposed? Do I interpret the silence as "yes"?

1450. Mr T Clarke: I am not sure at which stage I should say no. Do we accept clause 1 by saying yes?

1451. The Chairperson: No; because we have sought further clarification. We are accepting the amendment to clause 1 subject to further clarification about the issue of exemptions that we dealt with earlier.

1452. Mr D Armstrong: Clause 1 provides the power to make exemptions, but what those exemptions would be are dependent on clause 1, so I am slightly puzzled at the concern about approving clause 1.

1453. The Chairperson: We are not concerned about approving clause 1; we are concerned that we are adopting a clause when we are not fully and comprehensively informed of the issues. That is why we agreed earlier how we will proceed when you report back to us, Donald.

1454. Mr Brogan: Clause 2 establishes the two different types of licences — the restricted licence and the standard licence. There will be two different types of standard licence.

1455. The restricted licence will allow the operator to carry his own goods as part of his business or trade. He must not carry goods for other people for hire or reward under a restricted licence. There will be two different types of standard licences. A standard national licence will allow the operator to carry his own goods and carry goods for other people for hire or reward in Northern Ireland and Great Britain. The standard international licence will allow the operator to carry goods in the UK and on international journeys, including Ireland.

1456. Clause 2 states that it is an offence to carry goods for hire or reward under a restricted licence and/or to carry goods on international operations under a standard national licence. Fines will be £1,000, which is level 3. That replicates the Goods Vehicles (Licensing of Operators) Act 1995 in GB.

1457. The Chairperson: No issues arose from the consultation. Do members have anything to add?

1458. Mr T Clarke: Why are there three different bands?

1459. Mr D Armstrong: The hire-for-reward sector bands are set in European legislation. Standard licences allow drivers to operate in their own member state and international licences allow operators to cross state boundaries. In such cases, operators need a community authorisation when they are in those countries. Those authorisations are required in the EU. The own-account sector requires a licence that allows operators to carry their own goods. The standards that they require are different — on a standard licence, the operator must have a qualified certificate of professional competence (CPC) person in relation to maintenance. The own-account sector is a lesser standard; operators in that sector do not require that certificate. The requirements are not as high in the restricted area.

1460. Mr T Clarke: Is there any cost difference?

1461. Mr D Armstrong: There is no cost difference — it is the same cost across the sectors. Some people in the own-account sector in Northern Ireland have a standard licence because they want to have the option of doing hire for reward when they want to.

1462. Mr T Clarke: What is the definition of an own-account haulier?

1463. Mr D Armstrong: An own-account haulier carries his own goods as part of his trade or business. He does not carry anyone else's goods.

1464. Mr T Clarke: What licence is a courier company required to hold?

1465. Mr D Armstrong: A courier company is required to hold a standard licence.

1466. Mr T Clarke: Is a courier company required to hold a certificate of professional competence (CPC) licence as well?

1467. Mr D Armstrong: No. A courier company must hold a standard licence; in addition, the company must provide evidence of professional competence in the maintenance of its vehicles.

1468. Mr T Clarke: Where does the CPC licence come in?

1469. Mr D Armstrong: The holder of a CPC licence is a person who is certified as competent to provide a fleet maintenance and management function.

1470. Mr T Clarke: Are there many such people in Northern Ireland?

1471. Mr D Armstrong: Yes, there are quite a few. Hire-for-reward operators are required by EU legislation to hold a CPC licence. All hire-for-reward operators in Northern Ireland hold that licence. The Department has not extended that requirement to the own-account sector. We will not ask for that extension when restricted licences are introduced.

1472. Many operators in the own-account sector, particularly big companies such as Tesco, already hold CPC licences, even though they are not required to by law.

1473. Mr T Clarke: I am not worried about those companies. I am worried about the smaller operators who carry someone else's goods.

1474. Mr D Armstrong: Current legislation requires those operators to demonstrate that they have that professional competence in their management function. That is an EU requirement.

1475. Mr Ford: I presume that there are no international implications with regard to the restricted licence for cross-border operators.

1476. Mr D Armstrong: No. There is no requirement for a restricted licence across the border at the moment.

1477. The Chairperson: Do members have anything further to add in relation to clause 2?

1478. Mr T Clarke: May I ask Donald to provide the Committee with a list of people who can provide that professional competence for the smaller operators? He said that there were quite a few.

1479. Mr D Armstrong: The Department does not keep a register of those people. We are not required to do so. We can provide the Committee with the names of the bodies that provide CPC training and certification.

1480. The Chairperson: It is done separately.

1481. Mr D Armstrong: It is a separate issue.

1482. The Chairperson: Is the certificate issued separately?

1483. Mr D Armstrong: A company that carries goods for reward is required by law to have professional competence in the management of its transport operations.

1484. Mr T Clarke: Is that certificate required regardless of the size of a company's operation or the size of its fleet?

1485. Mr D Armstrong: It could be that two or three small companies, with one or two lorries each, will have one person contracted to them to provide that competence. Not every operator has to employ a person with a CPC certificate. That is an important point to make.

1486. The Chairperson: We will move on to clause 3. There does not seem to be any issues with it. Will you give us an overview on clause 3?

1487. Mr Beggs: I am not aware of any issues having been raised in relation to clause 2. Are we accepting clause 2, or are we going to go back to it again? Do we formally record —

1488. The Chairperson: We are scrutinising the clauses today. When the time comes, there will be a formal process in which I will put the question on the clauses.

1489. The Chairperson: If there are any issues to consider, John, please let us know. Will you give us a brief overview of clause 3?

1490. Mr Brogan: Clause 3 allows the Department to grant a temporary exemption from the requirement to hold a standard licence, thereby enabling an emergency to be dealt with or a special need to be met. The Department hopes that it will be used only rarely. For example, in GB, the exemption was granted during the last foot-and-mouth disease outbreak. It was also used during a period of drought in Yorkshire in order to enable tankers to bring water to rural areas.

1491. Mr Ford: Did those powers in GB fall to the commissioner or to the Department?

1492. Mr Brogan: It would have been exercised by the commissioner.

1493. The Chairperson: Do members have anything further to add to clause 3? If not, we will move on to clause 4.

1494. Mr Brogan: Clause 4 deals with vehicles that are authorised or permitted to be used under an operator's licence. In essence, the licence will authorise the use of any vehicle or trailer in the lawful possession of the licence holder. The Bill differs from the GB Act in clause 4(4), which states that: "(4) An operator's licence shall not authorise the use of any vehicle unless—

(a) the place which is for the time being its operating centre is in Northern Ireland; and

(b) the vehicle is registered under the Vehicle Excise and Registration Act 1994 (c. 22)."

1495. That Act deals with the proper registration of vehicles throughout the UK, as it involves the issue of registration plates and the payment of motor tax. It is not included in the GB legislation, although we suspect that they would like to do so, given the chance. Its purpose in the Bill is to overcome the problem that our enforcement teams encounter where a foreign vehicle is registered on a Northern Ireland operator's licence. Sometimes it is difficult for the enforcement teams to prove who the actual user is when a vehicle is detected committing an offence. However, if the licence only authorises vehicles that are registered under the Vehicle

Excise and Registration Act 1994 (VERA), then tracking the vehicle keeper and the actual user will be much easier.

1496. The Chairperson: Say one of those operator centres was located in Newry or up round Derry — as we know, there are vehicles registered on both sides of the border, and companies have cross-border operations and that is the nature of business as they go where the trade takes them — does that mean that there would be a difficulty, just because a vehicle is registered with Dublin or Donegal plates?

1497. Mr Brogan: It would.

1498. The Chairperson: I find that difficult; that could hit people who have a business of that nature.

1499. Mr Brogan: It is designed to overcome problems that our enforcement teams encounter. If they detect a vehicle that has committed an offence, and if that vehicle is registered elsewhere, it is difficult for them to trace it back to the user or the owner.

1500. The Chairperson: Surely, if a driver is caught speeding down South, there are arrangements between both authorities to establish the owner or the registered user of the vehicle?

1501. Mr D Armstrong: The purpose of clause 4(4) is to try to stop vehicles from outside the jurisdiction being used within the jurisdiction, particularly for illegal operations.

1502. The Chairperson: Nevertheless, the very fact that the vehicle is registered outside the jurisdiction makes it illegal — that is my understanding.

1503. Mr D Armstrong: Yes; anybody who is on a current licence will have to use vehicles that are registered within the United Kingdom.

1504. Mr Beggs: It would be useful to give us an example of the problems that you face and the reasons for introducing the change; it would give us a better understanding.

1505. Mr D Armstrong: It is to do with the detection of vehicles that are committing road-transport and traffic offences that are from outside the jurisdiction, and how that can be carried through to ultimate prosecution. A vehicle that drives outside the jurisdiction is hard to trace and chase. There is much more control if the vehicle is based in Northern Ireland. That does not mean that a vehicle currently registered in the South cannot be taken off an operator's licence as part of a sanction if that vehicle is misbehaving; that can still be done.

1506. The Chairperson: Yes. However, I am trying to deal with the practical realities of a situation where businesses have some of their vehicles registered South of the border and some registered in the North.

1507. Mr D Armstrong: Those vehicles are operating with legitimate licences registered with a company. At the end of the day, this clause does not exist in GB because it does not have land borders with any other country: its vehicles are all registered in GB.

1508. The Chairperson: Those vehicles are all right. However, we are in a different situation and in a different place. I do not think that clause 4(4)(b) takes account of that reality.

1509. Mr D Armstrong: Can we look at that and come back to the Committee?

1510. The Chairperson: You would need to; otherwise further problems will be created down the line.

1511. Mr T Clarke: Not really, Chairman. We are dealing with Northern Ireland legislation, and surely we should be encouraging operators to pay their licence fees in Northern Ireland.

1512. The Chairperson: I appreciate that. However, it depends on the situation, and the nature of the place and the operation. I know people whose vehicles are registered in the South but they are based in the North, with a subsidiary operation in the South.

1513. Mr D Armstrong: I can understand the legitimacy of that proposal in the case of an operator who has employees and vehicles on this side of the border — for example, in Newry or Armagh — and on the other side of the border.

1514. The Chairperson: We need to examine that matter because it reflects the reality here.

1515. Mr Brogan: We propose that two minor amendments are made to clause 4, which are to insert the words “if any” at the end of clause 4(5)(b) and after the words “prescribed fee” in clause 4(6).

1516. The Chairperson: That sounds promising.

1517. Mr T Clarke: We could insert the words “when we wish” instead.

1518. The Chairperson: That would take account of the credit crunch. [Laughter.]

1519. Subject to clarity being provided in the cases of operators who have employees and vehicles on both sides of the border, are members content with those two amendments?

Members indicated assent.

1520. Mr Ford: Clause 4(5), 4(6) and 4(8) all make reference to “the Department”. In GB, do those provisions apply to the traffic commissioner?

1521. Mr Brogan: Those measures would be exercised by the traffic commissioner.

1522. Clause 5 specifies the maximum number of vehicles and trailers that can be used under the licence. In the road haulage business, the difference between the maximum number of vehicles authorised and the number of vehicles that is specified on the licence is called the margin. Clause 4(3) to 4(6) provide for that margin.

1523. Applicants will be encouraged to apply for more vehicles than they initially need, which will enable them to deal with any day-to-day operational problems without having to apply to the Department to vary their licence. That is linked to the period of grace, which is provided for in the previous section. It will be an offence to exceed the maximum number of vehicles, and the subsequent fine could be up to level 4, which is £2,500.

1524. Mr T Clarke: If an operator specifies that he has five vehicles when applying for a licence, is a further fee applicable if he wants to add to his fleet at a later date?

1525. Mr Brogan: That would be an application to vary the licence, which is covered later in the Bill.

1526. Clause 6 provides the Bill's first mention of operating centres. It defines an operating centre and states that an operator should not use any place as an operating centre that is not specified on the licence. There is further reference to operating centres later in the Bill.

1527. The Chairperson: You proposed that an operating centre would be defined as the place where the vehicle is normally kept, but that is slightly at variance with the earlier definition — it is perhaps not as expansive.

1528. Mr D Armstrong: My suggestion was that the definition of operating centre could be amended to mean either the base or centre from which the vehicle operates and/or is normally parked when not in use.

1529. The Chairperson: That would be subject to us getting some kind of resolution on the planning issues.

1530. Mr D Armstrong: The Bill could then provide a definition that covers a place from which a person operates and a place where he parks.

1531. The Chairperson: Clause 6 will therefore be subject to a further amendment, and the planning issue must also be resolved.

1532. We now move to clause 7.

1533. Mr Brogan: Clauses 7 to 11 set out the application process for licences. This group of clauses provides for the Department to seek certain information from an applicant, and for the requirement for the applicant to publish a notice of the application in the newspapers. It also deals with the process of making an objection to, and representations against, the applications.

1534. Clause 7 deals with the application that is to be made to the Department. A person can hold only one licence at a time in Northern Ireland, and the Department is empowered to prescribe in the regulations all the information that will be needed in the application form. It is fair to say that the regulations will be significant. The information that will be required will include declarations on notifiable convictions and fixed or others penalties, as well as information on financial resources and details on the vehicles to be used and the operating centre. However, this provision is not new. Powers already exist in the Transport Act (Northern Ireland) 1967 that allow the Department to gather similar information that is necessary for dealing with the current licensing system.

1535. The Chairperson: Do Members have any issues that they wish to raise in relation to clauses 7 to 11?

1536. Mr Brogan: I have outlined clause 7 only.

1537. The Chairperson: Could you give us an overview of all of them, please?

1538. Mr Brogan: Clause 8 requires the applicant to provide details of any convictions or penalties occurred in the time between making the application and the application being disposed of — in effect, where a decision is made. It will be an offence to fail to meet that requirement with a fine up to level 4, which is £2,500.

1539. Clause 9 requires that the Department will publish a notice of any application for a licence made to it, and the notice should explain how objections or representations may be made. The

nature and form of the notice will be described in detail in the regulations provided for under the clause.

1540. Clause 10 sets out how an applicant will have to publish a notice that he or she has applied for an operator's licence. That will give formal notice to people who own or occupy buildings or land close to the proposed operating centre, so that they will have an opportunity to make representations against the application. The application itself will be refused immediately if the notice is not published, and there will be discretion to accept an application in circumstances where the notice did not comply with the normal requirements but the Department is satisfied that no one's interests will have been prejudiced as a result. In this case, the notice will have to be placed in a local newspaper that covers the place where the operating centre would be located.

1541. Clause 11 deals with objections and representations. It establishes the right to object or to make representations against an application. The person who may object or make representations will be restricted, as will the grounds on which they are to be made. Objections are different to representations. Clause 11(1), 11(2) and 11(3) deal with the objections, and they will come from certain prescribed trade unions and associations, the police, local councils and Government Departments.

1542. The bodies may object on the grounds that any of the requirements of clause 12 on good repute, financial standing or professional competence are not satisfied, or that the operating centre is unsuitable on environmental grounds. I will explain what is meant by "environmental grounds" when we discuss clause 31.

1543. Clause 11(4) and 11(5) deal with the representations against the issue of operator's licences. An owner or occupier of land in the vicinity of a proposed operating centre can make a representation against the proposal on the grounds that it would be environmentally unsuitable. Any adverse effects from using the site as an operating centre should be serious enough to affect their use or their enjoyment of the land.

1544. The remaining subsections of clause 11 deal with the process for making rejections and representations, and the time frame and information that is needed.

1545. The Chairperson: Does any member have an issue with clauses 7 to 11?

1546. Mr Ford: I noticed that the word "Department" appears in each of the clauses.

1547. The Chairperson: I propose to conclude our deliberations on the Bill, because we have other issues to deal with. I thank Donald, Gillian and John for their time and for taking us through the Bill. We will come back to that at our next meeting.

## **11 November 2008**

Members present for all or part of the proceedings:

Mr Patsy McGlone (Chairperson)

Mr Cathal Boylan (Deputy Chairperson)

Mr Roy Beggs

Mr Trevor Clarke

Mr David Ford

Mr David McClarty

Mr Ian McCrea



Mr Alastair Ross  
Mr Peter Weir

Witnesses:

Mr Donald Armstrong  
Mr John Brogan           Department of the Environment  
Mrs Gillian McIntyre

1548. The Chairperson (Mr McGlone): Do any members have any interests to declare?

1549. Mr Beggs: I declare that I own 25 acres of agricultural land and assist on my parents' farm, which may have a bearing on some of the issues.

1550. Mr Weir: I was going to declare that I was stuck behind a goods vehicle on my way to Stormont this morning so I may not be well disposed towards them today.

1551. Mr Ford: Was it a properly regulated one?

1552. The Chairperson: The Committee will continue its clause-by-clause consideration of the Goods Vehicle (Licensing of Operators) Bill. The Committee has been provided with copies of the departmental response on the issues paper, the amendments to be moved at Consideration Stage, the letter dated 23 October about the position of operating centres in relation to planning requirements, and the Department's response regarding further information on the secondary-legislation-making powers of the Bill, dated 5 November.

1553. The Committee has also received letters from Karen Magill, Federation of Passenger Transport; Aodhan O'Donnell, the Consumer Council; and Tom Wilson of the Freight Transport Association (FTA) on the issue of an independent regulator, which will inevitably bear on our discussions later. Those letters have been circulated by email to Committee members and I am aware that, like myself, other members will have received further correspondence from Mr Wilson about that issue.

1554. The key documents that will be used to scrutinise the clauses are the Goods Vehicle (Licensing of Operators) Bill, the summary table of issues paper, and the list of proposed departmental amendments.

1555. John Brogan of the departmental Bill team will introduce each clause, starting at clause 12. I direct members' attention to column 2 of the issues paper that lists the key issues raised in relation to each clause. After each clause has been introduced, members will have a brief period to familiarise themselves with the issues. John Brogan will then provide us with comments from the Department.

1556. I welcome Donald, John, Gillian, who are here to help us work our way through the Bill. We will start where we left off, at clause 12, unless there are any specific issues that the departmental representatives want to draw to our attention.

1557. Mr Donald Armstrong (Department of the Environment): No; I know that the Committee wrote to us about the other issues — we are currently putting together responses to those, and they will be with the Committee shortly.

1558. Mr John Brogan (Department of the Environment): Clause 12 sets out the factors or requirements that the Department will take into account when processing an application. The

Department must be satisfied that the applicant fulfils those requirements before it can approve the application. It is a complicated clause, in that some of the requirements relate to standard licence holders only and some relate to restricted licence holders only. There are also requirements that are common to both.

1559. Taking the example of the standard licence holder first, clause 12(3) states that the Department must be satisfied that the applicant is of good repute, appropriate financial standing and professionally competent. Those are EU requirements that are already in place here through the Transport Act (Northern Ireland) 1967 and relate to those involved in the hire-and-reward sector.

1560. Clause 12(4) relates to the restricted licence. The Department must be satisfied that the applicant is not unfit to hold a licence, although the requirement is slightly less onerous in relation to restricted licence holders.

1561. Clause 12(5) relates to both standard and restricted licence holders. Under clause 12(5), the Department will examine several arrangements and facilities to ensure that they are satisfactory: the system of monitoring drivers' hours; the arrangements to ensure that vehicles are not overloaded; adequate facilities to maintain vehicles in a fit and serviceable condition, and the availability of a suitable operating centre. In determining any application, the Department must take account of any objections or representations that have been made. It may include conditions to be attached to the licence to enable any outstanding requirement to be met.

1562. I must draw the Committee's attention to one particular point. In Great Britain, the Goods Vehicles (Licensing of Operators) Act 1995 does not have the power to apply professional competence requirements to a restricted-licence applicant. In clause 12(12), the Department includes a provision to allow it, at some time in the future, to apply the more stringent professional competence requirement to applicants for the restricted licence. We have talked about that at previous meetings, because it is one of the regulation-making powers that we must decide whether to make subject to affirmative or negative resolution. We parked that issue for discussion on another day anyway, but I needed to draw it to your attention. Quite a few issues were raised about clause 12, and the Committee may want to consider those.

1563. The Chairperson: Does any member have a query about clause 12, given that quite a lot of issues emerged from the consultation exercise? Do members not have any major issue with it? Take a minute or two to study the papers because there is quite a bit of information, which can be found on pages 16 to 18 of the overview document.

1564. Mr T Clarke: I have a question to ask while others are reading through that. The Department's response states that it is likely that it will have to exercise "discretion". Will you give me some idea of what you mean by discretion?

1565. Mr D Armstrong: The current system of licensing involves civil servants exercising a non-discretionary role. In other words, everything is tightly tied down in legislation or guidelines. Members will know from having heard the presentation by the Traffic Commissioner for north-west England that Great Britain operates very much on a discretionary basis. The rationale for that is that it allows the commissioner to negotiate and discuss with operators how they can be licensed, as opposed to the present system here in which boxes are ticked to give a yes or no outcome.

1566. In the case of GB, such discretion allows the commissioner to apply conditions and grant a licence, as opposed to refusing an application on the grounds that the standards have not been met. Therefore, it is a much more discretionary system in which the Department will be disposed to grant, rather than withhold, licences by trying to receive undertakings from the operators that

they will comply with the requirements of the licence. That system is more generous to the operator and, at the same time, it allows the Department to regulate in a much more flexible way.

1567. Mr T Clarke: It is nice to hear that the Department has discretion, but I do not see how it could work in practice. Operators would be at the mercy of an individual's discretion. I do not know how that could be measured.

1568. The Chairperson: You are talking about the consistency of discretionary powers. Donald, will you please talk us through how an application would work in practice?

1569. Mr D Armstrong: Say, for example, a person makes an application for a licence, and the paperwork that the Department receives reveals that the drivers have not complied with drivers' hours and tachograph records show that they have not been up to scratch. Under the current system, the Department would have to refuse to issue a licence. What the Department could do in the future, and what happens in GB, is that conducting an inquiry with the applicant the traffic commissioner could decide to grant the licence but could demand to be provided with the tachograph records for the next six months, on a monthly basis, to prove that the applicant will maintain their undertakings.

1570. Instead of a situation in which the Department would have to refuse to issue a licence, it could issue one with certain caveats. That is what we mean by discretion in this case. It allows much more flexibility, and it allows agreement to be reached between the Department and the applicant.

1571. The Chairperson: Will one individual exercise that discretionary power, or will it be exercised by a panel, to ensure that the application of discretion is consistent — if that is not a contradiction in terms?

1572. Mr D Armstrong: The power will rest with an individual, whether that person is a traffic commissioner or someone who is appointed by the Department to carry out that task. However, the decisions that that person makes will still be open to appeal. Ultimately, those appeals will be handled by the Transport Tribunal — as it is currently called — in London, so the checks and balances that currently exist will still be in place.

1573. Mr Weir: I am concerned about the Department's response to some of the issues that were raised. Although some of the issues were reasonably general, others asked quite specific questions, and it does not seem that any of those were answered properly. One person asked whether local-government vehicles could be kept at home. Another raised the matter of whether operating centres must be large enough to allow vehicles to drive in, turn around and drive out forwards, as is the case in GB.

1574. Other questions are quite specific and effectively require a yes or no answer, or at least a qualified answer. However, if I were an operator who was trying to work out whether specific circumstances applied to me, I would be none the wiser after reading the Department's response. It states that discretion must be applied to the cases against the consideration issues, but the specific answers to those questions do not appear. Are you in a position to at least answer some of the more specific questions that are asked between 12.3 and 12.7 in the document?

1575. Mr D Armstrong: In relation to 12.3 — whether a person can use a private house as an operating centre — the answer is yes, provided that the requirements of being able to park the vehicle are satisfied, and depending on what type of vehicle it is.

1576. Mr Boylan: Can I interrupt?

1577. The Chairperson: We should focus on that issue.

1578. Mr Boylan: My point is about that issue. In essence, that sounds OK, but the problem that I have with it is regarding people's right to object. It is fine to say that a private house can be used as an operating centre, but somebody 100 yards away could have an objection. The Department's answer is that it is down to discretion. Somebody may intend to operate a business from their own home. That is why we are talking about independence and people having opportunities to question that decision. I want more information about how the discretion of a single person or body is defined, and how people could challenge those decisions independently if they are refused permission.

1579. The Chairperson: That was the same issue that Trevor raised.

1580. Mr T Clarke: Donald said that people can work from their own home provided that they satisfy requirements. Now provisos are being attached. Do we not have a black-and-white answer setting out when that is allowed and when it is not?

1581. Mr D Armstrong: Essentially, that will be the case. In the case of a person working from home, a four-ton van may well fit into the driveway, but a 40-ton lorry will probably not. A carte blanche answer cannot be given for every situation — the regulator has the discretion to decide to what degree that can take place. In essence, that is the nature of the system, as opposed to what we have at present. The question is whether we are considering the ability of the person to decide fairly.

1582. The Chairperson: I remind members that we will suspend the meeting at 10.55 am for 10 minutes in order to facilitate those who want to attend the Armistice Day ceremony.

1583. Mr Boylan: What weight would an objection carry?

1584. Mr D Armstrong: Objections can be made only by those who are listed as statutory objectors in the context of the Bill — local government, police, and so on. Representations can be made by people who believe that their enjoyment of their property, which may be adjacent to the operating centre, is affected. The onus and the burden of proof will be on them: they must show that they are, in fact, disadvantaged by the operation.

1585. Another matter to which I must draw attention, because it may have a bearing on members' views, is that the Bill is written as a piece of legislation for the ongoing regulation of operators. It is not written specifically for the transitional period — in other words, between now and April 2011, when many existing operators will join the system. The legislation must be written as though it will stand for ever and a day and will advise new operators of the criteria that they must fulfil before they can obtain a licence.

1586. We must consider in fair detail what transitional arrangements are needed for those who currently operate outside the regulation, namely the own-account sector, who will have to join the regulatory regime when it is introduced. Obviously, we must examine issues such as grandfather rights. If someone has operated a business and parked a vehicle at their home for the past 25 years, can the Department suddenly come along and say that because of new legislation, the person cannot do that any more?

1587. We must, therefore, consider carefully what transitional arrangements will be provided, as opposed to what arrangements the Bill, in essence, will provide for the system to work, from day

one onwards, for new operators who wish to come into the business. That must be kept in mind when we consider discretion. For example, if 15,500 own-account operators must apply for a licence in order to come into the system, which is what we envisage will happen, must we go through the whole process of asking them to advertise and holding inquiries for every single one of them before we grant them licences? Frankly, that is not practical.

1588. That is why we must consider what transitional arrangements we want to introduce. For example, repute, which is dealt with under clause 12, is determined by the number of convictions that a person or his or her employees have. Clearly, there may well be many own-account operators who have a list of convictions. Can the Department suddenly say to them that they cannot have a licence because they have already triggered the level? We cannot do that. We must consider the introduction of cut-off dates, for example. Discretion is, therefore, needed even for transitional arrangements.

1589. The Bill aims to establish arrangements for the future. We must examine how we will feed in existing operators through a short-term process. I am not sure whether my comments have clarified the issue. The Bill deals with the permanent situation.

1590. Mr Beggs: Does discretion ensure consistency in the adoption of that system, regardless of whether a traffic commissioner or a politician is ultimately responsible? How can you ensure that there will not be inappropriate political interference in the event of there not being a traffic commissioner?

1591. Mr D Armstrong: First, the line of appeal leads to the Transport Tribunal, which is non-political. Secondly, at present, the Department exercises the function through the agency and there is no political interference. It does not exist and I have no reason to believe that that would be any different if a regulator were appointed in the Department.

1592. Mr Beggs: What will happen if the regulator receives representations from the Minister, which occurs in planning matters, for example?

1593. Mr D Armstrong: Representations from Ministers have certainly not been our experience. However, MLAs have made representations to the appeal panel, which I chair. We deal with those representations as part of the process. To date, there has not been a problem with the process as it currently operates.

1594. Mr Ross: Point 12.7 asks whether operating centres will be required to allow vehicles to drive in, turn around, and drive out forwards as they are in GB. We have previously discussed that matter. Can you provide further guidance on that? If an operating centre is someone's home, for example, it is unlikely that that will be possible.

1595. Mr D Armstrong: That standard is currently applied in GB when operators make applications for new operating centres — for example, when someone joins a firm and the operator wants that person's address to become an operating centre because the vehicle will be parked there.

1596. Mr D Armstrong: That is the standard that is currently applied in GB. It means that if new operators want to use their address as an operating centre because they park their vehicle there, or if existing operators want to establish a new operating centre for someone who joins their firm, the standard applied in GB is that they must be able to show that they can drive the vehicle in and out of the proposed operating centre in a forward direction. Given that there are approximately 9,000 single-vehicle operators in Northern Ireland, it would probably be silly to apply that standard here. We could not do that, because it would have such a high impact. We

must examine the issue. However, I do not think that we would be able to sustain that, and we are not pushing for it. We want to examine safety issues.

1597. Mr Ross: Presumably, one of the reasons why you do not want to adopt the same standard is because you do not want big lorries reversing out of driveways.

1598. Mr D Armstrong: That is correct.

1599. Mr Ross: Is it possible to include a clause in the Bill that would get round that issue and improve road safety?

1600. Mr D Armstrong: At a previous session, I mentioned that the issue of driving in and out will not be governed by regulation. Rather, the regulator will take a line on how he or she will exercise the function. We certainly do not envisage that the standard used in Great Britain would hold here. From examining the Bill, I cannot see that. It would not be sustainable here. That particular line would feed into our impact assessments if it were adopted, and I do not think that we could hold it up. It would be far too strict.

1601. However, we must very careful about road safety. If that standard is used in GB for road safety reasons, we need to be careful that we do not simply turn our backs on it. We may include something in the Bill that would allow drivers to reverse in but not out. We may have a look in detail at how that pans out. We do not yet know the detail of that, Alastair. However, I cannot see us holding that line. I do not think that is fair, because it would rule out an awful lot of operators.

1602. Mr Boylan: Obviously, people would object if traffic to an operating centre intensified as the result of a licence being granted. It is a roads issue because vehicles will be entering and leaving the operating centre. Have you taken that into consideration? Obviously, a neighbour would object to an operator using their home as an operating centre? Which clause deals with that issue?

1603. Mr D Armstrong: Clause 20 deals with conditions of licences.

1604. Mr Boylan: I have a problem with that issue.

1605. Mr D Armstrong: We will be addressing the conditions of licences under clause 20.

1606. Mrs Gillian McIntyre (Department of the Environment): Roads Service is a statutory consultee, and it will have an opportunity to comment on submitted applications.

1607. Mr Boylan: In the round, part of the problem is that traffic may or may not intensify at an operating centre as a result of someone getting their operator's licence. You said that the Roads Service will have the discretion to decide whether a road will be able to facilitate that, which will be a problem. We must take that on board, because we are talking about people's livelihoods.

1608. Mr D Armstrong: In the normal run of the mill, when considering an application for an operator's licence, a proposed operating centre must meet three criteria: it must be at a suitable location, on a suitable road, and have suitable access. The transitional side to this is that many operators already have operating centres. We will have no choice but to grant licences to the vast majority of operators, unless there is a clear road-safety reason why we cannot.

1609. If 15,500 people apply for a licence for 1 April 2011, our workforce would not have enough time to interview people, to hold inquiries, and to inspect all the operating centres.

There will have to be some form of transitional arrangements whereby we grant those licences, because there is no way that we will be able to visit all those sites and decide whether they are suitable. It simply cannot happen.

1610. Therefore, a transitional mechanism must be put in place whereby we bring people into the system without applying the strictest sense of the standards. For example, we could work on the basis of undertakings. Obviously, some people might want to make representations. However, the vast majority of people will not pay the slightest bit of notion, because the undertakings are already working. However, if people do make representations, it will be the responsibility of the Department to examine those at that particular time.

1611. The Department will probably not pay much attention to operating centres unless representations are made to it, and that will probably occur only in a very small percentage of cases. In GB the Department does not become involved with operating centres at all unless objections or representations are made. It is accepted that the undertakings are fine, and that if there is a problem it will arise in the process of time.

1612. Mr Boylan: I take your word that the Planning Service will not receive a large number of objections about operating centres.

1613. Mr D Armstrong: I notice that you are referring to objections made to the Planning Service, but the issue we are discussing is the possible objections to the obtaining of a licence.

1614. Mr Boylan: I know that, but I am making the point that objections to the Planning Service will be part and parcel of the consequences of the Bill. We will see.

1615. The Chairperson: That is an issue that is coming trundling down the line; we cannot get away from it.

1616. Mr Boylan: We need to be aware now that that is what is going to happen. It may be, hopefully, that there will not be that many objections, but we will see what happens.

1617. Mr D Armstrong: At the moment there are around 2,800-3,000 licensed operators with operating centres, and roughly around 15,500 operators in the own-account sector. When the Bill is enacted I do not envisage that that will change much. It is not the aim of the Department to implement legislation that will have a catastrophic effect. It will affect the livelihood of a large number of people, so the Department cannot introduce legislation that will force those people out of business.

1618. Mr T Clarke: The Bill defines an operating centre as a place of work, which is not the current definition. At the moment people are parking their vehicles outside their houses, but under the new definition an operating centre is that place from which the operator works. Under that definition, the operator's home becomes a legitimate business, and thus there are grounds for someone to complain.

1619. Mr D Armstrong: The last time we attended a Committee meeting we offered to redefine an operating centre as not only a place from which work is carried out, but as a place where a vehicle is parked. That would provide clarity on that issue.

1620. The Chairperson: If that definition of an operating centre were included in the Bill, would it then be outlined in any press advertisements, or other information that was put into the public domain as part of the consultation process? I presume that the definition of an operating centre as including any place in which a vehicle is parked would have to be put into the public domain.

1621. Mr D Armstrong: Yes.

1622. The Chairperson: The point I am making is that, as those of us who have sat on local councils will know, when something is put into the public domain and advertised as such, objectors will immediately zoom in on that. I can see a possibility that that definition of an operating centre, and even the title of the Bill itself, will attract like a magnet those people who are quasi-permanent objectors. That possibility is lurking at the back of my mind — there is a need to tie that down a bit.

1623. Mr D Armstrong: To be fair, if a person does object about an area in which a vehicle is parked, that objection should not stand. That will be taken into account anyway.

1624. The Chairperson: But those people know when and who to object to in order to cause maximum impact. They may have valid cases, they may not, but the extent of their objection will not be solely confined to the granting of a licence — it will be referred to the Planning Service.

1625. Mr D Armstrong: There is an example of a statutory advertisement for the public consultation, and we may be able to include in the context of that what is meant by an operating centre, that it includes the place where vehicles are parked, and that it can be defined what each centre is used for. An operator could, for example, name the Boghill Road as an operating centre, and could specify that that is where the vehicles will be parked. That could be examined in more detail, and has relevance to a later part of the Bill, which sets out what kind of notice is required when applying for a licence.

1626. The Chairperson: Does any other member have anything that they wish to raise in relation to clause 12?

1627. Mr Ford: I note that Mr Armstrong used the term “traffic commissioner” so often that I do not need to mention it.

1628. Mr Weir: The issue of local-government vehicles has been raised; what can be said specifically on that?

1629. Mr D Armstrong: That is dealt with in clause 1 of the Bill. The Department will not differentiate between public-sector and private-sector vehicles. A vehicle that is parked at home will be, currently, subject to scrutiny as regards income tax as well as anything else.

1630. Mr Weir: Did the people who raised that issue obtain that level of clarity in answer to their questions?

1631. Mr D Armstrong: Yes. The question was asked by people who take local government vehicles home and who wondered whether they would be affected, and the answer is yes, it will affect them.

1632. The Chairperson: There are people who work for Northern Ireland Water and the Rivers Agency who may be on call. Rivers Agency staff, in particular, may be on call to deal with flash flooding, for example. They may temporarily go back and forward from home, thereby dipping in and out of the definition of an operating centre. They may only have the van temporarily when they are on call. It might be one weekend in four, or one weekend in two, or, perhaps, not at all, unless there are specific times at which it is estimated that excessive flooding could occur.

1633. Mr B Armstrong: We have to use the definition “normally”, because a vehicle may normally be parked at a certain place at night, but could be parked somewhere else on its journeys. Our



lawyers may have to fight in court over what defines normal — whether that is 50% of the time, or more than that — but we have defined it as “normally”, so that if a vehicle is taken home over a weekend, say, in the event of an emergency —

1634. Mr Weir: There may be a certain threshold which counts as normal, but I presume, whether or not there is a higher threshold, that circumstances in which a vehicle was parked in a certain location for less than 50% of the time would not be considered as normal. There may be an argument as to whether the threshold should be set at 51% or 75%, but if the threshold is set below 50%, a vehicle could not be considered as being “normally” parked, by any definition.

1635. Mr D Armstrong: A separate judgment was made in relation to what “primarily” meant — whether a vehicle was primarily an own-account vehicle or classed as a hire-for-reward vehicle. The magistrate defined “primarily” as 51%, so “normally” would certainly be below that.

1636. The Chairperson: If there are no further issues in relation to clause 12, we will move to clause 13.

1637. Mr Brogan: Clause 13 deals with the right to make an objection, or make a representation, as set out in clause 11, on environmental grounds. An application may be turned down on the grounds that parking in or around the operating centre would have an adverse effect on environmental conditions, or because the centre would be unsuitable on other environmental grounds.

1638. However, there are safeguards that provide protection from refusal for an existing operating centre. I refer members to clause 13(3); if an application is based on an operating centre that is already specified on another operator’s licence, the application cannot be refused on general environmental grounds, as long as the centre has been transferred by the time the application has been determined.

1639. Alternatively, if the centre is not specified on another licence, and the applicant produces proof that its proposed use satisfies planning legislation — in other words, a certificate of lawful use — then refusal on general environmental grounds will not occur.

1640. The Chairperson: We are going back into it again. We cannot get away from this one; it has happened so many times.

1641. Mr Boylan: We have been talking about environmental grounds, and mention was made of grandfather rights. I have a problem with the idea that if those rights are passed on, there might come a time when an objection is submitted and the Department would have to assess it. Although we want people to pay into a fair system across the board, I am concerned about the independent checks that would have to be made. The objector has a right to object, but if the business has been operating for some time, and its circumstances have changed somewhat, where is the mechanism for the challenge?

1642. Mr Brogan: We will discuss the review of operating centres. Where representations have been made, the Department will carry out a review. There are powers available to the Department, which we will discuss in due course.

1643. Mr T Clarke: Was there not a measure to review licences every five years?

1644. Mr D Armstrong: That is what we were discussing. When a licence is granted, it is done so indefinitely. However, there is provision in the Bill to review licences every five years, which we will discuss later.

1645. The Chairperson: That concludes our discussion on clause 13. There do not appear to be any issues on clause 14, but John Brogan can provide an overview.

1646. Mr Brogan: Previous clauses have dealt with the application process and the determination of an application, so clause 14 deals with the issuing of the licence. It allows the Department a degree of discretion in determining the outcome of the application process — although it generally will issue a licence on the terms that were applied for, the Department can issue a licence on different terms. To do otherwise might mean that certain applications would be refused. The power to issue a licence on terms other than those under which it was applied for, allows some difficulties to be overcome and the licence to be issued.

1647. Mr D Armstrong: I will use the example that I already quoted. That measure can be used in circumstances where someone had a poor record and had previously been refused a licence.

1648. The Chairperson: We move on to clause 15.

1649. Mr Brogan: Clause 15 is short and completes the part of the Bill that deals with the processing of an application and provides for the duration of a licence. Licences will run on a continuous basis and, subject to revocation or another form of termination, it is open-ended once it has been issued.

1650. Mr Beggs: Paragraph 3 states:

“If the holder of an operator’s licence requests the Department to terminate it”.

1651. Why would an operator terminate his or her licence?

1652. Mr Brogan: He or she may be retiring or selling the business, or there may be other circumstances in which the business comes to an end.

1653. Mr Beggs: If an operator has a licence for one location, can it be passed on to a subsequent operator?

1654. Mr D Armstrong: The business could pass on, but the new owner must have his or her own licence. A licence does not come with grandfather rights. I am not sure that I like the term grandfather rights in its truest sense. Although a licence is indefinite, it cannot be transferred from generation to generation.

1655. Mr T Clarke: The only difficulty is that you would have difficulty refusing it in regard to a centre.

1656. Mr D Armstrong: Yes, and that is catered for.

1657. The Chairperson: We move on to clause 16.

1658. Mr Brogan: Clauses 16, 17, 18 and 19 deal with circumstances where an existing licence holder —

1659. The Chairperson: We can consider those clauses collectively, as there does not seem to be a wile pile of issues.

1660. Mr Brogan: Clauses 16, 17, 18 and 19 deal with circumstances that arise when a licence holder applies for his or her licence to be changed or varied. There is a replication of earlier material that deals with first-time applications.

1661. Clause 16 relates to the application process and provides the right for someone who already holds a licence to apply for the variation and lists the various circumstances in which the existing licence can be varied. The most common reason would be to increase the number of vehicles authorised at a particular operating centre; to change or delete any condition attached to the licence; or to use a new operating centre.

1662. Clause 17 deals with the publication of notice of applications for the variation in any locality affected, and it is very similar to clause 10, with which we have already dealt.

1663. Clause 18 is very similar to clause 11 in that it deals with the objections to, and refusal of, applications to vary operators' licences on environmental grounds. It sets out the circumstances in which the Department should or should not refuse an application.

1664. Finally, clause 19 provides for a specific regulation-making power that relates to the application for the variation. It deals with the conversion from a restricted licence to a standard licence or from a standard national licence to a standard international licence.

1665. The Chairperson: Do members have any comments or queries on clauses 16 to 19?

1666. Mr Ford: I take it that those clauses are in direct parallel with the GB legislation, except where they mention traffic commissioner?

1667. Mr Brogan: Yes, they are.

1668. The Chairperson: I think that you have made your point, David.

1669. Mr Weir: I hope that you are not going to become a one-trick pony. [Laughter.]

1670. The Chairperson: Has anyone any further comments? It might be appropriate to take a break before turning to clause 20, which has a fair bit of detail in it. We will resume at 11.10 am.

Committee suspended.

On resuming —

1671. The Chairperson: We will move on. There are a number of clauses that we can group together, just as we did previously. In that way, we will be able to get an overview, and use our time more efficiently.

1672. Please give us an overview of clause 20.

1673. Mr D Armstrong: May I first return briefly to clauses 11 and 12? We had a chat about that during the suspension. For those clauses, which concern operating centres, we can specify the form in which people have to advertise their intentions in the local newspaper. We will specify a template, so that they must supply the following information: who they are, what their business is, where their operating centre is, and, specifically, where vehicles will be parked only. Technically and in law, those places will be regarded as operating centres, but they will be advertised as places where vehicles will park only. If we can specify that in regulations, it might answer the Committee's questions in relation to planning and use of the site. That would deal

with clauses 11 and 12 more helpfully. We can provide a template for the Committee, of what we will be suggesting in regulation.

1674. The Chairperson: That would be great, Donald.

1675. Can we look at clause 20 please, John?

1676. Mr Brogan: Clause 20 allows the Department to attach conditions to a licence, either at the time of issue of the licence, or at the time of varying it. Under clause 20(1), conditions generally relate to road safety in and around the operating centre. Those road safety conditions are limited to dealing with danger to the public at the point of access to the public road or along any private-access road linking the operating centre with the highway.

1677. It also deals with the operator's duty to inform the Department of any event that might affect the licence. That will include notification of any relevant convictions or prohibitions — for example, as a result of overloading or use of a defective vehicle. It deals too with environmental conditions around operating centres. That could include limiting the number of lorries in the centre or, for example, the hours of operation of refrigerated units. The Department also has the power to impose other conditions as it thinks fit. We spoke about that in one of our earliest evidence sessions.

1678. In the interests of consistency, I must highlight that it will be an offence to contravene a condition with a fine up to level 4, which is £2,500.

1679. The Chairperson: As members do not have any questions or require any clarification of clause 20, we will move to clause 21.

1680. Mr Brogan: Clause 21 gives the Department power to issue an interim or temporary licence to an applicant. That will remain in force while the application for the main licence is processed. It will allow the operator to get on with business, especially if a contract has been offered at short notice.

1681. Clause 22 relates to interim variations. When a licence holder applies for a variation of a licence under clause 16, he can, at the same time, ask for that variation to be applied immediately, pending the outcome of the full application.

1682. The Chairperson: As no one wishes to raise any issues about either clause 21 or clause 22, we will move to clause 23.

1683. Mr Brogan: Together, clauses 23 to 26 contain a set of important disciplinary powers to take action against a licence holder in a range of circumstances. Revocation, suspension and curtailment will serve as an effective back-up to enforcement action, and it is important that those operators who continually break the law will find that their licences are taken off them and that they will not be able to stay in business. That is only fair to those operators who continually stay within the law. We already have similar powers to revoke and suspend licences issued in Northern Ireland, although the power to curtail will be a new one for us.

1684. I am not sure in how much detail you would like me to deal with each particular clause. I could run through each of the clauses if you wish.

1685. The Chairperson: Can you give us just a brief overview of them, please?

1686. Mr Brogan: Clause 23 deals with the power to revoke, suspend or curtail both standard and restricted licences. Those powers are discretionary, and in the next clause, there are powers to specifically revoke standard licences. The powers are actually mandatory.

1687. Clause 24 deals specifically with the revocation of a standard licence. The Department must revoke the standard licence if the holder no longer fulfils the requirements of good repute and financial standing. There is — up to a point — no discretion available in those cases. That provision is already in place in Northern Ireland and stems from EU requirements for those involved in haulage for hire and reward. The Department proposes an amendment to clauses 24 and 26. It may be better if I raise that at clause 26; it would make more sense then.

1688. Mr D Armstrong: On a point of interest regarding clause 24, the Department must revoke the licence if repute is breached. There is no discretion around that — it is a European requirement. In taking that back to the powers and conditions, what we would be able to do in the future that we cannot currently do is to give the licence back. If an operator had been running a business for 10 years, and, say, for some reason one of his five or 10 drivers racks up a number of transport or traffic offences, the operator's repute is breached and must, by law, lose the operator's licence. We do not have a mechanism at present to enable that person to come back in until a number of years have passed. What would happen then is that we would have the discretion to apply conditions, under clause 20, in order to grant a licence and put conditions on that licence.

1689. The Chairperson: Would that be dependent on the nature of the breach?

1690. Mr D Armstrong: Yes, it would. The Bill will give us the discretion to let a person function, whereas at present we do not. We have had the situation in Northern Ireland where we have taken licences from people simply because we have no choice but to do so. They have then had to transfer the business into someone else's name, and submit another application, so in putting together clauses 24 and 20, we will have a greater flexibility around discretion.

1691. Mr T Clarke: If someone has breached the regulations, and has a track record, why would you want to give the licence back?

1692. The Chairperson: Could you put the situation in context and possibly give us an example of the sort of thing that could lead to a breach and total revocation of the licence where, under other circumstances, you could display discretion? I understand where you are coming from, but I am not clear on the specifics.

1693. Mr D Armstrong: Suppose someone has an operation with 10 drivers, and some of those drivers breach the regulations on drivers' hours: they are travelling across the channel, rushing for the boat to get home and are caught — that quite often happens. The operator could exercise discipline on those people. He could tell the driver to go, that he could not have someone like that working for the organisation. However, that breach still stands against the operator's name. Under law, therefore, he must lose his licence. If the operator can show that he has taken appropriate action in relation to that breach, then we would have the discretion to say that he could have a licence.

1694. The Chairperson: That makes sense. Thank you for that. Did you have something further to add, Donald?

1695. Mr D Armstrong: Members had queries about discretion. I just wanted to make the point that, in that situation, discretion is clearly used to its best advantage.

1696. Mr Brogan: Clause 25 deals with disqualification and is another disciplinary tool available against individuals whose licences have been revoked. It disqualifies a person from holding or obtaining a licence for an indefinite or defined period. Moreover, it outlines that it is an offence to apply for or obtain a licence when disqualified and that offenders will be fined at level 4, which is £2,500.

1697. Clause 26 outlines the supplementary provisions of the revocation and disqualification process. It establishes a number of additional provisions designed to complete the disciplinary process, including the licence holder's right to request a public inquiry and to make an appeal to the upper tribunal. The Department proposes an amendment to remove an anomaly in clause 26(1). As currently drafted, the clause does not give a direction to revoke, suspend or curtail the licence without first holding a public inquiry if the licence holder requests the Department to do so.

1698. The Chairperson: The clause says

"without first holding an inquiry". It does not say "public inquiry".

1699. Mr Brogan: Inquiries are, generally, held in public. I want to emphasize the phrase:

"if the holder of the licence ... requests the Department to do so."

1700. How will the licence holder know to request an inquiry if the Department is not required to inform him that it is considering making such a direction? That is the problem.

1701. The requirement for the Department to notify the licence holder that it is considering giving a direction is included in clause 24(3). We want that requirement to apply to all situations, not to standard licence holders only. In order to ensure that clause 26 works correctly, we must include the specific duty to inform the licence holder.

1702. Mr D Armstrong: The requirement in clause 24 applies to standard licences only?

1703. Mr Brogan: Yes.

1704. Mr D Armstrong: John is suggesting that the clause be amended to cover all licences.

1705. Mr Beggs: Must notice be formally served to that individual or simply delivered to the business premises? In some instances, people give the authorities the runaround. Will the amendment create a difficulty? What is the nature of the informing process?

1706. Mr Brogan: That is a good question. I presume that notice will be posted by recorded delivery. That would be appropriate.

1707. I will discuss the list of amendments supplied for the previous meeting. In clause 24, on page 20 at line 36, we propose to omit subsection (3). In clause 24(4), on page 20 at line 39, there is a reference to "a notice under subsection (3)", which — given that subsection (3) will be omitted — must be removed. We propose to replace "subsection (3)" with "section 26(1)".

1708. In clause 26(1), on page 22 at line 17, after the word "first", we propose to insert:

"giving the holder of the licence or (as the case may be) the person concerned notice that it is considering doing so and".

1709. Mr Ford: Do you want to delete all of clause 24(3)?

1710. Mr D Armstrong: Yes. Clause 26 will cover standard and restricted licence holders.

1711. The Chairperson: Does anyone require clarity on anything else before we proceed?

1712. Mr Ford: If a company's licence is revoked, are all the directors of that company disqualified from holding licences in the future? Clause 25, which deals with qualification, does not make clear whether such a disqualification prevents a director from setting up another company.

1713. Mr D Armstrong: A particular person would be disqualified from setting up another company.

1714. Mr Ford: That should be the case, but I am not sure that it reads that way. If the company that holds the licence is disqualified, there must be a way of ensuring that directors are disqualified.

1715. The Chairperson: If, for example, a disqualification is issued because the company has fallen into ill repute — or disrepute, or whatever the term is — and it was determined to be as a result of the actions of one or two of the directors rather than all the company directors, can discretion be used if one of the directors reapplies for a licence?

1716. Mr D Armstrong: Disqualification and revocation are two different things. Disqualification applies to a company, and an individual in that company can be disqualified from being part of a licence.

1717. The Chairperson: Does disqualification apply to all directors of the company?

1718. Mr D Armstrong: It could be particular. Disqualification does not apply, necessarily, to the whole of a company; the company or named individuals could be subject to the disqualification.

1719. Mr Ford: Can that disqualification ensure that a disqualified individual director cannot become a director of another company that holds a licence?

1720. Mr D Armstrong: That is what this is saying.

1721. Mr Ford: If you are assuring me that that is what it says, I will take your word for it, but it is not the way that I read it.

1722. The Chairperson: If a disqualification is issued, named directors will be disqualified if it is deemed that they were the individuals who had fallen down. That would leave the other directors who acted in good faith, as determined by the Department, unaffected.

1723. Mr D Armstrong: That is correct. However, if, for instance, a company with three directors had its licence revoked due to the fault of one director, it, minus the director who was at fault, could apply for and be granted another licence. The director who was at fault in that instance would be barred from being granted a licence with another company.

1724. Mr Brogan: Clause 25(3) may answer Mr Ford's query. If a person who was disqualified in one company becomes a director in a similar business — or even a subsidiary or partner of the company that holds the licence or operates the goods vehicles — the licence of that company or

the partnership will be liable to revocation, suspension or curtailment. The Department would look at the company to which the individual moved.

1725. Mr T Clarke: Mr Beggs asked why anyone would want to give up their licence, and you said that the licence was for the person, not the business. Surely that is contradictory, because if someone were to sell a business, the licence would transfer to the buyer. Roy, did you ask about that earlier?

1726. Mr Beggs: I asked whether the new owner of the business would have to apply for an operator's licence.

1727. Mr T Clarke: If Roy was to sell a business called Beggs Transport, Donald, you said that the business, not the individual, would have the licence.

1728. Mr D Armstrong: You would be transferring the business to new ownership, and the new owners would require a licence.

1729. The Chairperson: The new owners would require a new licence?

1730. Mr D Armstrong: Yes.

1731. Mr I McCrea: How can you check the names of owners who move back and forward between companies?

1732. Mr D Armstrong: The names are specified on the application.

1733. Mr I McCrea: What if they are not specified?

1734. The Chairperson: We are talking now about the names of the company directors.

1735. Mr I McCrea: Do all directors have to be named on the application? I would not have thought so because an individual could apply on behalf of the company.

1736. Mr D Armstrong: I think that all directors must be named, but I am checking the draft application form. Yes, it states that all directors of the company must be listed. Therefore, all names must be specified.

1737. Mr I McCrea: What happens if they are not all specified? You have to take their word for it that they have listed all the directors of the company.

1738. Mr D Armstrong: The application is, to some degree, taken on trust. However, we will come to later clauses in the Bill that deal with false declarations, forgery, and so forth, for which severe penalties apply.

1739. Mr Weir: Is there a duty on the company to notify the Department of any change of directors?

1740. Mr D Armstrong: There is such a duty, but I am not sure where that is specified.

1741. Mr Brogan: It may not appear on the face of the Bill, but it will probably be contained in the regulations that apply to the application.



1742. The Chairperson: If no further clarity is required, we can move on to the three amendments. Are we agreed on the amendments to lines 36 and 39 of clause 24 and line 17 of clause 26?

Members indicated assent.

1743. Mr Brogan: Clause 27 relates to the periods of review for an operating centre. Once granted, the operator's licence will continue in force for the lifetime of the operator without having to be renewed. However, the clause allows the Department to review all operating centres with a licence at least once every five years. What happens after any review is dealt with in clauses 28 and 29.

1744. Clause 28 contains the more extreme measures available to the Department. The review is a check by the Department on the continued suitability of the operating centre. At that review, the Department may decide that no action is needed but clauses 28 and 29 give the Department the power to act if necessary. Clause 28 states that where an operating centre is found to be unsuitable, the Department will be able, in extreme cases, to remove it from the licence. That will be done only for non-environmental reasons: for example, road safety considerations, or because the parking arrangements for vehicles make the operating centre environmentally unsuitable.

1745. The Chairperson: Will you explain how that will happen only due to "non-environmental reasons"? The clause goes on to explain what would make the operating centre environmentally unsuitable? Is that a glitch?

1746. Mr Brogan: No, that is an attempt to describe the provision in the same way that it is set out on the Bill; it can be quite technical.

1747. The Chairperson: It states that a licence can only be removed for non-environmental reasons but goes on to talk about reasons that would make an operating centre environmentally unsuitable.

1748. Mr Weir: I wonder about the words used to convey the meaning. Is it more a case of the location being unsuitable, rather than the operating centre being environmentally unsuitable? Perhaps "environment" is being used in two different senses of the word.

1749. Mr Brogan: Clause 28(1)(a) states:

"on grounds other than environmental grounds"

1750. Sorry, I referred to it as non-environmental reasons, for example, road safety considerations, or the ground referred to in subsection (2), which is environmental. I was trying to describe it in the way that it is set out in the legislation, but less technically.

1751. The Chairperson: Does one not contradict the other? The legislation says that this will only be done for non-environmental reasons, and then it goes on to list an environmental reason for it being environmentally unsuitable.

1752. Mr Brogan: Subsection (2) refers to the parking of vehicles, which may have an adverse effect on environmental emissions.

1753. The Chairperson: One subsection lists the unsuitability of the place "on environmental grounds" and the other says: "on grounds other than environmental grounds".

1754. There is an inconsistency: the two do not square readily with each other.

1755. Mr Weir: Is it that it is either on non-environmental grounds or a specific environmental ground?

1756. Mr Brogan: Yes; relating to the parking of vehicles used under the licence.

1757. The Chairperson: It does not say that: that is the interpretation of it. The legislation states that:

“The Department determines that the place is unsuitable—

(a) on grounds other than environmental grounds, or

(b) on the ground mentioned in subsection (2).”

1758. which is:

“(2) ... the parking of vehicles used under the licence ... causes adverse effects on environmental conditions in that vicinity.”

1759. At line 25, clause (3) it states:

“as to the unsuitability of the place on environmental grounds for continued use as an operating centre for vehicles used under any operator’s licence.”

1760. One is not entirely consistent with the other. One part says:

“on grounds other than environmental grounds”

1761. or “on environmental grounds”.

1762. Mr Armstrong: We need a lawyer to clear it up for us. Do you understand it?

1763. Mr Weir: I do, yes.

1764. Mr Ford: He is a lawyer. [Laughter.]

1765. Mr Armstrong: Subsection (1) is either environmental or non-environmental and that is referred to at paragraphs (a) and (b). However, when it is environmental, subsection (2) relates to the specifics.

1766. Mr Weir: It is not all environmental grounds; it is one specific environmental ground.

1767. The Chairperson: It refers at subsection (2) to parking of vehicles under that licence causing adverse effects. However, line 25, subsection (3) states:

“the unsuitability of the place on environmental grounds for continued use as an operating centre for vehicles”.

1768. That seems pretty broad-brush.

1769. Mr Weir: Is that not qualified by an earlier part of subsection (3)?

1770. The Chairperson: I do not know. It appears to me that it starts out on the premise:

“on grounds other than environmental grounds”,

1771. but it then goes on to list the environmental grounds. The two do not necessarily square one with each other. In other words, why bother to mention it at all?

1772. Mr Brogan: If one did not specify in clause 28(1)(b) and explain it in subsection (2) it would then apply to all environmental grounds. There are a host of environmental grounds; it could be noise or excessive light.

1773. Mr Armstrong: On the specific environmental ground of car parking, subsection (3) states that that issue would not be dealt with unless there had been a representation.

1774. The Chairperson: However, subsection (3) refers to:

“the unsuitability of the place on environmental grounds”.

1775. Why have subsection 1(a) at all — it seems superfluous?

1776. Mr Weir: Is it not meant to cover situations on the basis of it not being on environmental grounds; for example, if it referred to road safety, which would not necessarily be counted as an environmental ground?

1777. Mr Boylan: I agree with that. However, there is also a major point. We are talking about established businesses which have grown. I referred earlier to intensification. Non-environmental and environmental grounds were mentioned, and I understand that, but at the end of the day, we are talking about operating centres, which are established businesses. That is the whole point of the operating centres. Operators will not get a licence if they cannot comply with this provision. We are talking about turning down applications on environmental grounds, but these are established businesses.

1778. Mr D Armstrong: This clause is about removing an operating centre from a licence. It says that on an environmental ground — particularly that of car parking — it will not be removed unless there is a representation. If no one raises any query about the parking of vehicles on a site, the centre will not be removed —

1779. Mr T Clarke: That is the whole problem. Someone will raise concerns. The industry objection to this is noted in the issues paper against clause 28(1):

“There was concern about an operator who has an established centre – and over a period of time, there are significant changes to the surroundings [development of housing etc.] – how would the Department view the situation. Would people who have moved into an area where there had been an operating centre have the right to object...”

1780. You are saying that they have such a right.

1781. Mr D Armstrong: People have a right to make a representation. What this provision says is that, on the environmental ground of parking, the centre will not be removed unless there is a representation received. It is a legitimate objection. If a person has an operating centre and it is

going to cause nuisance, it is proper that a person should have the right to make a representation.

1782. The Chairperson: The parking issue is more — and principally — a road-traffic and roads-management issue, as opposed to an environmental issue.

1783. Mr T Clarke: What about noise?

1784. Mr Boylan: Noise is such an issue.

1785. Mr D Armstrong: Not necessarily. It could be noise, but it could also be a refrigeration unit going all night, diesel fumes or excessive light. There could be other issues involved.

1786. The Chairperson: I do not understand paragraphs 28(1)(a):

“on grounds other than environmental grounds”

1787. or 28(1)(b):

“on the ground mentioned in subsection (2)”.

1788. Such environmental grounds and conditions exist for any business, location or house. They are mentioned again on line 25.

1789. Mr D Armstrong: Subsections 28(1)(a) and (b) say that the Department has power on grounds other than environmental grounds, and on environmental grounds, to remove a licence.

1790. Subsection 28(2) clarifies paragraph 28(1)(b): those environmental grounds relate about vehicle parking. It says:

“The ground referred to in subsection (1)(b) is that the parking of vehicles used under the licence”.

1791. That clarifies what is meant by the particular environmental conditions. It does not refer to the wider ground; it refers to the ground of car-parking. Subsection 28(3) says that, where that is the only ground, the Department will not remove the licence unless there has been representation made. The Department will not, of its own volition, remove a licence on car-parking grounds.

1792. Is that your understanding?

1793. Mr T Clarke: As you said earlier, there are 15,500 applications, and the Department will not review all of them. The industry has pointed out this example; but the Department will not review that situation unless someone makes representations.

1794. My point is that people moving into the immediate area of an operating centre will make representations; the Department will review the licence; and that operator will lose his operating centre.

1795. Mr D Armstrong: Not necessarily. People may make representations, but then a decision will be taken on them.

1796. The Chairperson: Do your consultees in the process include local councils?

1797. Mr D Armstrong: Yes.

1798. The Chairperson: There you are: environmental health will be involved.

1799. Mr Brogan: [Inaudible due to mobile phone interference.]

1800. ...extra powers to attach conditions on review. Only in extreme cases will operating centres will be removed.

1801. Mr Ford: Do we have a definition of the word "parking" or is there case law on that from GB? No. You have talked about a number of things. Does driving a lorry — or two or three lorries — into an operating centre at 3.00 am constitute parking? Does leaving a lorry overnight constitute parking? Does the running of a refrigeration unit, while a lorry is stationary in a yard, constitute parking? All those actions have different environmental impacts. No doubt there is GB case law on this; it would be helpful if we knew about it.

1802. Mr T Clarke: For established businesses, should there not be an exemption from the clause?

1803. Mr Ford: But someone might run an established business without refrigeration units, and if they then started installing them and left four or five fridges running all night, people might have a right to complain about that change.

1804. Mr Beggs: I have come across constituency issues of that very nature, where people began to run half a dozen fridges from 3.00 am up against residential property. Such issues can arise.

1805. Mr Ford: The installation of fridges is a significant environmental issue.

1806. Mr D Armstrong: Mr Ford's point goes beyond parking. It involves noise, vibrations, fumes and pollution. It is more than simply parking.

1807. Mr Weir: On that basis, that is one of the areas that would not be covered.

1808. Mr Ford: Yes.

1809. Mr Weir: If someone, for instance, enters the fridge business, that is one of the areas that is not covered, because it is an environmental rather than a parking issue. Simply having a fridge running would not be considered as parking; that seems to be a separate matter.

1810. Mr D Armstrong: The clause states that, unless there are representations, fridges are not a parking issue.

1811. Mr Weir: There is a danger of getting the worst of both worlds. On one side there is a degree of uncertainty for operators because people who move into newly-built houses may complain about existing businesses. On the other side is the situation that was posed by Mr Beggs, in which a pre-existing operator with whom residents are happy switches to a business involving noisy fridges that disturb people. Those people may not have objected had it not been for that, but they now have a legitimate concern. Legitimate concern is one of the areas that is not covered under the clause.

1812. Mr D Armstrong: Their legitimate concern is not parking, therefore that is a separate issue.

1813. Mr Weir: That is the point that I am making. There is an arguable case that the people with the most legitimate concern are not covered, whereas someone who buys a house next to a pre-existing operating centre kicks up a fuss about it because they are unhappy, even though that centre has existed for years. They are covered by the clause and may succeed in having the operating centre removed. It seems that things are flipped on their head in terms of —

1814. Mr Brogan: It may be appropriate, Chairperson, to move on to clause 29, because that deals with a lot of the situations that are being discussed by the Committee.

1815. The Chairperson: I will ask one thing. In the case of a planning application, the final arbiter on approval or refusal is Planning Service rather than any of the consultees or their determinations; does the same apply here? If a relatively less significant issue arises during consultation with, for example, a council's environmental health department, is the Department of Environment the ultimate arbiter?

1816. Mr D Armstrong: Yes, and the regulator or traffic commissioner — whoever that might be — will exercise their discretion in relation to the final decision.

1817. The Chairperson: From clause 29 to clause 35, there do not seem to be a lot of comments on issues that have arisen or departmental comments. Will Mr Brogan provide an overview on clause 29?

1818. Mr Brogan: Clause 29 is a less extreme sanction than the removal of a licence from an operating centre. If on review the operating centre is found to be unsuitable, the Department will have the power to attach new or additional conditions, or to vary existing conditions for environmental and road safety reasons.

1819. The conditions would be dealt with in the same way that was set out in clause 20. Therefore, the conditions that are provided for in clause 20 may be the way to deal with many of the problems that have been articulated by members today, rather than the extreme measure of entirely removing an operating centre from the licence.

1820. Mr Ford: Does clause 20(1)(c) allow the power to prohibit the parking of a working fridge unit?

1821. Mr Brogan: I think that it would.

1822. Mr Boylan: That is the problem. Roy mentioned an example earlier. A business that has been operating in a rural area for 20 years may find that nearby land is zoned for development. In such cases, the business owner is the person who will be challenged. I know that that is a planning issue, but the Committee must consider it seriously. It is OK to say that the business is already established and paying fees, and so on, but the next thing the business owner knows, people living in the development next door have complained about the fact that fridges are running on his premises. The Bill challenges the business owner to comply with the legislation by turning off his fridges. Up until now, that has not been the case.

1823. The Chairperson: We must ensure that the operators, the Road Hauliers Association and so on are aware of this matter. Any of us who have been involved in that type of case know the difficulties that can arise. Not so long ago, I was involved in a case in which a working farmyard was situated beside lands that had been newly designated for housing development. Believe it or not, in that case, the onus was on the woman who owned the established working farmyard, with its milking machines and so on, to notify environmental health that she could foresee a potential nuisance further down the line if residents of the housing development were to object to the fact that the cows were roaring. It is a clash between the urban and the rural — people

from an urban setting objecting to cows roaring and the use of milking machines, and so on. That is a reality with which we must live. That lady had to begin the lengthy process of flagging up the issue with environmental health to try to avert a situation whereby she could have been asked to milk her cattle at different times or even reduce the time spent milking cattle in a yard that has been used for farming for generations. Therefore, an issue arises: who should be responsible for informing people that they must register a potential objection with Planning Service? On whom is the onus to highlight potential objections?

1824. Mr D Armstrong: A person can make a complaint at any time about an operating centre or a business that is currently running. Such a complaint does not have to involve a notice; if a person is not happy, they can make a complaint.

1825. A couple of points are worth bearing in mind. When considering this clause, we checked out the experiences in GB. As a general rule, the guidance for traffic commissioners tends to steer them towards favouring the established operator. A separate issue arises when an operator changes the way in which he or she works — for example, if they start to use more vehicles, or change their work patterns or the yard becomes noisy at night when it was not in the past. However, the general view is that the traffic commissioners find in favour of the established operators. We teased out the issue and discovered that there was only one case in GB in which a traffic commissioner felt obliged to close a business because it was causing a nuisance. So, there is discretion there.

1826. Before we put proposals out to public consultation, we talked to members of the Road Haulage Association, the Freight Transport Association and others. Many of them raised the concern that existing and established operators were suffering because housing developments were being zoned and built up against their properties. However, as I said, the general pattern in GB has been to favour the operator.

1827. Mr Weir: I want to ask about the power to remove licences or attach conditions to them. I appreciate what you said about it being very rare for a business to be closed. However, should that happen, is there a mechanism through which an operator can appeal that decision, and, if so, to whom would they make the appeal?

1828. Mr D Armstrong: We will come to that provision later in the Bill, but, yes, there is scope for an operator to appeal any decision.

1829. Mr Weir: When you say any decision, do you include the power to remove a licence?

1830. Mr D Armstrong: Yes; the matter ultimately goes to the upper tribunal. Virtually all of the appeals with which we are current dealing are lodged by operators who are seeking to overturn curtailments and so on of their licences.

1831. Mr Weir: It could be problematic if this scenario arose, but is there an opportunity for what might be described as third-party appeals; in other words, when somebody who is disgruntled about an operating centre has put in a complaint, and you have considered that the situation is fine the way it is

1832. The Chairperson: We could perhaps deal with that issue when we reach clause 35. John, please give us an overview of clauses 30 to 34, and then we can perhaps deal with clause 35 separately.

1833. Mr Brogan: Clause 30 simply gives effect to schedule 2, so we will deal with that at a later stage.

1834. Clause 31 places a duty on the Department to take certain factors into account when deciding on environmental matters concerning operating centres. The details of those factors will be set out in regulations. The duty comes into play when the Department has to make a determination on the environmental suitability of a place to be used as an operating centre; on attaching a condition relating to the prevention or minimisation of adverse effects on environmental conditions; or on how the use of an operating centre may affect the environmental conditions in its locality. Any undertakings given by the applicant, or any conditions attached to the existing licence, can be taken into account at this stage.

1835. Clause 32 introduces a power for the Department to hold inquiries to enable it to properly exercise its functions under the Act. Details about the procedure of inquiries will be outlined in regulations. The first type of inquiry allows the Department to learn more about the application in question and gives the applicant a chance to justify the application. The second type of inquiry is one that deals with disciplinary issues, where the Department is considering the revocation, suspension or curtailment of an existing licence. It will be an offence to disclose any information about a trade or a business that is given during a private inquiry. The associated fine will be up to level 4, which is £2,500.

1836. The Chairperson: Was it said earlier that most of the inquiries are held in public?

1837. Mr D Armstrong: The inquiries are normally held in public. However, an inquiry may be held in a closed session, for example if it concerns commercial confidence.

1838. Mr Brogan: Clause 33 provides a power for the Department to appoint an assessor to consider any financial questions that arise from its functions under the Act, but I anticipate that it is unlikely that it will be used very often.

1839. Clause 34 is the first step in the appeals process. If it appears that the due procedural process was not complied with, the Department will be able to review a decision to grant or refuse an application for a new licence or an application to vary an existing licence. Generally, a review will be triggered by a request from anyone who has an interest in the decision. The Department can also trigger a review if it feels that it is necessary.

1840. Clause 35 is the second step of the appeals provision. The applicant or licence holder will have the right to appeal to the upper tribunal against the refusal of a licence or the terms of a licence variation.

1841. Mr Beggs: The planning commission, for example, has to be outside the parent body. What is the upper tribunal's position in the overall structure?

1842. The Chairperson: Who are the people on the upper tribunal? Are they departmental officials or external people?

1843. Mr Brogan: The upper tribunal is an independent judicial body set up to listen to appeals and make decisions on them.

1844. The Chairperson: Are the people on the upper tribunal legally qualified?

1845. Mr D Armstrong: They are probably lawyers and experts in transport law.

1846. Mr Brogan: The more familiar title for the upper tribunal is the transport tribunal. Indeed, that is the title used throughout the GB Goods Vehicles (Licensing of Operators) Bill 1995. The tribunal has a specific transport slant to its work. Following last year's reform of the entire UK



tribunal system, a number of tribunals have been brought together into a new two-tiered system.

1847. The first tribunal will be known as the first-tier tribunal, and there will also be an upper tribunal. The Transport Tribunal will be subsumed into the upper tribunal, and the Bill has been drafted with that in mind. The new arrangements for the tribunals are due to come into force in April 2009, which should be well before the new system of operator licensing is introduced in Northern Ireland.

1848. Mr Weir: Will the upper tribunal be part of a UK-wide transport tribunal? Presumably, it would not be cost effective to set up a tribunal in Northern Ireland, as there would only be a limited number of appeals here.

1849. Mr D Armstrong: We anticipate that that will be the case. However, members of the tribunal have indicated that they are content not only to cover Northern Ireland, but to hold a tribunal in Northern Ireland if it is appropriate.

1850. Mr Weir: I was merely thinking that it would not be cost effective for Northern Ireland to have its own full-time tribunal, with members being paid full time.

1851. Mr Brogan: Clause 35 establishes the right of appeal, and it sets out who can appeal and what he or she can appeal against. In essence, the appeal can be made by the applicant against the refusal of an application or by a licence holder against a refusal to vary, or the revocation, suspension or curtailment action, or the removal of the operating centre from a licence, which Mr Weir asked about earlier, or, indeed, the addition of a condition to a licence.

1852. Mr D Armstrong: The Transport Tribunal, which will be subsumed into the upper tribunal, has the same authority as a Crown court or a county court. The tribunal is chaired by a senior circuit judge, and it usually draws in members from the transport world.

1853. The Chairperson: What is the time frame for the right of appeal?

1854. Mr D Armstrong: I think that it is 21 days.

1855. The Chairperson: I would be grateful if you could take me through the appeals process. How much detail is required to submit an appeal? Is it just a matter of people filling in a simple form stating that they wish to appeal against a decision? If that is not the case, and applicants must supply a substantial amount of detail with their appeal, 21 days may be insufficient time in which to engage an expert, a consultant, or someone who is legally qualified, to provide that level of detail on their behalf. I am anxious to establish what level of detail is required to ensure that people can lodge an appeal within 21 days.

1856. Mr D Armstrong: Under the current system, when an appeal is lodged to the Department, it is simply a matter of writing a letter broadly stating the grounds for the appeal. When that has been established, the appellant and the agency then put together the relevant papers. Therefore, the whole package does not have to be in place within 21 days.

1857. The Chairperson: Is it only the broad nature of the appeal that must be in place within 21 days?

1858. Mr D Armstrong: The appeal must be lodged within 21 days, and, after that, papers can be gathered to substantiate the case.

1859. The Chairperson: These things can often become quite technical, depending on the person who is interpreting the information at the other end. No disrespect to any legal person, but, sometimes, a certain amount of nit-picking goes on. For example, if members of the public lodge an appeal, they could inadvertently leave out a technicality that should have been included in the initial letter. Indeed, someone referred to the Planning Appeals Commission, which has become incredibly technical. Therefore, the average operator driving a vehicle will not be fully apprised of such information. Therefore, an appeal could be lodged, but the person could be left hung out to dry on technicalities.

1860. Mr D Armstrong: When someone lodges an appeal, it is for them to decide how they want to be represented. There have been some recent appeals where legal representation has been brought to bear and their skills have been applied, but there have been other cases where people have done exactly what you said.

1861. The Chairperson: My point is that 21 days may not be adequate. It is necessary to establish how an appeal should be lodged. For example, is it simply a matter of outlining the broad nature of the appeal? The time frame of 21 days may make it complicated for someone to lodge an appeal. Indeed, the average person will simply want to lodge an appeal without getting into the technicalities of it. If the appeal were required to be anything other than simply a general, broad appeal, it would take more than 21 days to engage a competent person with expertise to formalise that appeal. We do not want the process to be made extraordinarily complex and for the 21-day period to be tied up in legal technicalities. If, after that period, someone requires legal expertise to represent them at the appeal, that is well and good.

1862. Mrs McIntyre: Guidance from GB on appeals to the Transport Tribunal states that the appeal is based on the evidence that was presented to the Traffic Commissioner. The case would have already been made to the Traffic Commissioner for that decision to have been reached, so the only additional information would be the grounds for an appeal.

1863. The Chairperson: That guidance refers to the Traffic Commissioner in GB. By that stage, should all of the information have been supplied to the Department?

1864. Mr D Armstrong: The Department would conduct an inquiry into the decision.

1865. The Chairperson: Would that be done before an appeal was even lodged?

1866. Mr D Armstrong: Yes. The Department would have gathered and submitted all the information, which would be chewed over and deliberated on. The material would already be with the Department; an appeal would be made on the basis that the decision was wrong. According to the GB guidance, the appeal can be lodged within 28 days, and the Traffic Commissioner in GB, or, in the case of Northern Ireland, the Department, would have 21 days from the date of decision to inform the appellant of that decision. That is our current process, and the proposed tribunal would carry that on.

1867. The Chairperson: Does the guidance refer to that period as 21 working days, or as 21 calendar days?

1868. Mr D Armstrong: The guidance does not specify whether the 21-day period is counted as working days. It says that the decision is published within 21 days of the date of decision.

1869. The Chairperson: If you have nothing further to add on the issue of appeal times, we will move to clause 36.

1870. Mr Brogan: The provision that is covered by clause 36 is fairly common in licensing legislation, and it reflects similar provisions to those that are contained in the Taxis Act (Northern Ireland) 2008. It deals with the offence of forgery of documents, plates or marks. Under clause 36, it will be an offence to forge, alter, lend or allow someone else to use any one of a list of documents. Clause 36(2) sets out that list, which includes an operator's licence and any document, plate or mark that relates to a licence, or any general documents that are related to operator licensing. On summary conviction, the penalty is a fine of the statutory maximum of level 5, which is £5,000. On indictment, the penalty is imprisonment of up to two years and a fine.

1871. The Chairperson: We will move to clauses 37 to 45; I note that there is not much observation on those clauses.

1872. Mr Brogan: The provision that is covered by clause 37 is also fairly common in licensing legislation. It will be an offence to make a false or misleading statement in order to obtain an operator's licence.

1873. Clauses 38 to 45 set out the powers of enforcement. All but one of those powers is currently in operation in Northern Ireland for enforcing road-freight licensing and road-passenger licensing. The powers have been lifted from the Transport Act (Northern Ireland) 1967 and are reproduced in the Goods Vehicles (Licensing of Operators) Bill. It is important that all of the powers that relate to goods vehicle licensing are contained in the same Bill. The powers will also remain in the Transport Act (Northern Ireland) 1967 so that they can continue to apply to road-passenger licensing.

1874. Clause 38 relates to the powers of entry. It provides power to enter and inspect premises and vehicles, but restrictions will be placed on that power, and responsibilities will be placed on officers when they leave the premises.

1875. Clause 39 deals with the power to seize documents, which would be used on visits to premises. It provides the power for officers to seize certain documents or articles that they believe have been forged or obtained through making a false statement. It also includes provision for the release and return of those documents.

1876. Under clause 40, the authorised officer will be able to obtain certain information relating to operator licensing under the Bill. Under clause 41, it will be an offence for a person to obstruct an authorised person from carrying out certain functions under the Bill. The fine will be made at level 3, which is a £1,000 fine, six months' imprisonment, or both.

1877. The Chairperson: Are members happy that they do not require further clarity on anything relating to clauses 37 to 41?

Members indicated assent.

1878. Mr Brogan: Clause 42 imposes a duty on the authorised person to produce proof of his authority if required, and allows a police constable in uniform to also carry out the functions of the authorised officer.

1879. Mr Beggs: In the comments on clause 42(1), you indicated that the Department consulted on the options for operator licensing, and the outcome of that was that Northern Ireland will not have an independent traffic commissioner for the time being. Will you advise the Committee of who you consulted and what comments were made by the different individuals? Or was it the case that you consulted people and someone gave you direction?

1880. Mr D Armstrong: The issue of the traffic commissioner was consulted on in the original consultations on the Bill.

1881. Mr Beggs: What specific responses came back on that issue, and from which groups?

1882. Mr D Armstrong: I cannot detail the responses to the consultation now, but the Committee will have been given those.

1883. Mr Beggs: Do you feel that the responses were overwhelmingly in support of one option rather than another?

1884. Mr D Armstrong: No; the responses were not overwhelming on any issues in the consultation. [Laughter.]

1885. The Chairperson: The issue of the traffic commissioner is one to which the Committee will be returning. It seems that the FTA people gave their support for the overall Bill on the understanding that there would be a traffic commissioner.

1886. Mr D Armstrong: The Freight Transport Association is very keen to have an independent traffic commissioner for Northern Ireland. However, the FTA knows that that is not included in the Bill and has still been very supportive of us — representatives from it attended our briefing sessions throughout Northern Ireland and supported us in all of those. The FTA's preference is to have an independent traffic commissioner; the Road Haulage Association is not as supportive of that view. That does not mean that it is not happy with it, but it is supporting the Bill as it is, in its entirety.

1887. Mr Ford: Has the Committee supplied the copies of the three letters that were circulated to members this week to the Bill team? I was going to mention that later because I thought we were still expecting the Department to come back to us on that issue. In particular, the suggestion in Tom Wilson's letter that, as a result of discussions with the Department, the FTA had an expectation that there will be an independent commissioner seems to be something that must be teased out. I would have considered it appropriate that we gave the Bill team copies of those three letters so that it could provide the Committee with a reasonable response.

1888. The Chairperson: I agree; the FTA appears to have understood the Department to have committed to quite a specific undertaking. We will email those letters to the Bill team.

1889. Mr D Armstrong: We are drafting our response on that issue.

1890. Mr T Clarke: With respect to the role of the commissioner, if we take the example of David's goddess from England — [Laughter.] Can you tell us what size of an area that Traffic Commissioner is responsible for or how many vehicles come under her area?

1891. Mr D Armstrong: I honestly do not know.

1892. Mr T Clarke: We are discussing an area that has around 15,500 vehicles. I want to compare the area size or the number of vehicles that that commissioner would be governing with Northern Ireland.

1893. Mr D Armstrong: There are approximately 18,000 vehicles in Scotland and in Wales there are in the region of 20,000. There is one Traffic Commissioner for each of those areas, so that should give some idea, as a comparison.

1894. Mr Weir: She covers the north-west of England; an area that I presume includes Liverpool, Manchester, Lancashire, and so forth. The situation nationwide probably does not differ greatly from that.

1895. Mr D Armstrong: That area is approximately the same size as Northern Ireland. In considering whether a traffic commissioner is required, we tagged Northern Ireland as a traffic area on to Wales, Scotland and north-west England. We considered those options, but we will explain more about that in a paper for the Committee.

1896. The Chairperson: John, if it squares with your information, can we move on now to clauses 43 to 49?

1897. Mr Brogan: In proving that any offence under the Bill has been committed, the Department must be able to produce a certificate of evidence, and clause 43 sets out what information will appear on that certificate.

1898. Clause 44 simply gives effect to schedule 3, and we can deal with it at that time.

1899. Clause 45 limits who can instigate prosecutions and the time within which they should be brought. That provision is already in place here and in GB.

1900. Clause 46 deals with the disclosure of information under the Bill. It curtails the use or disclosure of any information gathered for the purposes of the Act. It is worth noting that it will be an offence to contravene the clause. Such contravention is penalised by a level-4 fine of £2,500, a period of imprisonment of up to six months, or both.

1901. Clause 47 provides the Department with the power to charge fees for the administration of the operator licensing system. Details of the fees will be outlined in regulations.

1902. Clause 48 directs that, in general, an operator's licence is not transferable or assignable. However, the Department will have the power to make regulations to give it an element of control over the use of a licence in certain circumstances. In particular, the Department will be able to allow another person to use a licence if the holder has died or has become a patient within the meaning of the Mental Health (Northern Ireland) Order 1986.

1903. Clause 49 states that if a person wants to work in the road-transport business in a member state other than the UK, he or she can apply to the Department for a certificate of qualification. The certificate will include details of applicants' repute and professional competence and, in so far as the Department is satisfied that it can be properly certified, their financial standing.

1904. The Chairperson: As members have do not have any questions about clauses 43 to 49, we can move on to clauses 50 to 55.

1905. Mr Brogan: Clause 50 gives effect to schedule 4, and we can deal with that in due course.

1906. For the purposes of the Act, clause 51 sets out how the weight of a vehicle will be calculated. Perhaps, at this point I should ask whether the Department may propose an amendment to the Bill by inserting a new clause 51(A), as detailed in the list of amendments supplied to the Committee.

1907. At an earlier meeting, the Committee expressed concern about the impact of the Bill on small businesses. The addition of clause 51(A) provides the Department with the power to pay

grants to persons or bodies in connection with the provisions of the Bill, and that may allay some concerns. It is, in fact, a replication of a provision included in the Taxis Act (Northern Ireland) 2008.

1908. Mr Beggs: By grants, do you mean money that comes from other licence holders or from the block grant?

1909. Mr D Armstrong: The money does not come from anywhere in particular. Clause 51(A) gives the Department the power to give grants, should there be an opportunity to do so — for example, in GB, the Department for Transport gives grants for the modal shift of freight. That does not exist here, but the clause gives the Department the equivalent power, but money has not been set aside for that purpose. It is an enabling thing; it is not as if we have a lot of grants up our sleeve or in our back pocket that we want to give out.

1910. The Chairperson: Are members happy for that amendment to be included?

Members indicated assent.

1911. Mr Brogan: Clauses 52 to 55 deal with how the Bill will apply in certain special cases.

1912. Clause 52 is a regulation-making power, and those regulations will enable a company with one or more subsidiaries to hold an operator's licence. The vehicles listed on the licence may belong to any of its subsidiaries.

1913. Clause 53 concerns the application of the Act to partnerships, and other regulation-making power to enable the Act to apply in a partnership situation.

1914. Clause 54 concerns the application of the Act to the Crown. You will notice that there is no Crown immunity. The Act applies to Crown vehicles; however, we will have the power to make exceptions in the use of certain Crown vehicles in regulations under clause 1.

1915. Clause 55 deals with the application of the Act to harbours. The Department proposes an amendment to clause 55. The use of the phrase "on a road" in clause 1 and elsewhere, combined with the definition of "road" in clause 58 of the Bill means that roads within Belfast harbour estate and other harbour estates would not be covered by the legislation. Given the large number of goods vehicles using the harbours, it is important that the Bill applies within harbour areas. We have expressly applied the Bill to those areas, and the requirement to hold a licence while using a vehicle on the road will apply to roads within the Belfast harbour estates and other similar harbour estates.

1916. Following the drafting of the Bill, it came to our attention that the term "harbour commissioners" would not cover all harbour areas, particularly Larne and Warrenpoint harbours. They are not under the control of commissioners, so those two harbours would be outside the scope of the Bill, as currently drafted. We inadvertently, used the term "harbour commissioners" when we would now prefer the term "harbour authority", which would ensure that the Bill will cover all harbours in Northern Ireland. It is a simple amendment to remove "harbour commissioners" and insert "harbour authority".

1917. Mr T Clarke: Did you say that they were not happy with that?

1918. Mr Brogan: I was not covering that.

1919. The Chairperson: Are members happy with that amendment?

Members indicated assent.

1920. Mr Brogan: The remaining clauses — 56 to 61 — are grouped together as supplementary clauses to the Bill. Clause 56 contains a general power for the Department to make supplementary changes as it thinks necessary for the implementation of the new Act. Any changes would be made by an Order that is subject to affirmative resolution.

1921. Clause 57 contains a general regulation-making power for the implementation of the Act. It is a standard entry in many primary Bills, including the Taxis Bill, and will allow the Department to outline the detail of the application forms, what a restricted licence will look like and how the national standard licence will differ from an international licence. Clause 57(12) is important —

1922. The Chairperson: I am conscious that we are about to become inquorate. At least two members have made arrangements to attend a Business Committee meeting at 12.30 pm. We will continue for a few minutes and then allow members to go. Anything that remains will be dealt with at Thursday's meeting.

1923. Mr Brogan: Clause 57(12) is important in that it allows the Department flexibility in how it manages the introduction of the Bill. Given the large number of operators who will be applying for a licence for the first time, that is an important point.

1924. Clause 58 contains general interpretations of the terms used throughout the Bill, and that is standard practice in primary legislation.

1925. Clause 59 gives effect to schedule 5, which lists a series of amendments and repeals.

1926. Mr Weir: Given that some general interpretations in clause 58 appear to relate to statutory definitions, could some form of words be devised to cover the definition of parking, which was mentioned earlier?

1927. Mr Brogan: Given that I am unable to answer that question, I am more than happy to park the matter.

1928. The Chairperson: I suggest that we stop at clause 59 and conclude the business on Thursday.

1929. I draw members' attention to the item on the agenda concerning secondary-legislation-making powers in the Bill. The note from the Examiner of Statutory Rules has been emailed to members.

1930. On Thursday, we will continue our informal clause-by-clause scrutiny until we have considered the whole Bill. Clarification was sought about parking, and Donald has taken note of that and will get back to us. I am not sure whether Thursday's meeting need extend into the afternoon, but we will see how things go and attempt to conclude then. I thank members for giving of their time today.

1931. Mr D Armstrong: I wish to come back on small point. Earlier, the matter was raised of whether it is necessary for operators to inform the Department about change of directors. Under clause 12(8), one of the undertakings that an operator gives is to inform the Department about any changes, including financial and personnel changes, so that matter is covered there.

1932. The Chairperson: I thank Donald, Gillian and John for taking the time to go through the Bill with us. We will return to it on Thursday, when we will do our best to resolve the hardy-annual matters that cause us most difficulty.

## 13 November 2008

Members present for all or part of the proceedings:

Mr Patsy McGlone (Chairperson)  
Mr Cathal Boylan (Deputy Chairperson)  
Mr Trevor Clarke  
Mr David Ford  
Mr David McClarty  
Mr Ian McCrea  
Mr Alastair Ross  
Mr Peter Weir

Witnesses:

Mr Donald Armstrong  
Mr John Brogan  
Mrs Gillian McIntyre     Department of the Environment  
Mr John McMullan

1933. The Chairperson (Mr McGlone): We shall begin our discussion of the Goods Vehicle (Licensing of Operators) Bill. Several issues have arisen. I want to thank Donald Armstrong and his departmental staff for burning the midnight oil in order to prepare the documentation that has been tabled, some of which arrived this morning. I propose that the Clerk of Bills gives us an overview of the first document — the note from the Examiner of Statutory Rules — because it is relevant to our deliberations.

1934. The Clerk of Bills: The Examiner of Statutory Rules has responded to the points that were raised by the Department in response to the Committee's queries about the powers to make subordinate legislation in the Bill. Most queries centred on whether to use draft affirmative procedure, which is longer and requires a vote in the Assembly, or negative resolution procedure, which means that if no specific query is raised, the legislation is brought to the Assembly and goes through unchallenged. That, therefore, is the essential point for members to consider.

1935. The response addresses some of the points that the Department raised. In particular, it addresses the Department's concern about a certain group of provisions: if the Committee were to use the draft affirmative procedure for the entire Bill, several provisions would bind the Department to using that in the future, even for small and insignificant drafts. However, the Examiner of Statutory Rules believes that that point can be addressed. One of the Committee's options is to ask the Department to reply to that response.

1936. It is time to make a decision on some of those clauses. The Department has stated that it is happy to move to draft affirmative procedure on some of them. It is a question, therefore, of leaving those out.

1937. Mr Weir: That seems to be a sensible approach. The Committee wanted certain amendments to be made to the legislation and required clarification on some elements. It strikes me, however, that on some points it is more a question of the Committee requiring some peace of mind and an assurance that it is not writing a blank cheque to the Department in relation to



some of the regulations. If we were to press for the affirmative resolution procedure, that would be a safeguard and give us peace of mind. People would not come to us with concerns about future changes to the regulations. The Committee has the opportunity to say yes or no to that at this stage.

1938. The Chairperson: Donald, will you and your team take the Committee through the individual items of correspondence? First, we have one more clause to discuss.

1939. Mr Donald Armstrong (Department of the Environment): I was going to suggest that we discuss that first, and that would leave only the outstanding issues.

1940. The Chairperson: We still have a fair bit to get through. Will you talk us through clause 60?

1941. Mr John Brogan (Department of the Environment): Clause 60 is another standard feature in primary legislation, and it deals with the arrangements for commencing the various provisions in the Bill. Some may commence immediately on Royal Assent, and others — generally the majority — commence as and when the systems are in place to deal with them. The power in clause 60 will be used to bring provisions into effect at different times.

1942. Clause 61 is the final clause and simply provides the name of the Bill.

1943. Schedule 1, as drafted, would provide the definition of a small goods vehicle. The Department proposes to amend the Bill by removing schedule 1. That relates to the amendment to clause 1. The Committee has agreed to an amendment that would provide for the Department to define in more detail the meaning of the term “small goods vehicle” in regulations. The removal of schedule 1 would happen during Consideration Stage: the Minister would oppose the schedule during the debate.

1944. Schedule 2 deals with the transfer of operating centres. It outlines the detailed arrangements for transfer, and was referred to in clause 30. It provides for the transfer of an operating centre, either as part of an application for a new licence or for an application for a variation of an existing licence.

1945. Schedule 3 is quite extensive, and introduces a major addition to the powers of enforcement. It has been in place in Great Britain since about 2000, and, in essence, it provides the power to impound any vehicle and its contents or load if that vehicle is detected as being used on the road without an operator’s licence. It is broadly an enabling power, and we will need a host of regulations to set out the details of the scheme. Those details would concern how a vehicle would be immobilised and removed from the side of the road, when and how it would be returned or disposed of, and what would happen to the contents.

1946. The Committee may want to note that a number of offences are outlined in the schedule. Paragraph 4 explains that it will be an offence to remove or to attempt to remove an immobilisation device — commonly called a clamp — that has been fixed to a vehicle. Under paragraph 4(2), it will be an offence to remove or interfere with an immobilisation notice attached to a vehicle. Paragraph 16 outlines that it will be an offence to make a false declaration to secure possession of the vehicle. The penalty for that will be a fine of up to level four, which is £2,500, or imprisonment for two years, or both.

1947. The Department proposes an amendment to schedule 3. It is another amendment taken from the Local Transport Bill [HL], which is going through Westminster. It relates to the return or disposal of vehicles that have been impounded. The amendment is to paragraph 7, and is designed to make it easier for the owner to have his or her vehicle returned. It will make it

possible for the return of the vehicle without the need for the owner to apply to the Department in certain prescribed circumstances. We would like to replicate the amendment to reflect the GB legislation so that the systems in GB and Northern Ireland remain consistent.

1948. The Chairperson: Is it the case that even if the owner was not guilty, he or she would still have to apply for the return of their vehicle? Do you mean that in circumstances in which no offence has been committed the vehicle would automatically be returned?

1949. Mr Brogan: That is correct; they would not have to go through the process of having to apply to the Department for the return of the vehicle. It is hoped that it will make it easier for the owner of the vehicle in certain circumstances. The amendment can be found in the list of amendments that have been provided: "Schedule 3, page 47, line 29, leave out from 'for' to end of line 30 and insert 'authorising a vehicle detained by virtue of paragraph 1 to be returned to the owner, in prescribed circumstances, without the need for any application under paragraph 8.'"

1950. The Chairperson: Are members content?

Members indicated assent.

1951. Mr Brogan: Schedule 4 to the Bill defines a large goods vehicle, and it imposes a requirement on the driver of a large goods vehicle to carry certain documents. A large goods vehicle is one that has a plated weight over 16,260 kg or an unladen weight over 5,080 kg. The driver of a large goods vehicle will have to carry a consignment note any time that it is used for carrying goods, and the detail of what will be required in the consignment note will be outlined in the regulations.

1952. Under paragraph 2(6) of schedule 4 to the Bill, it will be an offence to use a vehicle without carrying a consignment note. Furthermore, it will be an offence to fail to preserve the consignment note — when the journey has been completed — for a prescribed period. Any individual who is guilty of such an offence is liable to a fine not exceeding level 4, which is £2,500.

1953. Paragraph 3 of schedule 4 to the Bill provides information on the power on an authorised person to have the document produced for inspection and copying. It will be an offence not to comply with that requirement, and anyone who does so is liable to a fine at level 3, which is £1,000.

1954. Under paragraph 4 of schedule 4 to the Bill, it will be an offence to falsify any consignment note. Such an offence will be subject to — on summary conviction — a fine at level 5, or, on conviction on indictment, to up to two years' imprisonment, or the fine, or both.

1955. Schedule 5 and schedule 6 to the Bill contain a list of consequential amendments and repeals, arising from the implementation of the Bill. The Transport Act (Northern Ireland) 1967 will be heavily amended to remove references to Part III that currently provide for operator licensing.

1956. The Chairperson: Does any member want to ask a question on anything from clause 60 to the schedules?

1957. Mr T Clarke: Schedule 1 of the Bill provides a definition of small goods vehicles, and you have commented on large goods vehicles. Why is everything not the same, regardless of the size

of the vehicle or the goods that they carry? Why is there a need for two separate parts — small and large vehicles?

1958. Mr D Armstrong: It relates to the use of consignment notes, which will state what the vehicle is carrying. The differences are recognised in the hire-or-reward sector in GB, and we are transferring it from one Bill to another. Large loads, not the vehicles, will be subject to consignment notes. It is not about defining large vehicles per se —

1959. Mr T Clarke: It is referred to in relation to large vehicles only.

1960. Mr D Armstrong: It is not for small loads. It is for large vehicles and large loads only.

1961. Mr T Clarke: What is the purpose of it? Are we using it because it is used in GB?

1962. Mr D Armstrong: Small goods vehicles are exempt from the requirements of the legislation if they are under 3.5 tons, so they would not require it.

1963. Mr T Clarke: What about vehicles that are over 3.5 tons, which are not defined as large vehicles.

1964. Mr D Armstrong: That is correct; because it is between the two. I am not sure why it is tied down to the larger vehicles; I will have another look at it.

1965. Mr T Clarke: If you are trying to regulate everyone, it seems silly to make a difference between two parts of the sector.

1966. Mr D Armstrong: For the most part, the hire-or-reward sector carries the large loads; it does not affect the own-account sector. If we were to extend it, consignment notes would be a vast issue.

1967. Mr T Clarke: Large vehicles are vehicles with a relevant plated weight of over 16,260 kg. Therefore all 7.5-ton vehicles will be excluded.

1968. Mr D Armstrong: They would be excluded, because they do not fall within that gross weight. If the requirement for consignment notes were extended to those vehicles, there would be a massive increase in the amount used. However, I will go back and work out the rationale.

1969. Mr T Clarke: Why are consignment notes required for the large vehicles?

1970. Mr D Armstrong: I am not clear on the rationale for that. However, I will come back to you with details on their purpose. It might relate to the controlling of the movement of goods.

1971. Mr T Clarke: I thought that that was the purpose of consignment notes. It is equally as important to know what goods are contained on a 7.5-ton lorry, as it to know what goods are contained on a 16-ton lorry or a 26-ton lorry.

1972. Mr D Armstrong: I will examine the rationale behind that. Are you suggesting that we also require drivers of lower-weight vehicles to carry consignment notes in order to widen the scope?

1973. Mr T Clarke: Despite the definition in the Bill, I do not think that there should be a differentiation between vehicles that need to carry consignment notes and those that do not.

1974. Mr D Armstrong: The Committee can consider the issue once I have examined the rationale behind that.

1975. The Chairperson: Before we move on to discuss other issues, I advise members that the Committee recently received letters on the issue of an independent regulator from Karen Magill of the Federation of Passenger Transport; Aodhan O'Donnell of the Consumer Council; and Tom Wilson of the Freight Transport Association (FTA). A letter, dated 12 November, was also received from Phil Flanders of the Road Haulage Association (RHA) on same issue.

1976. Mr D Armstrong: Shall we first deal with the issue of a traffic commissioner, given that you just mentioned those letters?

1977. The Chairperson: That might not be a bad idea.

1978. Mr Brogan: In the letter dated 12 November 2008, the Department tried to set out in a table the main points to consider about negative resolution and affirmative resolution and to try to demonstrate the level of scrutiny that is in place for both.

1979. The Department's position is that the scrutiny that the Committee gives to an SL1 is rigorous. Indeed, that scrutiny is crucial, regardless of whether a regulation goes through under negative resolution or affirmative resolution. The SL1 stage is the point at which most attention is given and most questions can be asked, and officials will be present to try to answer them.

1980. The second part of the process is the point at which the two systems diverge. In the case of regulations that are subject to negative resolution, the regulations are laid before the Assembly, and Members still have the opportunity to vote against the negative resolution. In those circumstances, the regulation would fall and the Assembly would have to have the regulation annulled. It has happened. I have given an example of the Local Government Pensions Scheme (Amendment No. 2) Regulations (Northern Ireland) 2007. Therefore, the process works.

1981. Following the Committee's scrutiny of the regulation, it becomes law when a motion affirming the regulation is passed in the Assembly. We have some experience of that as well. In particular, the Motor Vehicles (Wearing of Seatbelts) (Amendment) Regulations (Northern Ireland) 2008 went through on affirmative resolution. However, on that occasion — as in the case of the previous regulations that I mentioned — the Minister simply tabled the motion on the Floor of the House. No one really opened the debate, no questions were raised and the regulations were affirmed.

1982. With regard to the Bill itself, for the convenience of everyone concerned in the latter stages of operator licensing legislation — that would be the individual operators, the associations, the legal profession, tribunal staff and the departmental staff who are asked to administer the new system — we had planned and hoped to develop one consolidated set of regulations that would include as much of the detailed administrative material as possible. We wanted to avoid a situation in which the regulations would be split into six or seven different sets, which would prove difficult to administer. We have taken further legal advice, as the letter says:

"to the effect that a mixture of affirmative and negative resolution requirements throughout the Bill is likely to inhibit the Department's ability to produce ... consolidated set of general regulations."

1983. We really must set out those regulations that will be subject to affirmative resolution and keep them separate from those that will be subject to negative resolution. There should not be a

mix. The Chairperson mentioned a pick-and-mix situation. It is clear that that must be avoided at all costs.

1984. Members expressed some concern about offences that appear in clause 57(8) of the Bill. There was some concern that the Committee might be signing up to regulations that would contain details of those offences, but that the provision for the offence and the penalty would appear in the Bill itself. The concern seemed to be that the Committee was not aware of what exactly it was signing up to.

1985. Clause 57(8) deals with offences against administrative types of material, and it might be very difficult to separate them from the main set of omnibus regulations. We tried to set out that where a provision in the regulation states that a licence holder must do x, the regulation would be subject to negative resolution procedure. On the other hand, where a provision in the regulation states that if the licence holder fails to do x, he commits an offence, the regulation would be subject to affirmative resolution procedure. Again, that would leave the matter quite hard to understand and the application of the law quite difficult.

1986. In conclusion, although we have no particular concerns about the form of control, we are concerned about how it might affect the future development of regulations. Our key message is that, in our opinion, it is appropriate for regulations that seek to implement a policy or a change in policy to be subject to affirmative resolution, while it would be appropriate to make regulations that involve matters of a procedural or administrative nature subject to negative resolution. It should be borne in mind that the most rigorous scrutiny takes place at the SL1 scrutiny stage, regardless of whether the procedure used is negative or affirmative. I am sure that quite a few colleagues will testify to the rigour of that scrutiny.

1987. The Chairperson: They obviously have experience of it.

1988. I would appreciate your views on the first document in the folder, which is a note dated 13 November from the Examiner of Statutory Rules on the Bill's powers to raise secondary legislation. This is probably the first time that you have seen the document, so I obviously do not expect a response today. You will probably wish to consult the Department's legal advisers. I am not in a position to adjudicate your response. Issues have been raised in the document, and we will get a bit more detail from the examiner, just to satisfy ourselves.

1989. The next document, which contains a list of training centres, is simply to be noted. The following document gives an example of a statutory notice, and is an issue on which we had sought detail from the Department. We can simply note that document. We now move on to a document that gives a view on the independent regulator, and that will be dealt with later.

1990. The next document deals with the designation of a property as an operating centre and the implications for the Planning Service. It is not really a matter to be simply noted. Donald, can you give us an overview on the progress that has been made to allay some of the concerns that were expressed in numerous Committee meetings?

1991. Mr D Armstrong: Our understanding is that the main concern is the potential involvement of the Planning Service. The concern was that when a place is designated as an operating centre — irrespective of whether the premises are used for parking or as a base from which a business operates — that will in some way trigger the interest of the Planning Service, and, ultimately, lead to enforcement proceedings. I take it that, in essence, the worry is that if a place is designated as an operating centre, even if it is a private house, the Planning Service will take an interest. That is our understanding of members' concerns.

1992. The Chairperson: Yes, that is correct.

1993. Mr D Armstrong: We sought to address that concern in the letter from the departmental Assembly liaison officer (DALO). Several steps were taken. First, we sought further legal clarification on the matter, and the finding is that there is no change in relation to planning issues. The Bill deals with goods vehicle licensing and its clauses relate to this particular Bill — or Act, as it will become when it is enacted. The first piece of advice was that that in no way, and cannot, affect what might happen within the planning system.

1994. It was also suggested that calling something an “operating centre” does not affect how planning rules apply to it. It could be called “the circus” or anything — the Planning Service is interested in what something does and its use, not what it is called. Therefore, the legal advice is that there would be a planning interest only if there were a simultaneous change to planning laws that refer to what we now call “operating centres”. The planning system is entirely separate and will continue to operate under its own rules; it has nothing whatsoever to do with this. That is the legal advice that was obtained by the Department.

1995. That opinion also confirmed that adding clarification on the face of this Bill will not lead to a change to planning and would add no value to the system, because planning is under separate legislation. In order to allay the Committee’s fears, the Department took up the suggestion made by Mr Ford at the previous meeting to have the Minister make a declaration at Consideration Stage that would provide the assurance that the Committee seeks, and that would be recorded in the Official Report.

1996. The Department has subsequently conferred with planning officials and produced a statement that the Minister might make during that debate. Obviously, the Minister must approve the detail of that statement, but it could be included in his speech. If that allays the fears of the Committee, it may be the way to progress. The Minister’s statement may read:

“Following a designation by the Department of a place as an “Operating Centre” under the GV (LOO) Bill, the issue of read-across into interest or action by Planning Service may be of concern to some.

I want to give you an assurance that the designation of a property as an Operating Centre will not in itself have any read-across to Planning action; nor will it be used by, or influence any action by Planning Service as to the use of the property.

Irrespective of this assurance, it is the responsibility of all land owners to ensure that the use of their property satisfies the requirements of planning law.”

1997. The Department proposes that the Minister makes that statement in order satisfy the Committee’s concerns.

1998. The Chairperson: Will you expand on the binding nature and the legitimacy of that statement in relation to planning law? I recognise that there is an opt-out in the last sentence.

1999. Mr D Armstrong: The opt-out is not in relation to operating centres, it states categorically that anybody who owns property must be sure that their land use satisfies planning law.

2000. The Chairperson: I appreciate that.

2001. Mr D Armstrong: The statement is binding because it is being made by a Minister who is responsible for both planning and road safety.

2002. Mr T Clarke: How does that statement compare with a previous guidance note from the Minister that the Planning Service did not understand?

2003. The Chairperson: To be fair, Donald and his departmental team cannot answer for the Planning Service. I want to know what weight is attached to the statement in respect of the interpretation of planning policy by planning officials. If, for example, the Committee accepts this solution as read — and a statement made by a Minister is one thing — I want to satisfy myself about the weight attached to that statement in the interpretation of planning law.

2004. Mr D Armstrong: The interpretation of planning law is separate, and what this statement is saying is that —

2005. The Chairperson: No, sorry, maybe —

2006. Mr Weir: The Chairperson is asking what effect the statement will have.

2007. The Chairperson: Yes, in relation to the interpretation of planning law. I am probably asking the wrong person, but the answer will form an important part of the Committee's deliberations.

2008. Mr D Armstrong: From the Department's discussion with planning officials, who are satisfied with the statement, the interpretation is that when a place is designated as an operating centre, that declaration means that planning will have no interest in it. The Planning Service is interested only in how a property is being used — what is materially happening on it.

2009. The Chairperson: I appreciate that, but what is the statement's import? In other words, will it be more than a public statement in the Assembly and have a bearing on the interpretation of planning policy?

2010. Mr D Armstrong: The statement is a direction by the Minister that the Planning Service will not have any interest in a property because of its designation or any interest in the designation.

2011. Mr Ford: My understanding is that the Minister's statement goes further than that. I am slightly horrified that I cannot get clarification on the matter. My understanding is that if there is a lack of clarity in the Bill's wording, the courts will take account of the statement that a Minister makes to introduce a Bill or a clause because it is the basis upon which the legislature passes the legislation. That is why I asked for the statement. It seems that the third paragraph raises all of people's previous fears.

2012. The Chairperson: It does.

2013. Mr Ford: If the Department decides that the third paragraph must be included, it would be somewhat better to be recast and inserted as the second paragraph. People are interested in the read-across. Of course, people must satisfy planning law. However, nothing on the face of the Bill has anything to do with planning.

2014. Mr Weir: Furthermore, it is a truism that it will be the responsibility of all landowners to ensure that their properties satisfy planning law, irrespective of whether that is written in the Bill. However, in the context of what appears in the statement, the problem with that is that it muddies the waters. I am not sure what the third paragraph adds. A greater degree of clarity is provided in paragraphs one and two.

2015. The Chairperson: You are probably not in a position to interpret that.

2016. Mr D Armstrong: John McMullan from our branch in Clarence Court can provide some clarity.

2017. The Chairperson: You have not switched to Planning Service yet, John.

2018. Mr D Armstrong: He has not, yet.

2019. Mr Boylan: The problem that arises with the third paragraph is the change of use of a building or facility, which requires someone to notify the Planning Service. That is where the problem lies. An established business may have problems when it extends. Any new businesses must notify the Planning Service of a change of use.

2020. Mr T Clarke: There is also the 10-year rule.

2021. Mr Boylan: Yes, that is another part of it. The problem lies with having to notify the Planning Service of a building's change of use. That has been the problem from the start. That is why we have raised planning permission so often. It is all right to give someone an operator's licence, but what if that person has nowhere to operate? Perhaps, John can answer that.

2022. The Chairperson: John, I do not ask you to pronounce on planning policy or its interpretation.

2023. Mr John McMullan (Department of the Environment): I am not sure that I am qualified to do so. I am not sure whether I will clarify the matter or add to the confusion.

2024. As regards a Minister's statement on a Bill as it goes through the Assembly or Westminster, for years, a Minister's comments could not be taken into account in the interpretation of the Bill. Eventually, a case went to the House of Lords at Westminster, namely *Pepper v Hart*, which changed the view on that. The House of Lords' judgement, which, therefore, also has effect in Northern Ireland, was that when a Minister makes statement in the House about the interpretation of the Bill, it can, as Mr Ford said, be used as the interpretation that is applied when the legislation is considered. It cannot be said that the Minister's statement is not worth the paper on which it is written.

2025. The Chairperson: I understand that. We all understand what the problem is. Although it is not of your making, it has a knock-on effect.

2026. Mr D Armstrong: Can you clarify whether the problem is with the statement itself or with its principle?

2027. The Chairperson: The problem is with the interpretation and the weight that is given to the statement. The statement has a rider at the end of it and, perhaps, could be worded slightly differently. The issue is the weight that is given to the statement in the interpretation of planning policy. John referred to the *Pepper v Hart* case. Given the Committee's level of concern on the matter, we must seek opinion from Assembly Legal Services about the weight that is given to the statement and how it is worded — irrespective of its text — and how it may allay, ease or otherwise the interpretation of operating centres.

2028. I want to expand on that so you are aware of the main issue, Donald. There are probably a lot of operating centres out there and our main concern is that once the legislation is advertised in the local press, objections to the Planning Service may be generated almost immediately, specifically regarding enforcement. Therefore, there is a need for clarity about the circumstances of the planning issue.



2029. I am aware that you cannot answer on behalf of the Planning Service, and I would not ask you to second-guess its stance. You are working with the information that you have, but the Committee must get more detail on that, specifically with regard to Pepper v Hart — was it Pepper or Peppard?

2030. Mr McMullan: It is Pepper; as in salt and pepper. [Laughter.]

2031. The Chairperson: We need more information on the Pepper v Hart case so that we can relate it to the Legal Services here. We need that detail before we can consider the text of the Minister's statement.

2032. Mr Ford: I was going to suggest that perhaps those two issues could go together. I am grateful to John for reminding me the name of the Pepper v Hart case — I will probably remember that from now on.

2033. That point seems to build on what Peter and I said earlier — that we could at least ask the officials to examine whether it is possible to drop the third paragraph entirely and perhaps insert something at the start of the second paragraph, which reflects the Minister's responsibility for the Bill and the Planning Service.

2034. The Chairperson: The third paragraph was taken as read.

2035. Mr D Armstrong: The third paragraph stands without the Bill.

2036. The Chairperson: It is superfluous, therefore.

2037. Mr Ford: However, adding that paragraph results in a negative impression being given.

2038. The Chairperson: I agree; it switches the import and the effect of anything that the Minister may say. In other words, on the one hand he is saying yes — or maybe — and on the other hand he is saying maybe not.

2039. Mr D Armstrong: To clarify; does the Committee want us to work with the planning officials to redraft the statement in light of those remarks?

2040. Mr Ford: Yes; perhaps Peter and I could write it for you, if that would help?

2041. Mr D Armstrong: He has probably written it already.

2042. The Chairperson: We will check how the paragraph affects the level of import and value of what the Minister says.

2043. Mr D Armstrong: Another aspect is that if a person makes an objection and there is a material change in the use of a particular property, the Planning Service would certainly be interested, irrespective of whether we have designated it as an operating centre. If people have a legitimate reason—

2044. Mr Boylan: That is the problem.

2045. Mr D Armstrong: Yes; but that problem could exist already. All that we would be doing is providing the notification that would trigger someone's mind in relation to the issue. If a breach has happened already, the Bill is not triggering the problem; rather, it is making people aware of the avenue that they can take if they want to object to a problem.

2046. Mr T Clarke: Currently, after someone finishes work, they can park their vehicle at their home at night. The Bill will deem the place where they now park as an operating centre.

2047. The Chairperson: Yes, officially that will be the case.

2048. Mr T Clarke: That means that the Bill will make a difference. When discussing another part of the Bill, you mentioned that people would be allowed to park emergency vehicles at their homes for a percentage of time and it would not be considered an operating centre. However, when they are not parking there, they are parking at their official operating centre, which nearly legitimises that as being the place of work. Therefore, you have created a problem because you have allowed those people to park at their homes for a percentage of time, so you have created a difference.

2049. Mr D Armstrong: We were talking about the place where vehicles are normally parked when not in use?

2050. Mr T Clarke: The place where it is normally parked would be the operating centre. However, you have distinguished between the operating centre and instances when someone is on call and takes the vehicle home occasionally.

2051. Mr D Armstrong: Any people who take their vehicles home occasionally when they are on call would not nominate their home as an operating centre.

2052. Mr T Clarke: I am unclear as to why you have made the difference.

2053. Mr D Armstrong: The people who normally take their vehicles home would have to nominate their home as an operating centre. However, the Planning Service has said on several occasions that that does not in itself create a planning interest because there is no material change of use.

2054. Mr T Clarke: To muddy the waters a wee bit more, there is also the issue of the numbers. The one-vehicle issue must be addressed.

2055. The Chairperson: During last week's meeting, Mr Kirk suggested that the Planning Service's interpretation of how an operating centre applies to single and multiple vehicles may differ.

2056. Mr D Armstrong: That concern already exists. If my memory serves me right, he discussed fact and degree. The fact of parking and the degree of it are two different issues.

2057. Mr T Clarke: The problem only exists with heavier vehicles. It is no problem for people in rural locations who have two large vehicles on a farm. However, the introduction of the concept of smaller vehicles is a problem for people who are doing this already.

2058. Mr D Armstrong: Simon Kirk said that if that will be an issue in the future, it must be an issue now. For example, if two vehicles caused a planning difficulty, it would exist irrespective of whether or not we designate an operating centre.

2059. The Chairperson: The only reason that the Committee considered that issue is because of the Bill and its ramifications. We will seek further clarity.

2060. Mr D Armstrong: We will return with the redefinition that Mr Ford is applying to us.

2061. The Chairperson: We will move on.

2062. Mr D Armstrong: The letter at tab 7 of the packs arose from the Committee's concern about clause 4(4), which states that a vehicle with an operator's licence must be registered in the United Kingdom under the Vehicle Excise and Registration Act 1994 (VERA). The Chairperson raised the issue that someone who operates a business situated near the Irish border may employ people from both jurisdictions.

2063. The Chairperson: It would apply to someone who has a business that operates on the entire island. I know many people do that.

2064. Mr D Armstrong: The paper, which is quite extensive, outlines the reasoning behind that clause. The first reason concerns enforcement. We have access to the records of vehicles registered under VERA and, therefore, can take enforcement action against the owners of those vehicles. However, enforcement against owners of foreign vehicles is different from enforcement against owners of vehicles that are registered in the United Kingdom or Northern Ireland. Owners of foreign vehicles can commit offences, drive across the border and avoid detection; we have no access to their record base.

2065. The Chairperson: We must determine how to gain access to that record base, rather than discuss the registration process.

2066. Mr D Armstrong: Yes, that is the enforcement issue.

2067. The Chairperson: We are discussing parity with GB. However, without getting into the politics, we have a land border here. There are two jurisdictions and, because of the EU, people operate businesses on the entire island. The issue is why we do not have the access to information, not as a reason for including this in Bill.

2068. Mr D Armstrong: That is one solution to the enforcement difficulty. For example, if a vehicle registered in the Irish Republic is working in Northern Ireland and is breaching tachograph rules, we have no power to visit the operating centre and demand to see tachograph and maintenance records.

2069. The Chairperson: If the operating centre is here, it could be coincidental that the vehicles are registered in the rest of Ireland.

2070. Mr D Armstrong: I will address that legal issue later. I am talking about a foreign-registered vehicle that is based in its own operating centre across the border, where the vehicle is normally kept when not in use. When considering a foreign vehicle based at a centre in Northern Ireland, we come to legal issues, and we can deal with those.

2071. I want to comment on parity with GB. At the last meeting, we said that the clause that we were considering was not on the face of the GB Act. That is true, however, it is still a requirement in GB. For example, in an appeal concerning Reids Transport, the transport tribunal in London stated that:

"when an operator obtains an operator's licence in Great Britain, there is an on-going obligation to comply in every respect with the domestic law of Great Britain, including vehicle excise duty legislation."

Foreign vehicles cannot comply with that.

2072. The Vehicle Excise and Registration Act 1994 states that:

“A duty of excise (“vehicle excise duty”) shall be charged in respect of every mechanically propelled vehicle which is used, or kept, on a public road in the United Kingdom and shall be paid on a licence to be taken out by the person keeping the vehicle.”

Again, a foreign vehicle cannot comply with the requirements of VERA if it is normally kept within the United Kingdom.

2073. Fairness is one of the basic underlying principles of operator licensing, and it is recommended that all operators licensed in GB be treated equally, and to the same standard and requirements met by them. By taxing vehicles abroad, a company will not have paid the vehicle excise duty and thereby cannot contain competitive advantage.

2074. The strongest point, in relation to the requirement, can be found in paragraph 9 of the letter that we received, which states that:

“In addition to the requirement for vehicles to be within VERA, vehicles used under a GB road freight operator’s licence must have an operating centre in Great Britain.”

If the operating centre is not in Great Britain, we cannot enforce that; that is the point that has been made.

2075. An operating centre is the place to which a vehicle is normally returned when not in use — its home. Under licensing law, vehicles registered in Ireland cannot be regarded as being normally kept within the UK. The vehicle licensing has to be transferred, and that applies to any vehicle, including a car. If a vehicle is normally registered in the United Kingdom, by law, it must be on the registration system within the United Kingdom. A visiting vehicle can stay in the country for a limited period of time, but, without registering within the United Kingdom, it cannot stay as a permanent vehicle.

2076. A further element is introduced if that vehicle is from another member state, irrespective of whether it is from Ireland, France or Poland. Under EU cabotage rules, that vehicle cannot take on contracts, of which operating licensing would be one; it can only do ad hoc work within the United Kingdom for a limited period of time. Vehicles from the South, which as part of their business operate from an operating centre in Northern Ireland, would be in breach of EU cabotage rules.

2077. For all those reasons — enforcement, legal and European — we suggest that the clause remain as it is, and that it is in keeping with what is happening in the rest of the United Kingdom.

2078. The Chairperson: Is it in keeping with what is happening in the rest of the EU, where there are quite clearly land borders involved?

2079. Mr D Armstrong: I do not know what is happening with the rest of the EU; however, the cabotage rules apply across the EU and a person cannot be resident in one member state and operate a business in another.

2080. The Chairperson: Is that not the nature of economies and businesses within the EU?

2081. Mr D Armstrong: There is nothing to stop an operator having, for example, drivers from across the border; there are lots of foreign drivers.

2082. The Chairperson: There are also foreign drivers from other parts of the world.

2083. Mr D Armstrong: The issue is having the vehicle registered in another EU state.

2084. The Chairperson: I am interested to find out about this issue a like-for-like situation. For example, in France and Spain, where there is a shared land border.

2085. Mr T Clarke: Why not compare it with our neighbours? They have the same rules, and do not allow Northern registered vehicles to stay in the South.

2086. The Chairperson: I understand that; however, just because they are doing one thing does not necessarily mean that that is the right way to approach it.

2087. Mr Boylan: I agree.

2088. The Chairperson: I am anxious to hear how this is applied in areas where a land border is shared with other jurisdictions; we are not like for like with GB.

2089. Mr D Armstrong: The capitage rules still apply across the board.

2090. The Chairperson: The EU legislation is being cited a lot, I want to hear how it works in application.

2091. The proposed introduction of a traffic commissioner is the next topic for discussion.

2092. Mr Boylan: What procedures does the South have for the traffic commissioner?

2093. Mr D Armstrong: In the South, the traffic-commissioner function is carried out by the Road Safety Authority.

2094. Mr Boylan: Is the traffic commissioner completely independent or is it Government funded?

2095. Mr D Armstrong: The system in the South is very similar to Northern Ireland's current system — a Government agency carries out the traffic-commissioner function.

2096. Members have raised the issue of a traffic commissioner at several meetings. The Committee has also forwarded letters that it has received on the matter to the Department. We have noted the views expressed in those letters, and I will refer to them shortly.

2097. As I indicated at the previous meeting, the Department is in the early stages of a review of the management of operator-licensing regulation. That review will consider bus and taxi operators as well as goods-vehicle operators. We are assessing how operator-licensing regulation is managed in other countries.

2098. We are considering the several options that have been suggested, and more suggestions will follow. One such option is to appoint a dedicated traffic commissioner for Northern Ireland. Members have discussed that option on several occasions, and it is preferred by the people who have written to the Committee. Another option is to attach responsibility for Northern Ireland to one of areas of GB where a traffic commissioner is already in place — Wales, Scotland or north-west England. A further option is to retain the traffic-commissioner function in the Department but detach it from the agency; in many senses, the Bill steers us towards the last option. We are happy to engage with the Committee as those options are fleshed out.

2099. Members had asked whether it would be possible for the Bill to provide for the appointment of a traffic commissioner. We received legal advice, and the Department's view is that, although the Bill covers the functionality of a traffic commissioner, it does not contain legislation on a commissioner's appointment of staff, remuneration, pensions and so on. GB had a separate Bill for the appointment of traffic commissioners rather than using a Bill of this form. The Department feels that the appointment of a traffic commissioner in Northern Ireland should be covered by its own legislation because it covers such a wide remit.

2100. The Department also feels that the provisions of the Bill would not compromise any future decisions regarding a traffic commissioner. Traffic commissioners in GB have all the powers that are contained in this Bill. Those powers could be very easily handed to a traffic commissioner without the Bill having to be changed. Members had suggested that the Bill should be future proofed by inserting the words "Department or traffic commissioner" or

"Department or such other body as may be prescribed."

2101. However, the Department's view is that it would not be possible to make that reference, because there is no such legal entity in Northern Ireland. Indeed, we received legal advice to that effect.

2102. We welcome the support for the Bill that is contained in the letters that were received by the Committee. The appointment of a traffic commissioner was one of the proposals of the Department's 2003 review of road freight operator licensing. The Minister decided not to proceed with the introduction of a traffic commissioner following that exercise, preferring to consider the matter in a wider context. At no stage after that consultation was it suggested that a traffic commissioner would be included as part of this Bill. The letters received by the Committee contain a misunderstanding that there may have been communication to that effect. The legal advice was unequivocal in stating that amending the Bill is not possible because it would be unlawful.

2103. The Department will continue to review the management of operator licensing for buses, freight and taxis, and we will co-operate with the Committee in that work. The Department is not in a position to determine the appointment of a traffic commissioner at this stage because it has not been accepted as a policy. However, we are not opposed to the general principle. The traffic-commissioner system seems to work very well in GB, where it is popular with the industry and the Government. We are content for the Committee to include a recommendation to that effect in its report on the licensing of this Bill, and we seek to proceed with it as quickly as possible.

2104. The Chairperson: Do members have any comments?

2105. Mr Ford: I am fascinated by paragraph 12 of the letter that has just been repeated by Donald. It states that: "The legal advice is unequivocal. It is not possible to amend the Bill to provide for a Traffic Commissioner".

2106. That is not what the legal advice appears to be about. Rather, it appears to be about the legislative implications of including a provision in the Bill that might allow for a traffic commissioner at a future stage. We did not hear any reason why this Bill could not contain provision for a traffic commissioner to deal with freight transport.

2107. Paragraph 5 states that the traffic commissioner was constituted in GB under the Public Passenger Vehicles Act 1981 and the Transport Act 1985, and that the road-freight legislation was added in 1995. Given that our problems are principally about road freight — with the exception of one or two minor passenger-transport operators from whom we have heard — it

seems that the entirely logical corollary in Northern Ireland is that something should be done about a traffic commissioner for road freight at this stage. If appropriate, legislation regarding taxis and passenger vehicles could be added subsequently.

2108. Can I confirm that there is no legal advice that states that provision for a traffic commissioner could not be added to the Bill at this stage? Paragraphs 5, 6, 7 and 8 of the letter refer to what might happen in the future as opposed to what would happen if that were added now.

2109. Mr McMullan: What you said is correct. Future-proofing the Bill could pre-empt the decisions of a future Minister, and our legal advice states that that is unlawful. The Bill could legally contain a schedule that sets out the constitution of the traffic commissioner, the appointment, the remuneration and other provisions.

2110. However, we have not yet developed the policy far enough to allow that provision to be included in the Bill, but it could be included legally. Similar provision is contained in the Public Passenger Vehicles Act 1981 in GB, so such a provision could technically and legally be included in this Bill.

2111. Mr D Armstrong: The other issue that John raised, and which I mentioned during the previous meeting, was that we do not know what the best way forward is for Northern Ireland. We have not conducted a policy review, nor have we discussed — with the Committee or anybody else — the options that could be used for the management of operator licensing across Northern Ireland. To include a provision in the Bill that has neither been consulted on nor cleared in policy is something with which we would not be happy.

2112. Mr Ross: Would it not be preferable to see how the legislation works after it is introduced? If things do not go well or if there is room for improvement, a traffic commissioner could be considered at a later stage. That seems like a more logical way of proceeding.

2113. Mr Boylan: That is fair enough. We want the best possible model, although we might get off to a bad start if we follow the example of the NIEA (Northern Ireland Environment Agency). If we followed that example, a traffic commissioner could be appointed next week. I certainly agree that there should be an opportunity to see how this Bill works. The South uses the same model, and that works. If the model does not work, can provision be made in the Bill for the introduction of a traffic commissioner?

2114. Mr D Armstrong: No, the Bill cannot pre-empt the introduction of a traffic commissioner. The Department carried out a review of licences for taxi operators, and the Taxis Act (Northern Ireland) 2008 is now in place. We did that with the knowledge that we would consider whether a traffic commissioner would be needed for future operation.

2115. The Goods Vehicles (Licensing of Operators) Bill has been drafted with the same thought in mind. The need for a traffic commissioner has been considered, and, in conjunction with the Department for Regional Development (DRD), we are conducting a bus review, which has also been done with the same view in mind. All of that has been done knowing that consideration must be given to how the industry is regulated in Northern Ireland and knowing that we will try to introduce measures to do that. We have not taken a suck-it-and-see approach; we are committed to how it should be done on a wider basis.

2116. The Chairperson: What time frame is in place for that review, given that the Taxis Act (Northern Ireland) 2008 has been passed?

2117. Mr D Armstrong: It is a normal time frame for primary legislation. This morning, I suggested to someone that, by the time the provisions of the Goods Vehicles (Licensing of Operators) Bill are in place in 2011, we should be well down the road of considering the overall management of the regulation of the industry. Therefore, the review will not come that far behind the introduction of the legislation. As you know, the legislation will not be introduced next week.

2118. The Chairperson: I did not mean to ask when the review would be completed; I meant to ask when it would start.

2119. Mr D Armstrong: The review has started. Consideration of operator licensing is consideration of the total resource.

2120. The Chairperson: Can you provide detail on how that is being done? Has a panel been set up, and has a group of stakeholders been identified?

2121. Mr D Armstrong: To date, research has been carried out on the management of the industry in other countries. Terms of reference for the review are being put together, and, after that, we will put our attention to the regulations that flow from the legislation.

2122. The Chairperson: So, the review has not commenced.

2123. Mr D Armstrong: It did commence. The member of staff who was working on it has moved to the Department of Finance and Personnel (DFP), so it has been parked for a short time. The review started, but, in recent months, it has not progressed.

2124. Mr McMullan: I wish to return to the point that was made by Mr Ross. We regard the Bill as a stepping stone towards a traffic commissioner, rather than a stumbling block to that. The Bill contains the same functionality as exists in GB. As Donald said, if the outcome is that there would not be enough cases to employ a traffic commissioner in Northern Ireland, perhaps Beverley Bell could be asked to examine our cases.

2125. Mr Weir: Lucky her. [Laughter.]

2126. Mr McMullan: The legislation would mean that a traffic commissioner from GB did not have to learn Northern Ireland law. The two laws would be compatible, and, therefore, that traffic commissioner would have a platform and a basis to take on a case.

2127. Mr D Armstrong: The mention of Beverley Bell was guaranteed to produce a response. When the letters mention an independent traffic commissioner, the thrust of the argument seems to be around the need to separate the role from the agency. By progressing with the Bill, we are satisfying the need for that separation.

2128. The Chairperson: Can you talk me through how that separation is happening please, Donald? It is not apparent to me that that is happening.

2129. Mr D Armstrong: The Driver and Vehicle Agency (DVA) manages road transport licensing. Therefore, a person who applies for a licence applies to the agency, and the agency grants the licence. The DVA is also the enforcement agency, so it gathers evidence for prosecutions. It puts the whole package together and revokes licences. The prosecution, the administration and the decision-making are all contained in that agency.



2130. In GB, the equivalent agency is the Vehicle and Operator Services Agency (VOSA), but the decisions are taken by the Traffic Commission, which is separate, although VOSA's staff work for the Traffic Commission.

2131. In the Bill, we are proposing that the powers are separate from the agency — we could give the agency all the powers, but we feel that the powers should be separate. In light of the review of whether we have a traffic commissioner, its functions will already be separate and it will already be somewhat independent. It is also proofed, because it is accountable to the Transport Tribunal or the Upper Tribunal. We are providing a degree of independence — there is one Department, but the functions are separated.

2132. Mr T Clarke: If there was a traffic commissioner here, what would be the effect on the licence application process? Who would be responsible for enforcement?

2133. Mr T Clarke: I can explain how it works in GB in very broad terms.

2134. Mr T Clarke: I would rather you said how it would work here.

2135. Mr D Armstrong: There will be an office of a regulator, whatever it is called, which will be separate from the agency. Applications for variations and new licences will go to the agency and reviews will be triggered. The office will be responsible for the decisions. The agency will provide the office with information on, for example, breaches of legislation and other issues that demonstrate whether the operator is — or is not — of repute and whether it is providing proper maintenance. Separate from that agency, the decisions will be taken by the regulator, whoever that may be.

2136. Mr T Clarke: So, the regulator would feed in information that comes directly from the agency?

2137. Mr D Armstrong: That is correct.

2138. Mr T Clarke: To what is the agency connected?

2139. Mr D Armstrong: The agency is part of the Department, but it is not part of the office of the regulator.

2140. Mr T Clarke: At the moment, the agency does everything — it is responsible for enforcement and then takes cases to the courts.

2141. Mr D Armstrong: It also takes the decisions on licences.

2142. Mr T Clarke: The only difference that a traffic commissioner would make to the process is that the agency would take the information that it collates to a different office. Therefore, is it not right that the decision has almost been made by the time the information would get to the traffic commissioner?

2143. Mr D Armstrong: No; the decisions will be taken by the regulator.

2144. Mr T Clarke: Regardless of whether there is good commissioner or not, does a lot not hinge on the quality of the enforcement? If the enforcement is not good, the quality of the commissioner will not make a difference to whether there is success.

2145. Mr D Armstrong: That is correct.

2146. Mr T Clarke: Therefore, the key is enforcement, rather than the existence of a traffic commissioner.

2147. Mr D Armstrong: The key is successful enforcement. In GB, VOSA enforcement officers provide the same information to the traffic commissioner, so the pattern is exactly the same.

2148. Mr T Clarke: But, the key is enforcement.

2149. Mr D Armstrong: The key is successful enforcement.

2150. Mr Ford: On the issue of independence, Committee members should examine the four letters that are in front of us, because the summary that we have received is not entirely fair.

2151. In his letter, Phil Flanders from the Road Haulage Association (RHA) states:

“we were under the impression that once approved, enabling legislation would follow very soon thereafter to introduce an “independent regulator” similar to the role of Traffic Commissioner in GB.”

2152. He also states that the RHA has no issue with role being a Civil Service one, as long as it is totally independent of DVA.

2153. In her letter, Karen Magill from the Federation of Passenger Transport states:

“Prior to the 16th, it was my understanding that as a result of this Bill, there would be an Independent Regulator and all the associated powers”.

2154. In his letter, Aodhan O'Donnell states:

“The Consumer Council believes it is essential that this legislation includes the provision for an Independent Regulator ... completely independent of enforcement agencies”.

2155. Tom Wilson from the Freight Transport Association (FTA) goes beyond that stating:

“We were assured by the Department throughout our discussions that there would be provision within the Transport Bill enabling the appointment of an Independent Regulator or Traffic Commissioner (GB model)”.

2156. The Department is saying that there has been a misunderstanding, but that is not consistent with the statement in Mr Wilson's letter from 7 November 2008. What correspondence was there between those organisations, and are there any notes of meetings that they had with the Department? It is stretching the point a fair bit for one party to say that it was assured throughout its discussions, and another to say that there was a misunderstanding.

2157. The Chairperson: It is a wee bit hard to get your head round the compatibility of the two arguments.

2158. Mr D Armstrong: Far be it from me to reflect on the understandings — or misunderstandings — of the FTA. The Department regularly meets with FTA and RHA in the Northern Ireland Road Freight Forum, which it chairs. The RHA and the FTA have met with officials and various Ministers to discuss the Bill, and at no time did we make any commitment to include in the Bill provision for a traffic commissioner — that is a misunderstanding.

2159. Mr Ford: Are saying that Mr Wilson's statement is completely false?

2160. Mr D Armstrong: Yes.

2161. The Chairperson: To tie down the issue completely, was any commitment given to the introduction of a traffic commissioner or a similar regulatory body?

2162. Mr D Armstrong: No; there was a commitment to review the management of operator licensing in Northern Ireland. That has been consistent since 2004 or 2005. Never has a commitment been given to having a traffic commissioner for Northern Ireland, nor to include it in this Bill. There is no policy clearance to it. That is absolutely clear. It is a misunderstanding. The Bill can separate it from the enforcement function, but there was never any commitment given for a traffic commissioner.

2163. Mr Boylan: Has there always been the situation in GB where there has been a traffic commissioner, or was there an agency operating before that? Maybe we could have some results on how that operated before we decide.

2164. Mr D Armstrong: I think that it goes back to at least 1995, but I would have to check.

2165. Mr Boylan: Do you know what I mean? If there was an agency before the introduction of a traffic commissioner that —

2166. Mr D Armstrong: John is whispering 1981 — as far back as 1981.

2167. Mr Boylan: If there is an issue, and the results were coming out of that on how they operate, did that lead to the introduction of a traffic commissioner to get things done properly? We are now going to operate under an agency. I simply want to make a comparison.

2168. Mr D Armstrong: We are not proposing to operate under an agency; we are proposing to operate as a separate entity from an agency. The agency will have a different function.

2169. Mr Boylan: That is your interpretation. I will wait to see how you get on with that. I want to know if there is any information that we could use as a basis for comparison.

2170. Mr T Clarke: Is Tom Wilson correct where, in the last paragraph of his letter, he states that: "this is not the case in GB where an independent Traffic Commissioner — appointed by the Secretary of State has been established for 75 years"?

2171. Mr D Armstrong: I have no idea where he got that from.

2172. Mr T Clarke: I would like to see the validity of his argument. It seems surprising that it has been established for so long, but it could take that long to get the person in place. I suppose that that did not start until the early 1990s, is that right?

2173. Mr D Armstrong: I think that Beverley Bell was talking about her own appointment.

2174. Mr T Clarke: Do you know how long they have had a commissioner for?

2175. Mr D Armstrong: I have no idea.

2176. Mr T Clarke: Could we find that out?

2177. Mr D Armstrong: We could certainly dig back through the history to see what we can find.

2178. Mr T Clarke: I do not think that you will have to go back 75 years.

2179. The Chairperson: For complete clarity, contained within the documentation that has been provided to members, in the paper entitled 'Review of Road Freight Operator Licensing in Northern Ireland Summary of Responses to 2003 Consultation', paragraph 16.3, the states that: "The scale of operations in NI questions the need for a Traffic Commissioner for road-haulage matters only. However, with the Department's on-going review of regulation of the taxi industry and the Department for Regional Development's review of the regulation of the bus industry, the role of the Traffic Commissioner may well have merit. This will be explored further."

2180. At that point, the Road Haulage Association had an objection because of any discretionary powers being deemed to be unfair if a penalty-points system were to be used. That is not a question; I am quoting that for the record. That paragraph would be consistent with what you have just told us, Donald.

2181. Mr D Armstrong: It is, yes.

2182. Mr McClarty: Donald pointed out that the agency has its functions and that the Department's functions are quite separate. Surely, in law, does an agent not work on behalf of the principle, and is therefore deemed to be acting on behalf of the principle? It is the same thing.

2183. Mr D Armstrong: It is the same department in law, but it will be a separated function in that the agency will be responsible for enforcement. The decision-making will be taken away from that completely. In one sense, you have a little cameo now of how the agency's decisions are reviewed by the Department separately — I do that with panels. We have a separation of functions, and we very often disagree with the agency's decision. There is that separation between the two.

2184. In the GB model, although the traffic commissioner heads the body, the traffic commissioner's staff are all VOSA staff, so there is a close working relationship, even though they are separate entities. We believe that we can administratively maintain that separation, pending the results of a review into how that should be done in future, and whether or not the traffic commissioner is best placed to carry out that function.

2185. The Chairperson: Do members wish to seek further clarification on those matters before we move on?

2186. Mr Ford: I wish to raise a separate issue. Given that we have just discovered that there is a significant difference in interpretations of previous discussions between the Department and the FTA, it would be appropriate to ask Mr Wilson or his colleagues what information they have that justifies the statement that he made in his letter of 7 November 2008. The Department has had an opportunity to comment on that statement, so it is appropriate that the FTA be given the opportunity to justify the comments that it made in that letter.

2187. Mr T Clarke: What bearing will that have on the matter?

2188. Mr Ford: It is a relevant issue. We should be told what processes have been gone through up to this stage.

2189. The Chairperson: It would be useful if there was any correspondence, but I do not think that that will be the case.

2190. Mr T Clarke: I do not think that we need the FTA to come here.

2191. Mr Ford: It need not take long, but it should be given the opportunity.

2192. Mr T Clarke: We did not consult on the issue, so we should have known at that stage that we were not going to consider the appointment of a commissioner. You are reading the part of the FTA's letter in which it says, more or less, that it has been promised a commissioner as part of the Bill. As Donald said earlier, we did not consult on the appointment of a commissioner.

2193. The Chairperson: I believe that that was the case, Trevor. The appointment of a commissioner was part of the consultation — I read that bit out. That was consistent with the response that Donald has just given us. If someone has misinterpreted an issue, it will be important that we seek clarity on where those misinterpretations have come from. I realise that the issue falls outside the remit of the Bill.

2194. Mr Ford: I am sorry; I do not think that the issue is outside the remit of the Bill, particularly if a key body in the industry was given an assurance that what it had asked for would be included in the Bill, and that that body and the Department arrived at two entirely different interpretations of their discussions on the matter. I do not know how to cast that.

2195. The Chairperson: It is difficult to adjudicate on that matter. If the FTA is in receipt of correspondence from the Department that states otherwise, I am sure that we would welcome the opportunity to view that correspondence. I do not think that it will be there. However, we can ask the FTA whether it can verify its claim.

2196. Mr I McCrea: We can ask for any such information to be provided in writing.

2197. The Chairperson: Absolutely. We cannot accept any further witnesses at this stage. If there is something in black and white that is different — but it is not going to be there.

2198. I thank the witnesses for their time. We will see each other again.

## **20 November 2008**

Members present for all or part of the proceedings:

Mr Patsy McGlone (Chairperson)

Mr Cathal Boylan (Deputy Chairperson)

Mr Beggs

Mr T Clarke

Mr McClarty

Mr Ford

Mr I McCrea

Mr Ross

Mr Weir

Witnesses:

Mr Donald Armstrong  
Mr John Brogan            Department of the Environment  
Ms Gillian McIntyre

2199. The Deputy Chairperson (Mr Boylan): We come to the clause-by-clause scrutiny of the Goods Vehicles (Licensing of Operators) Bill, and I ask members to declare any interests. Today, the Committee will get feedback from the Department on the outstanding issues in the Bill. If members are content with that, we will move on to the formal clause-by-clause consideration of the Bill.

2200. The Department will first address the two outstanding items that cannot be linked to a clause: planning; and the appointment of a traffic commissioner. I will ask the officials to comment on any further outstanding issues as they occur during clause-by-clause consideration. I remind members that they considered departmental amendments at previous meetings and were content with all the proposals.

2201. Members have a copy of the Bill, its issue paper, and the accompanying papers, which include issues that were raised by the Committee; departmental responses to date; proposed departmental amendments; advice and feedback from the Examiner of Statutory Rules; recent letters from stakeholders; correspondence from Tom Wilson of the FTA, in response to the Committee's request for information on any assurance given by the Department concerning a traffic commissioner; and information on the Bill's powers to make secondary legislation. A list of circumstances that would render an amendment to the legislation out of order is included, as is the cover note for this item of business.

2202. A further meeting may be scheduled for Tuesday 25 November if clause-by-clause scrutiny is not completed today. I introduce Donald Armstrong, John Brogan, and Gillian McIntyre, who are here to provide further information and to help us through clause-by-clause scrutiny.

2203. Mr Beggs: I declare an interest as an agricultural landholder and as someone who assists on my father's farm. Some aspects of the Bill might be relevant.

2204. Mr T Clarke: I declare an interest as a member of the motor trade.

2205. The Deputy Chairperson: During clause-by-clause scrutiny, some issues were raised by the Bill team. The first is the planning concerns of the operating centres. The Department said that it would be happy to submit a statement to the Minister for perusal at consideration stage. The Committee considered the first draft of that proposed statement and asked for the removal of the third paragraph, along with the reference to the fact that the Minister will be speaking as Minister for the Driver and Vehicle Agency (DVA) and for the Planning Service.

2206. Following further discussions with the Planning Service, the Department proposed a revised statement:

"Following a designation by the Department of a place as an 'Operating Centre' under the GV(LOO) Bill, the issue of read-across into interest or action by Planning Service may be of concern to some.

I want to give you an assurance that the designation of a property as an Operating Centre will not in itself have any read-across to Planning action; nor will it be used by, or influence any action by Planning Service as to the use of the property.

Irrespective of this assurance, it is the responsibility of all land owners to ensure that the use of their property satisfies the requirements of planning law."

Are members content with that?

2207. Mr Weir: Why do we need that third sentence? It is a truism to say: "Irrespective of this assurance, it is the responsibility of all land owners to ensure that the use of their property satisfies the requirements of planning law."

2208. Mr Ford: What are you reading from, Chairperson?

2209. The Deputy Chairperson: Tab 49 in the master file. For clause-by-clause scrutiny of the Bill we will be examining tabs 47, 48, 49 and 50 in the master file. Do members agree on the planning section of the revised statement?

2210. Mr T Clarke: I would prefer some changes in the terminology for an operating centre or the need for one, particularly for smaller operators.

2211. Mr Weir: We have asked for changes, and the Department has — to a large extent — bent over backwards to meet our concerns and even included the wording that Mr Ford asked for.

2212. Mr Ford: Most of the concerns that we expressed have been included and, in order to be nice to the Department, we should agree on that part of the revised statement.

2213. Mr Beggs: I concur.

2214. The Chairperson: Do Committee members agree to the planning section of the revised statement?

Members indicated assent.

2215. Mr T Clarke: Put me down as a no.

2216. Mr Beggs: Are you going to say that for every part of the Bill?

2217. Mr T Clarke: I am not against the whole Bill, only certain sections of it. It is ill thought-out.

2218. The Deputy Chairperson: On enforcement, the revised statement says that the Committee may want to consider:

"1. If it should make a recommendation that the Department should separate the regulatory and enforcement roles when implementing the Bill in Northern Ireland; and

2. If it should make a further recommendation that the Department pursues the feasibility of the appointment of a traffic commissioner for Northern Ireland, to have statutory responsibility for among other things, Goods Vehicles Operator Licensing; or

3. If it should make a series of amendments to bring the appointment of a traffic commissioner for Northern Ireland into the scope of this Bill."

2219. Mr Weir: Regardless of the merits or demerits of having a traffic commissioner, I understood that provision for one was outside of the scope of the Bill and would be part of a separate consultation. There is nothing in the Bill that precludes the introduction of a traffic

commissioner at a later stage, nor is there anything that makes a traffic commissioner a necessity. We should not muddy the waters by making further amendments to the Bill on the issue.

2220. The Deputy Chairperson: I will go through the three points again.

2221. Mr Ford: Whether there should be a traffic commissioner is a matter of some debate. I do not accept Mr Weir's statement that the appointment of a traffic commissioner is outside the scope of the Bill.

2222. Mr Weir: Correct me if I am wrong, but officials previously said that it was; I understood that that issue was separate from the Bill.

2223. Mr Ford: Legally, the appointment of a traffic commissioner is not outside the scope of the Bill, which is to regulate road freight; it is entirely within the legal scope of the Bill to insert provision for the appointment of a traffic commissioner. The decision on whether or not to do that is a different issue; however, it is not valid to say that the appointment of a traffic commissioner is outside the scope of the Bill. The issue must be considered on its merits.

2224. Mr Weir: The appointment of a traffic commissioner would be outside the original intention of the Bill, which was not to prejudge that issue one way or the other. Arguments can be made about whether that is outside the scope or outside the intention of the Bill; I think that the appointment of a traffic commissioner was intended to be a separate issue. It should not be introduced as an issue at this stage; it is for another day. It is fair enough that the Bill does not preclude or make necessary such an appointment. The Bill leaves it open.

2225. Mr Ford: At the risk of being nice to the departmental officials twice in a row, the correspondence with which we have been supplied suggests that it is difficult to substantiate that a guarantee that a traffic commissioner would be appointed was given to some of the freight associations. However, it seems that the issue of a traffic commissioner has been part of the public consultation process for some years. It is for the Department to decide whether it chooses to introduce that.

2226. It will be for the Assembly to decide on the evidence whether it believes that a traffic commissioner is a good idea now rather than in five, six or seven years' time. On the basis of the evidence that we have received, we should consider appointing a traffic commissioner as part of the Bill rather than wait five, six or seven years.

2227. The Deputy Chairperson: I need agreement on whether to accept the three proposals. Donald, do you want to respond before we do that?

2228. Mr Donald Armstrong (Department of the Environment): Chairperson, in your opening remarks you recommended that the Department press ahead with consideration of the appointment of a traffic commissioner. We are content with that recommendation.

2229. The Deputy Chairperson: The first consideration on which we must agree is whether the Committee:

"should make a recommendation that the Department should separate the regulatory and enforcement roles when implementing the Bill in Northern Ireland".

2230. Mr Weir: What will that mean in practice?



2231. Mr D Armstrong: It means that the Department will not put the role of regulator — or what was termed the “traffic commissioner” function — into the agency; we will separate that function from the agency. The last time that we met the Committee we gave an undertaking that we will separate the functions.

2232. The Deputy Chairperson: Are members content?

Members indicated assent.

2233. The Deputy Chairperson: The Committee should consider:

“If it should make a further recommendation that the Department pursues the feasibility of the appointment of a traffic commissioner for Northern Ireland, to have statutory responsibility for among other things, Goods Vehicles Operator Licensing.”

Can you clarify that for the Committee?

2234. Mr D Armstrong: The Department will proceed with consideration of the appointment of a traffic commissioner, and we will do so as expeditiously as possible. That will cover freight, buses and taxis.

2235. Mr Weir: By “feasibility” do you mean that it will be deemed whether or not that is the right route?

2236. Mr D Armstrong: Yes. A policy decision is not in place to appoint a traffic commissioner because we do not know whether that is the best solution.

2237. The Deputy Chairperson: Are members content?

2238. Mr Ford: The third option is a direct alternative to the second, so you must read both before putting the question to the Committee.

2239. The Deputy Chairperson: Thank you, Mr Ford. The Committee may wish to consider:

“If it should make a series of amendments to bring the appointment of a traffic commissioner for Northern Ireland into the scope of this Bill.”

Mr Ford is determined to get that in.

2240. Mr D Armstrong: The Department would not be happy with the third option.

2241. Mr Weir: We accept the second option rather than the third.

2242. The Deputy Chairperson: The Committee is therefore agreed on the second option.

2243. Mr Ford: Do you wish to record a vote on that?

2244. The Deputy Chairperson: I have to record a vote for Mr Clarke's benefit. For clarification, I will read the first and second proposals again.

2245. I have been thrown into the hot seat today without briefing notes. We are voting on proposals 1 and 2.

2246. Mr Weir: Are we not voting on proposals 2 and 3? I thought that 1 had been agreed to.

2247. The Deputy Chairperson: Sorry, my mistake; we are voting on proposal 2. Are Members agreed?

Members indicated assent.

2248. Mr Ford: Can I record my dissent?

2249. The Deputy Chairperson: OK. We have to go back to vote on the previous issue on planning, as Mr Clarke has expressed his dissatisfaction.

2250. Mr Beggs: With regard to proposal 3, shall I read that out and then we will have dealt with all three? That seems reasonable.

2251. The Deputy Chairperson: Just for clarification, the third proposal is opposed and the second is agreed. The second reads:

"If it should make a further recommendation that the Department pursues the feasibility of the appointment of a traffic commissioner for Northern Ireland, to have a statutory responsibility for among other things, Goods Vehicle Operating Licensing."

Mr Ford has voted against that. The third reads:

"If it should make a serious of amendments to bring the appointment of a traffic commissioner for Northern Ireland into the scope of this Bill."

2252. Mr Ford: Procedurally, since the Committee has agreed to proposal 2, there is no point in voting on proposal 3.

2253. The Deputy Chairperson: It is only for clarification purposes for Mr Beggs, and I take your point. We are going back to the revised statement. Are members agreed?

Members indicated assent.

2254. Mr T Clarke: I vote against.

2255. The Deputy Chairperson: Mr Clarke's dissent has been recorded. You will be delighted to know that we are going through the Goods Vehicle (Licensing of Operators) Bill clause-by-clause.

2256. Mr Ford: Can I make a procedural point? I have recorded my dissent from the recommendation not to proceed with the traffic commissioner. I do not intend to obstruct the Committee by suggesting an amendment to every clause, given that the principle has been decided by the rest of the Committee that there will not be a traffic commissioner. I do not believe, however, that that negates my right to continue to express my view in favour of a traffic commissioner. There is, however, little point in my obstructing the Committee's work and suggesting an amendment to every clause that says "Department" where it should say "traffic commissioner". In the interests of being helpful to the Committee, I reserve my right to continue to object in future while not objecting in practice to clause-by-clause scrutiny at this stage.

2257. Mr I McCrea: I would not have expected anything less.

2258. Mr T Clarke: Come you and sit beside me, David.

Clause 1 (Operators' licences)

2259. The Deputy Chairperson: Mr Armstrong, what is the Department's view on clause 1?

2260. Mr D Armstrong: Members will have a copy of a letter dated 12 November from our departmental Assembly liaison officer, Una Downey. I have given members a paper on exemptions that sets out the arrangements for exemptions in Northern Ireland and in Great Britain. During our scrutiny of the exemptions we met representatives of the GB traffic commissioners who said that they would recommend the removal of 60% of exemptions in GB. There are European Union proposals on exemptions. Earlier this year, we were consulted as part of a UK-wide consultation on the regulation of the European Parliament Council's establishment of common rules to be implemented for transport operators. The proposal will come into law directly as a regulation.

2261. The UK Government believes that member states should be free to continue granting exemptions. In particular, they have cited the agriculture industry, and the UK Government is lobbying as part of that. We have received requests for exemptions, and we have listed those in papers that were distributed to members.

2262. The exemptions are listed in appendix C and are to some degree generic. The public sector, including local authorities, the Department for Regional Development and the Department of Agriculture have made requests for exemption.

2263. Mr Weir: What is a showman's vehicle?

2264. Mr D Armstrong: It is a sort of roundabout circus vehicle, for which exemption is already being sought.

2265. Mr Weir: Are there many showman's vehicles in Northern Ireland?

2266. Mr D Armstrong: That is among the proposed exemptions that the traffic commissioners in GB feel should be removed.

2267. Mr T Clarke: Have local authorities asked for exemptions?

2268. Mr D Armstrong: Some local authorities have; others have not.

2269. Mr T Clarke: Which requests is the Department considering?

2270. M D Armstrong: No one on that list has yet been considered; it is a list of requests. The Department will continue to engage with stakeholders and with those who have requested exemptions to establish whether there is a justification for their request. We could use the function of a vehicle as a criterion rather than the vehicle itself. However, the possible effect on the various industries of proceeding in that manner must be G24 explored.

2271. The effect of the European dimension for Northern Ireland and for the rest of the United Kingdom must also be considered, as well as the UK's response. The importance of exemptions must be recognised, and we will have proposals for the consideration of the Minister and of the Committee as soon as possible. In six months' time, after the Bill has been completed, the Department should be able to make proposals on what may be exempted. Essentially, the Bill grants the power to give exemptions. However, it is too early to say what those exemptions may be.

2272. Any proposals will be subject to public consultation before final decision and before subordinate legislation is introduced.

2273. Mr Beggs: Surely there should be a specific reason for an exemption. Should public bodies not be aware of the dangers of over-legislating and that a balance must be maintained?

2274. Mr D Armstrong: There is no Crown exemption in the proposed legislation; justification, therefore, is required for public or private exemption. The Department takes into account the function of a vehicle when considering exemption. The process of engaging with stakeholders has started. Proposals may take as long as six months after the completion of the Bill.

2275. The Deputy Chairperson: Are members content with the Department's thoughts on exemptions or do they wish to make any other points?

2276. Mr Beggs: I am content, at this stage.

2277. Mr Weir: The Committee cannot issue a blank cheque; some re-examination will be necessary.

2278. The Deputy Chairperson: In relation to clause 1(2)(d), may I refer members to tab 47 of their papers?

2279. Mr D Armstrong: Is that the letter of 17 November?

2280. The Deputy Chairperson: Yes.

2281. Mr John Brogan (Department of the Environment): The amendment to clause 1(2)(d) gives the Department the power to make exemptions through regulations. Having considered the Committee's earlier comments, we are content for any regulations made under amended clause 1(2)(d) to be subject to affirmative resolution. As the Bill is drafted, clause 1(2)(d) is subject to negative resolution; therefore the Committee must recommend an amendment to make clause 1(2)(d) subject to affirmative resolution. However, that amendment will be made to clause 57 rather than to clause 1. When we reach consideration of clause 57, we can include clause 1(2)(d) on a list of clauses that will be subject to affirmative resolution.

Question proposed:

That the Committee recommend to the Assembly that the clause be amended as follows: In page 1, line 10 leave out

"within the meaning given in Schedule 1"

and

In page 1, line 16, at end insert —

"(2A) For the purposes of subsection (2)(a) a goods vehicle is a small goods vehicle if-

(a) it does not form part of a vehicle combination and-

(i) it has a relevant plated weight not exceeding 3.5 tonnes, or

(ii) in the case of a vehicle which does not have a relevant plated weight, it has an unladen weight not exceeding 1525 kilograms; or

(b) it forms part of a vehicle combination and complies with such conditions as may be prescribed;

and 'relevant plated weight' in paragraph (a) means a plated weight of the description specified in relation to that paragraph by regulations;" — [The Minister of the Environment (Mr S Wilson).]

Question put and agreed to.

2282. Question, That the Committee is content with the clause, subject to the Minister's proposed amendments, put and agreed to.

Clause 1, subject to the Minister's proposed amendments, agreed to.

Clauses 2 to 5 agreed to.

Clause 6 (Operating centres to be specified in operators' licences)

2283. The Deputy Chairperson: The Committee had already decided that it is broadly content with clause 6.

2284. Mr T Clarke: I am not broadly content with operating centres, full stop.

2285. Question put, That the Committee is content with the clause.

The Committee divided: Ayes 5; Noes 1.

AYES

Mr Beggs, Mr Boylan, Mr I McCrea, Mr Ross, Mr Weir.

NOES:

Mr T Clarke.

Question accordingly agreed to.

Clause 6 agreed to.

Clauses 7 to 11 agreed to.

Clause 12 (Determination of applications for operators' licences)

2286. The Deputy Chairperson: Has the Department any issues with clause 12?

2287. Mr Brogan: The Department would be content for clause 12(12) to be subject to affirmative resolution.

Clause 12 referred for further consideration.

Clauses 13 to 19 agreed to.

Clause 20 (Conditions of licences)

2288. The Deputy Chairperson: I invite the Department to discuss its response to clause 20.

2289. Mr D Armstrong: The question was whether clause 20(1)(d) should be subject to negative or affirmative resolution. The Department has considered the matter and its view is that it should remain subject to negative resolution.

2290. Mr Beggs: Can you explain why?

2291. Mr D Armstrong: Clause 20(1)(d) deals with conditions that would be attached to a licence; for example, road-safety conditions may be introduced. A fundamental policy issue is not involved, and, as such, we should leave the provision subject to negative resolution.

2292. Mr T Clarke: Does that mean that we cannot make changes later?

2293. Mr D Armstrong: Changes can be made under SL1 processes.

2294. Mr Beggs: Just to clarify: you want clause 20(1)(d) to be subject to negative resolution so that regulations can be brought straight into effect and the Committee would have six months in which to object to them. In contrast, under affirmative resolution, the regulations would have to be approved by the Assembly before coming into effect.

2295. Mr D Armstrong: The Committee will have the same access to any regulations and will still scrutinise them under SL1 processes; the only difference is that instead of having an affirmative vote in the House, the Committee would have to pray against it as a negative resolution.

2296. The reason, which members may recall from a couple of weeks ago, is that it is part of bringing the discretionary process into licensing. For example, if someone were to commit a misdemeanour, his or her licence would be removed. This clause will give us the ability to grant a licence and attach conditions to it; for example, for road-safety reasons. It gives us flexibility to grant licences rather than take them away. The phrase in 20(1)(d) "any other prescribed purpose" is used because it allows us to grant licences for road-safety reasons.

2297. Mr T Clarke: What was that last thing you said?

2298. Mr D Armstrong: The clause allows us to prescribe conditions on a licence for road-safety reasons. That is not in paragraphs 20(1)(a), (b) or (c). It enables the licence to be granted as opposed to withdrawn or refused.

2299. Mr T Clarke: Therefore, in a sense, you are weakening the legislation.

2300. Mr D Armstrong: Sorry?

2301. Mr T Clarke: You said that someone had to commit a misdemeanour. By adding that measure, you have weakened what should have been in place.

2302. Mr D Armstrong: We are being given the power to apply conditions, should we wish to do so.

2303. Mr T Clarke: Are you applying conditions as opposed to not giving a licence at all?

2304. Mr D Armstrong: Yes.

2305. Mr T Clarke: Therefore you have weakened the legislation.

2306. Mr D Armstrong: We have not weakened it; it simply gives greater discretion to the person granting the licence. For example —

2307. Mr T Clarke: You are making it easy for a person who has a history of misdemeanours to obtain a licence.

2308. Mr D Armstrong: I will go over the points that I made about it last week. Under EU legislation, when a person is deemed to be of poor repute because he or she has committed traffic or transport offences, we must remove his or her licence. Clause 20 allows us to apply a condition to the licence and give it back. We must take the licence off the person; we have no choice, because that is what EU law demands. However, in GB there is discretion to return the licence on condition that, for example, the person provides monthly tachograph records for the following six months or provides more detailed information about maintenance checks on the vehicle.

2309. The provision is about being able to let a person have a licence as if he or she were on probation, and we will watch how that person complies with the conditions. Instead of taking someone out of business, the provision allows them to continue in business, but with certain conditions; and 20(1)(d) enables the Department to specify what form those conditions should take.

2310. Question, That the Committee is content with the clause, put and agreed to.

Clause 20 agreed to.

Clauses 21 to 23 agreed to.

Clause 24 (Revocation of standard licences)

Question proposed:

That the Committee recommend to the Assembly that the clause be amended as follows: Page 20, line 36,

“leave out subsection (3)”

Page 20, line 39,

“leave out ‘subsection (3)’ and insert ‘section 26(1)’” — [The Minister of the Environment (Mr S Wilson).]

Question put and agreed to.

2311. Question, That the Committee is content with the clause, subject to the Minister’s proposed amendments, put and agreed to.

Clause 24, subject to the Minister’s proposed amendments, agreed to.

Clause 25 agreed to.

Clause 26 (Revocation, disqualification etc: supplementary provisions)

Question proposed:

That the Committee recommend to the Assembly that the clause be amended as follows: Page 22, line 17,

“after ‘first’ insert ‘giving the holder of the licence or (as the case may be) the person concerned notice that it is considering doing so, and’” — [The Minister of the Environment (Mr S Wilson).]

Question put and agreed to.

2312. Question, That the Committee is content with the clause, subject to the Minister’s proposed amendment, put and agreed to.

Clause 26, subject to the Minister’s proposed amendment, agreed to.

Clause 27 (Periods of review for operating centres)

2313. The Deputy Chairperson: Is the Committee happy with clause 27?

2314. Mr T Clarke: No. Operating centres will be all right for five years, and then if the Department does not like them, it can get rid of them.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 5; Noes 1.

AYES

Mr Beggs, Mr Boylan, Mr I McCrea, Mr Ross, Mr Weir

NOES

Mr T Clarke

Question accordingly agreed to.

Clause 27 agreed to.

Clauses 28 to 49 agreed to.

Clause 50 (Large goods vehicles)

2315. Mr D Armstrong: We wrote to the Committee on 18 November 2008 about clause 50 and schedule 4. Trevor Clarke raised some concerns about the clause during the previous meeting of the Committee, particularly about the threshold weights for large goods vehicles.

2316. This issue highlights the value of Committee scrutiny. It appears that the provisions on weight are out of date. We searched through the mists of time for previous examples and found them in the Goods Vehicles (Licensing of Operators) Act 1995. We discussed the matter with our colleagues in the Vehicle & Operator Services Agency (VOSA) and the Department for Transport



(DFT). Schedule 5 never came into effect in GB, even though it was in the 1995 Act. Were it to be brought into effect now, parts of it would have to be substantially amended, such as the old HGV 16.2 tonnes weight limit. Things have changed drastically since that weight limit was in effect.

2317. The Department of the Environment would be happy for the Committee to remove clause 50 and schedule 4. There are a couple of other references to schedule 4 in the Bill. Furthermore, the Department recommends the replacement of the provisions in clause 57(2) by giving the Department the power to make regulations that will require certain documents to be carried by drivers of large goods vehicles. The definition of large goods vehicles will have to be specified to bring it up to date.

2318. In response to Trevor Clarke's query, the Department suggests that the Committee drop clause 50 and schedule 4 and amend clause 57(2).

2319. Mr T Clarke: Does schedule 4 deal with consignment notes?

2320. Mr D Armstrong: Yes.

2321. Mr T Clarke: We did not get an explanation why consignment notes were needed for larger vehicles and not smaller ones.

2322. Mr D Armstrong: That was your question. We can find no requirement in law for them; consequently, we do not believe that such a requirement should appear in the Bill. Broadly speaking, consignment notes give details of the consigner, the consignee, the content and weight of the load.

2323. They are used as good practice in the industry, but there is no law that requires that — either here or in GB. The law in GB has not been enacted in its 13 years of existence, and if it were enacted, it would be out of date. We suggest that if GB were to amend and enact it, we would have a provision in 57(2) that would enable us to follow suit. It is good practice, but it is not a legal requirement.

2324. Mr Beggs: The proposal is to remove clause 50 and grant the power to the Department. Would the Department introduce a decision on the matter by affirmative resolution?

2325. Mr Armstrong: That could be done, as it would be a policy change — we would be considering new weights and what consignment notes are required. Consignment notes are quite common, but there is no legal requirement for them. The Department suggests that if it were to be introduced, it would require an amendment to the weights issue, as has been suggested. The Department suggests that clause 50 and schedule 4 be dropped and that we watch developments in GB so that we can introduce similar provision if necessary.

2326. The Deputy Chairperson: Could the Department come back to the Committee with an amendment on clause 50?

2327. Mr Weir: We could disagree to clause 50 now.

2328. Mr D Armstrong: The Committee could drop clause 50 and schedule 4 and amend clause 57(2).

2329. Question, That the Committee is content with the clause, put and negatived.

Clause 50 disagreed to.

Clause 51 (Method of calculating weight of vehicles)

Question proposed:

That the Committee recommend to the Assembly that the clause be amended as follows:

"After clause 51 insert —

'Payment of grants

51A.—(1) The Department may, with the approval of the Department of Finance and Personnel, pay such grants to such persons or bodies as it considers appropriate in connection with any provision of, or the purposes of, this Act.

(2) Grants under this section shall be subject to such terms and conditions as the Department may, with the approval of the Department of Finance and Personnel, determine." — [The Minister of the Environment (Mr S Wilson).]

Question put and agreed to.

2330. Question, That the Committee is content with the clause, subject to the Minister's proposed amendment, put and agreed to.

Clause 51, subject to the Minister's proposed amendment, agreed to.

Clauses 52 and 53 agreed to.

Clause 54 (Application of Act to the Crown)

2331. The Chairperson: Are members content with clause 54?

2332. Several Members: Yes.

2333. Question, That the Committee is content with the clause, put and agreed to.

Clause 54 agreed to.

2334. Mr T Clarke: What was clause 54 again?

2335. The Deputy Chairperson: Its title is "Application of Act to the Crown".

2336. Mr T Clarke: Which means?

2337. Mr Brogan: It would apply the Act to Crown vehicles.

2338. The Deputy Chairperson: Can I put the question on clause 54 to the Committee again? Are members content with the clause?

2339. Question, That the Committee is content with the clause, put and agreed to.

Clause 54 agreed to.

Clause 55 (Application of Act to harbours)

Question proposed:

That the Committee recommend to the Assembly that the clause be amended as follows: In page 36, line 19, leave out "'commissioners' and insert 'authority'."— [The Minister of the Environment (Mr S Wilson).]

Question put and agreed to.

2340. Question, That the Committee is content with the clause, subject to the Minister's proposed amendment, put and agreed to.

Clause 55, subject to the Minister's proposed amendment, agreed to.

Clause 56 agreed to.

Clause 57 (Regulations)

2341. Mr Brogan: The Committee was concerned about clause 57(8), and it requested that it be subject to affirmative resolution. In its letter of 17 November, the Department explained what it hoped would be done in regulations under clause 57(8) and gave examples of the nature of the provision that will be included. I have listed the style of a disc and where it will be fixed to the windscreen of a lorry or goods vehicle; arrangements for name and address changes to be notified to the Department; and arrangements for the return of licences and discs.

2342. Offences will be attached to the provisions: contravention of the requirement to place the disc in a waterproof container and to display it in the near side lower edge of the front windscreen; writing on or making an alteration to a disc; and failing to notify the Department of a change in name and address for correspondence purposes. Such issues will be dealt with under clause 57, and the offences come into play in clause 57(8), as they are more of an administrative rather than a policy nature.

2343. We are also looking to the future. The Department planned a single composite set of regulations that would contain all the administrative matters that are spread throughout the regulation-making powers in the Bill. The regulations that would deal with the issues that I have listed under clause 57 would be, by nature, more at home in that composite set of regulations. However, if we make clause 57(8) subject to affirmative resolution, we will have to split the composite set of regulations and set them aside, whereas all the other administrative material will be subject to negative resolution.

2344. There is not a hair's breadth between the scrutiny that the Committee affords to negative and affirmative resolutions; therefore, there will be adequate opportunity for scrutiny for the provision under clause 57 generally. For those reasons, we would like clause 57(8) to remain subject to the negative resolution procedure.

2345. We have taken legal advice on the matter, which confirms our opinion that if we want to keep it in a composite set of regulations, we must stand firm in our hope that it will remain subject to negative resolution.

Question proposed:

That the Committee recommend to the Assembly that the clause be amended as follows:

“(a) to widen what is in subsection (9) [draft affirmative procedure] to apply it to-

? any regulations made under [clauses] 20(1)(d) and 27(3) (whether or not in conjunction with other provisions of [the Bill];

? any regulations containing a declaration under subsection (8); and

(b) to provide, as in subsection (10), that any other regulations under this Act shall be subject to negative resolution.” — [The Minister of the Environment (Mr S Wilson).]

Question put and agreed to.

2346. Question, That the Committee is content with the clause, subject to the Minister’s proposed amendment, put and agreed to.

Clause 57, subject to the Minister’s proposed amendment, agreed to.

Clauses 58 and 59 agreed to.

Clause 60 (Commencement)

2347. Mr Brogan: We have taken legal advice, and the strong recommendation is that we should not drop clause 60(3). It provides the Department with the ability to do some tidying up through amendments or modifications in a Commencement Order. I stress that the Commencement Order must be related to the commencement of the provisions. All we would ever wish to do is to correct minor slips that have occurred in the drafting of the Bill. That is a well-precedented power. It occurs in many Bills throughout Departments, and, indeed, it appeared in clause 56(2) of the Taxis Bill, which the Committee considered earlier this year.

2348. It is also worth considering that when all the provisions of the Bill have been commenced, clause 60(3) will cease to have effect, and any further amendments to the Act would be made under section 56, which is subject to affirmative resolution.

2349. Question, That the Committee is content with the clause, put and agreed to.

Clause 60 agreed to.

Clause 61 agreed to.

Schedules 1 and 2 agreed to.

Schedule 3 (Detention of vehicles used without operator’s licence)

Question proposed:

That the Committee recommend to the Assembly that the clause be amended as follows: Page 47, line 29,

“leave out from ‘for’ to end of line 30 and insert ‘authorising a vehicle detained by virtue of paragraph 1 to be returned to the owner, in prescribed circumstances, without the need for any application under paragraph 8.’” — [The Minister of the Environment (Mr S Wilson).]

2350. Question, That the Committee is content with the schedule, subject to the Minister's proposed amendment, put and agreed to.

Schedule 3, subject the Minister's proposed amendment, agreed to.

Schedule 4 disagreed to.

Schedules 5 and 6 agreed to.

Long title agreed to.

2351. The Deputy Chairperson: Thank you very much for your time and patience, gentlemen and lady.

2352. Mr D Armstrong: I record our thanks to the Committee for how it has treated us over the past few months. No doubt, we will meet again to discuss this important stage of the Bill.

2353. The Chairperson: I thank Donald, Gillian and John for providing the Committee with that level of detail; it was very useful. It is good to have an informed relationship with the Department.

## **27 November 2008**

Members present for all or part of the proceedings:

Mr Patsy McGlone (Chairperson)

Mr Roy Beggs

Mr Trevor Clarke

Mr Tommy Gallagher

Mr Ian McCrea

Mr Alastair Ross

2354. The Chairperson (Mr McGlone): Members have been provided with a first draft of the Committee's report on the Goods Vehicles (Licensing of Operators) Bill, which must be agreed and finalised in time to be submitted to the Business Office on 12 December. The report contains a section on membership and powers, an executive summary, recommendations and an introduction. I pay tribute to the Committee staff for compiling the report; they have been very helpful in taking the Bill to this stage.

2355. If Members have issues with the layout, content or wording of the report, they should make staff aware of their concerns, either today or on any other occasion between now and next week's meeting.

2356. The formal clause-by-clause analysis of the Bill was completed last week, but, due to amendments to take on board recommendations made by the Committee, we need to revisit a couple of clauses today. The Committee will also need to reconsider schedule 1, because incorrect wording was used last week.

Clause 50 (Large goods vehicles)

Schedule 4 (Large goods vehicles)

2357. The Chairperson: We will first reconsider clause 50 and schedule 4. At last week's meeting, the Department told the Committee that the provision requiring consignment notes for larger vehicles has never been enacted in GB, and no policy rationale for it could be found. Consequently, the Department proposed to amend the Bill by removing clause 50 and schedule 4 and inserting a power to make secondary legislation elsewhere in the Bill to introduce consignment notes in future, if necessary.

2358. The Department has since been advised by the Office of Legislative Counsel that the same result could be achieved by retaining clause 50 and amending schedule 4. Do members agree to those changes?

2359. Mr Beggs: Should we not consider the amendment to schedule 4?

2360. Mr McGlone: Yes; I should have mentioned that. The amendments are in the appendix to the correspondence that was received on 25 November.

2361. Mr T Clarke: Is the amendment to clause 50 there?

2362. The Chairperson: Yes.

2363. Mr T Clarke: I cannot find it in the documents.

2364. The Chairperson: Clause 50 has not been amended; it has been reinstated as it was in the Bill.

2365. Mr T Clarke: Therefore clause 50 still refers to "large goods vehicles".

2366. The Committee Clerk: The clause still refers to large good vehicles so that if it is decided in future to introduce consignment notes, there is provision for that; however, the amendment to schedule 4 will mean that it is not built in.

2367. Mr T Clarke: The problem that I had with that originally was that the Bill is supposed to cover all vehicles that need a goods vehicle licence. However, clause 50 differentiates between large vehicles and small vehicles. There is provision to enable the eventual introduction of consignment notes for large vehicles but not for smaller vehicles.

2368. The Committee Clerk: That is true. At the moment, however, such a provision is not being introduced.

2369. Mr T Clarke: I have been against the 3.5 tonne limit from the beginning, but if the Bill aims to make all goods vehicles subject to the same legislation, why is there a differentiation between large vehicles and small vehicles? It is either all or nothing.

2370. The Chairperson: I honestly do not know; the departmental officials are not here to explain it to us today. I cannot answer for them and would not attempt to; no doubt they have a reason for proposing those changes. Do members feel that the officials should appear before the Committee again to give another explanation of the matter?

2371. Mr T Clarke: I am certainly not accepting the proposals.

2372. The Chairperson: We will invite the departmental officials back to address the Committee. That may mean falling behind time or having a special meeting on Tuesday. Are members content to have a special meeting of 15 or 20 minutes?

Members indicated assent.

2373. The Chairperson: We will leave that issue until Tuesday. Are members available on Tuesday and happy to have a half-hour meeting? The staff can check, or we could perhaps meet on Thursday.

2374. The Committee Clerk: The full report must be agreed by then.

2375. The Chairperson: We will need a separate meeting in that case.

2376. The Department has agreed that the powers to introduce consignment notes will be subject to draft affirmative procedures, as requested by the Committee. Guidance is being sought from the Office of Legislative Counsel about whether that will involve a reference to clause 50 or schedule 4, which must also be explained on Tuesday.

Clause 57 (Regulations)

2377. The Chairperson: The insertion of clause 1(2)(d), clause 12(12), clause 50 and schedule 4 into clause 57(9) requires that the powers in those clauses be subject to draft affirmative procedures, which is what the Committee requested.

2378. Clause 1(2)(d) deals with exemptions; clause 12(12) introduces a professional competence requirement for restricted licences; and clause 50 and schedule 4 specify requirement notes for large vehicles, which the Committee has already touched upon.

2379. Is the Committee agreed that clause 57, as amended by the Department, be accepted?

2380. Mr T Clarke: No. The Committee is accepting a differentiation between large goods vehicles and goods vehicles. Under the Bill, a vehicle of up to 3.5 tonnes is, to all intents and purposes, a goods vehicle. Therefore why make a distinction in the definition of goods vehicles and large goods vehicles?

2381. The Chairperson: We will park the issue to Tuesday. However, we must move on that matter one way or another and, as Alex said, we must have the full report agreed by next week.

## 2 December 2008

Members present for all or part of the proceedings:

Mr Cathal Boylan (Deputy Chairperson)

Mr Roy Beggs

Mr Trevor Clarke

Mr Ian McCrea

Mr Daithi McKay

Mr Alastair Ross

Mr Peter Weir

Witnesses:

Mr Donald Armstrong  
Mr John Brogan

Department of the Environment

2382. The Deputy Chairperson (Mr Cathal Boylan): I welcome the Department's Bill team to the meeting.

2383. Mr Donald Armstrong (Department of the Environment): Apologies for the absence of Gillian McIntyre. We had two appointments this morning and she has gone to the other one, while we have come here.

2384. Mr T Clarke: Which of you got the short straw? [Laughter.]

2385. The Deputy Chairperson: I advise you that this session is being recorded for Hansard. Will you explain the Department's response to clause 4(4)?

2386. Mr John Brogan (Department of the Environment): Perhaps we should go over how we got to where we are today. I refer to a couple of letters that the Department has sent to the Committee. In the first letter, dated 13 November, we outlined the reasons why the Department included clause 4(4) in the Bill, including licensing and enforcement. The action that can be taken against a foreign vehicle is different and less effective than the action that can be taken against domestic vehicles.

2387. We were also seeking parity with GB. In GB, to ensure fair trade, the operator licensing system requires all vehicles specified on a licence to be registered under the Vehicle Excise and Registration Act 1994 (VERA). An operator who has taxed a vehicle abroad will not have paid vehicle excise duty in the UK, which may give the operator a competitive advantage.

2388. During the meeting on 13 November, the Committee asked for examples of how other member states in mainland Europe that share a land border address issues such as vehicle registration and excise policies. We followed up that request with a letter dated 18 November, in which we reported that research was ongoing and that we would provide an update at our meeting with the Committee on 20 November. However, at that meeting, the subject was not actually raised. Therefore, the update has now been provided in our most recent letter, dated 1 December.

2389. In that letter, we acknowledge that it has been very difficult for us to get information about systems that operate in other member states, so we may not be able to give precise answers to the Committee's questions. We have tried to get that information from many individuals in the Department for Transport in London and from colleagues in the Vehicle and Operator Services Agency. We even contacted staff from the Office of the First Minister and the deputy First Minister who are based in the European Commission in Brussels. However, we had limited success. What we have been able to do is to gain further understanding of a European Commission proposal to introduce what it calls the operator regulation. That is highlighted in our letter.

2390. One aspect of that proposal relates to the issue about which we have been talking. From the papers that we have on the proposal, it appears that there are problems that cross member states about operators who have letterbox companies, whereby they become established in one state in name and address only, but essentially operate in another state, perhaps their real home state. Those operators generally have a poor compliance record and are likely to take advantage of less robust licensing and enforcement requirements in the state in which they are licensed. The Commission proposes to clamp down on that practice by making it a requirement that operators be "effectively and stably" established in a member state.

2391. For that to happen, operators will have to demonstrate that they have an office and operating centre in the member state in which their vehicles are registered. Given that in the UK



it is already a requirement for vehicles to be registered in a member state, the Government supported the proposal on the operator regulation.

2392. I repeat what I said in my original letter of 13 November about the sequence of requirements and the linkages between the Goods Vehicles (Licensing of Operators) Bill and the Vehicle Excise and Registration Act 1994. In effect, the 1994 Act means that operators should already be using vehicles that are registered and taxed in the UK.

2393. Mr T Clarke: I have a small problem with that. I welcome your statement that vehicles should be registered in the same country as the operating centre. The only thing that worries me is in relation to enforcement. The second paragraph of your letter of 13 November states:

“When a vehicle is registered within another jurisdiction in the EU the vehicle is deemed by law to be a foreign vehicle.”

I accept that, but it goes on to say:

“The enforcement action that the Department can take against foreign registered vehicles and their drivers, when detected being non-compliant, is different and to a significant degree less effective”.

As I said at the outset, a system is again being introduced that will restrict the operation of businesses in Northern Ireland and, by your own admission, be less effective in relation to vehicles registered in other jurisdictions.

2394. Mr D Armstrong: As far as operator licensing is concerned, the provision is less effective in the sense that, if a Northern Ireland vehicle is found to be in default on the road, that has implications for the operator's licence. The same cannot be said of a foreign vehicle that is in default because it is registered in another country.

2395. However, apart from operator licensing, the Department will introduce before the end of next summer — and probably within six months — a graduated fixed-penalty and deposit scheme for road traffic and transport offences. That will entail foreign vehicles being penalised at the side of the road and being barred from moving until the penalty is paid, while vehicles from the United Kingdom will have the option of a fixed penalty and being processed through the courts.

2396. Therefore, foreign-registered vehicles will not escape penalty, but the Department has no control over their operator licences because they are registered abroad; in that sense you are quite correct. However, foreign vehicles will not completely escape sanction, because they will be immobilised unless a deposit is paid in lieu of a fine.

2397. Mr T Clarke: I know that the Department is not responsible for that situation, and that our industry's hands are tied in comparison to other foreign states, but what fines are being considered by way of on-the-spot penalties?

2398. Mr D Armstrong: The fines would be on a graduated scale for both foreign and UK vehicles. I believe that the maximum is £1,200. I can confirm that and the detail of the maximum deposit that would be taken.

2399. Mr T Clarke: My problem is that the approach is geared for enforcement officers to visit yards and check vehicles at operating centres. Although I welcome the road-safety measures, from the start our industry is at a disadvantage because it has operating centres here, whereas

the poor enforcement regime in Northern Ireland means that the chance of detecting foreign vehicles is slim to none. Therefore, foreign vehicles that operate in the North are given an advantage.

2400. Mr D Armstrong: I hope that that will not be the case. I cannot comment on the level of enforcement, because that is a matter for the Driver and Vehicle Agency, which has already given evidence to the Committee. The agency will be increasing the level of enforcement year-on-year over the next three to four years. As far as the principle is concerned, I understand what Mr Clarke is saying. It is a fact that the Department has no sanction over foreign operators, but it has a sanction on foreign vehicles coming in and out of the country.

2401. Mr Beggs: The Traffic Commissioner told the Committee that Northern Ireland vehicles had a higher infringement rate. I got a sense that those vehicles were targeted because it was recognised that they were of a lower standard. When the Bill is enacted, will the Department have mechanisms to drive up vehicle standards in Northern Ireland? Does the Department envisage that, at that stage, vehicles from outside Northern Ireland may be more heavily scrutinised by enforcement officers because there will be tighter regulations covering Northern Ireland vehicles?

2402. Mr T Clarke: You would need to wake them up first.

2403. Mr D Armstrong: By virtue of the fact that Northern Ireland operators improve the standard of their vehicles and their compliance with road transport and traffic law they will, under the rating system, be less likely to be stopped. Therefore, by default, the enforcement exercise will be targeted more towards foreign vehicles.

2404. Mr T Clarke: Anybody who listened to the news last night will know that, even before the regulations are introduced, it is recognised that vehicles in the Republic of Ireland are not of the same standard as those in Northern Ireland. That was mentioned on the news last night. Therefore, our industry is being taken from its current higher level to an even higher one, leaving southern-registered vehicles further behind.

2405. Mr Beggs: We must pursue the issue of road safety — it should be discussed on a North/South basis and should be addressed by the politicians in the South of Ireland also.

2406. The Deputy Chairperson: Do members have any more comments? We agreed clause 4 on 20 November. Following this discussion, do members believe that there should be a further amendment, or are we happy to move on?

2407. Mr Beggs: To clarify, what is the latest proposal?

2408. The Committee Clerk: Clause 4 was agreed on 20 November. Unless members want to suggest further amendments, that decision stands.

2409. The Deputy Chairperson: Are members content to move on?

Members indicated assent.

2410. The Deputy Chairperson: The Committee will now consider clause 50 and schedule 4, which allow for consignment notes to be introduced for larger goods vehicles. Previously, the Committee questioned the need for those and was told by the Department that, as such provisions had not been invoked in GB and there was no policy rationale for their inclusion, the Department would consider removing them from the Bill. The Committee accepted that and,

during the formal clause-by-clause analysis on 20 November, it was agreed to drop both clause 50 and schedule 4.

2411. However, the Office of the Legislative Counsel (OLC) subsequently advised the Department that, from a legal perspective, it would be better to retain both provisions and make an amendment to schedule 4. Last week, the Committee was asked to consider that, but members felt that they could not make a decision without further information from the Department. Therefore, I invite the Bill team to explain the situation, please.

2412. Mr D Armstrong: The Bill includes references to three types of vehicle: small goods vehicles; goods vehicles; and large goods vehicles. By and large, small goods vehicles are those weighing 3.5 tons or less. Those vehicles are outside the scope of the regulations; therefore, the Bill does not apply to small goods vehicles. Operator licensing applies to goods vehicles and large goods vehicles, and that is consistent throughout the whole Bill. All of the Bill's provisions, with the exception of what I am going to talk about, apply to operator licensing for goods vehicles and large goods vehicles.

2413. Therefore, the question that must be answered is why there is a separate reference to large goods vehicles. That is the point that was raised by Mr Clarke. At present, there is separate legislation requiring vehicles carrying, for example, animals or dangerous goods to carry consignment notes. That legislation is completely separate and has nothing whatsoever to do with operator licensing.

2414. However, clauses 50, 38 and 39 and schedule 4 of the Bill make provision for the adding-in of a requirement for consignment notes for large goods vehicles of 16.2 tons and over. Mr Clarke queried that provision. Such a power already exists in GB; however, it has never been exercised, we are not aware of any plans to exercise it and consultations with our counterparts in GB have never turned up any indication that anyone is even considering exercising it. Therefore, although that was included in the Goods Vehicles (Licensing of Operators) Act 1995, it is now 2008 and there is absolutely no indication that that power will ever be exercised.

2415. As the Chairman has said, when we last met the Committee, the view was that clause 50, schedule 4 and consequential references in clauses 38 and 39 could be removed. We also indicated that we might replace them with a power in clause 57 to legislate for the carrying of documents under regulations, should it be deemed necessary in the future — that was not picked up on. That is what we presented the last time that we met the Committee.

2416. However, we have since received legal advice in relation to clause 57 informing us that it is not possible to do that, and that is where the difficulty lies. Therefore, we could remove clause 50 and schedule 4, as well as the consequential references in clauses 38 and 39, but there is no mechanism for including that power somewhere else in the Bill. That is our current position, which leaves us with two scenarios. The first scenario is to leave things as they were voted on, and the second is to re-insert the clause and the schedule, as was suggested by OLC at the last meeting that we were not at, and I understand that that is what generated unhappiness among Committee members. I will run through those two scenarios with the Committee.

2417. The first scenario is to leave things as they are — that is, remove clause 50 and schedule 4. As far as the Bill is concerned, that is a much tidier option, because it would remove from the Bill something that may never be enacted. The Committee would need to agree to the consequential amendments to clauses 38 and 39, thus removing the references to schedule 4. Operator licensing would function perfectly normally without those clauses, as they are not about operator licensing per se. However, if Great Britain moved to enact consignment notes, as provided for in the Goods Vehicles (Licensing of Operators) Act 1995, the Committee would have

to consider following suit and, if those clauses are removed from the Bill, that would have to be done through primary legislation.

2418. Under the second scenario, clauses 38, 39 and 50 would remain in the Bill, and schedule 4 would perhaps be modified to take away the 16·2 tons definition and leave it, for example, as set out in regulations, subject to affirmative resolution. Operator licensing would still function, just as it would if we took out the provision. If GB moved to enact consignment notes, we, in turn, could do so without primary legislation. However, that would mean that there would be a power in the Bill that we have no plans ever to use.

2419. Those are the two options; take it out or keep it in. The Department has no strong preference and is quite happy for the Committee to choose whichever option it wants. One option is legislatively cleaner but reduces the options for the future, in that if consignment notes are ever brought in, it will have to be done through primary legislation. The other option is messier, in that the Bill will provide for a power which we have no plans to use, and, to be honest, may never use. If GB moved on consignment notes then we would have to consider following suit with further primary legislation.

2420. I think that, last time, the Committee voted to remove it. I hope that did not sound too complicated.

2421. Mr T Clarke: I do not really care whether it stays in or out, but if it is in, I do not think that it should be restricted to large goods vehicles; it should just say "goods vehicles". Any registered vehicle over 3·5 tons would be classed as a goods vehicle.

2422. Mr D Armstrong: I will run over the implications of that. Currently, consignment notes are predominantly used in relation to animals and dangerous goods. In GB their use is good practice in freight, although there is no legal requirement to do it, and some people in Northern Ireland use them as well. However, is it fair to ask somebody who is carrying, for example, their own goods in a vehicle over 3·5 tons, to provide consignment notes detailing what they are carrying, where it is from, where it is going, and what it weighs? To me that seems to be an excessive burden.

2423. If consignment notes were brought in they would probably only be for the hire-for-reward sector. It seems to me rather burdensome to require every vehicle over 3·5 tons to have one. It might well be that we would be looking only at large goods vehicles over 20 tons or 25 tons — whatever figure the Committee or the Assembly agreed on. I do not see it as ever being necessary for all vehicles over 3·5 tons. I think that that would be totally unfair and the impact would be huge.

2424. Mr T Clarke: It should not be necessary for a vehicle of 3·5 tons to have an operator license either. I am glad that you have said that it is unfair. The principle of the whole Bill is unfair.

2425. Mr D Armstrong: I did not say that. I am talking about the unfairness of consignment notes; I am not talking about that other issue.

2426. Mr T Clarke: In a previous life, long ago, I was involved with haulage. Mr Armstrong said that it is good practice to use consignment notes; in those days, vehicles of 7·5 tons and over used consignment notes, not only for livestock but for dry goods in containers.

2427. Mr D Armstrong: It is a good practice.

2428. Mr T Clarke: If it is good practice, why, would it be introduced piecemeal rather than across the whole industry? It should be all or nothing.

2429. Mr D Armstrong: If we were go down that road, consultation would take place to find out what the public view is. If we were to try and bring it in for all vehicles over 3.5 tons there would be an outcry.

2430. Mr T Clarke: It would show how big a nonsense it is to even have that 3.5 ton figure to start with.

2431. Mr D Armstrong: That is a slightly different issue.

2432. Mr Beggs: The option is to keep schedule 4, or, alternatively, if things change at a European or GB level, to introduce primary legislation. What would be the timescale of the introduction of primary legislation? Could that, in itself, cause problems? There would have to be some consultation, and I am concerned that it might cause problems for the freight industry in Northern Ireland if GB regulations change.

2433. Mr D Armstrong: The figure of 16.2 tons is contained in GB primary legislation, so if, for example, they were to decide to bring that in, they would have to make a change to that legislation anyway. That issue does not worry me unduly. If it is brought in at a European level — and there is no indication that there is anything on the European front in relation to that — it may well be brought in under section 2(2) of the European Communities Act 1972. That means that the primary legislation would be done that way, which is much quicker and much easier; that is not such a slow process.

2434. Mr Weir: I appreciate what you have said. However, it strikes me that, if primary legislation is needed at a later stage, it might be done through Europe. We would not have much of a choice about that, and it is a fast-track process anyway. Alternatively, we may bring ourselves back into line with GB. In either case, there will not be a great deal of room for manoeuvre. I think that leaving this power out of the Bill would be a neater solution. I would take the Department's advice on that, and leave out clause 50 and schedule 4.

2435. Mr D Armstrong: You will have to vote on two consequential amendments to clauses 38 and 39.

2436. Mr Weir: OK. I propose that we do that.

2437. Mr T Clarke: I second that.

2438. The Deputy Chairperson: I advise members that schedule 4 is referred to three times in clauses 38 and 39, and having agreed to drop it —

2439. Mr Weir: Does that need to be put to a formal vote?

2440. The Committee Clerk: Both were dropped formally on 20 November. The question was whether they needed to be reintroduced.

2441. The Deputy Chairperson: I advise members that schedule 4 is referred to three times in clauses 38 and 39, and, having agreed to drop it, we must now agree the consequential amendments needed to remove reference to it in these clauses.

2442. Is the Committee agreed that clause 38, as amended by the Department, be accepted?

Members indicated assent.

2443. The Deputy Chairperson: Is the Committee agreed that clause 39, as amended by the Department, be accepted?

Members indicated assent.

2444. The Deputy Chairperson: I advise members that they need to reconsider clause 57(9), which has been amended to take on board the recommendations of the Committee for secondary legislation relating to exemptions, clause 1(2)(d), and the introduction of a requirement for professional competence for restricted licenses, clause 12(12), to be subject to draft affirmative resolution. Are members content?

Members indicated assent.

2445. The Deputy Chairperson: Is the Committee agreed that clause 57, as amended by the Department, be accepted?

Members indicated assent.

2446. The Deputy Chairperson: I remind members that during the formal clause-by-clause analysis on 20 November, they agreed the proposed departmental amendment to drop schedule 1 and incorporate its contents into clause 1. Unfortunately, the wrong wording was used and members are asked to reconfirm that they are happy for schedule 1 to be dropped. Is the Committee agreed that schedule 1 be dropped?

Members indicated assent.

2447. The Deputy Chairperson: That concludes the formal clause-by-clause analysis. Members will receive the second draft of the Committee's report at Thursday's meeting, and any changes resulting from today's meeting will be included.

## **4 December 2008**

Members present for all or part of the proceedings:

Mr Cathal Boylan (Deputy Chairperson)

Mr Roy Beggs

Mr Trevor Clarke

Mr Tommy Gallagher

Mr Ian McCrea

Mr Daithí McKay

Mr Alastair Ross

Mr Peter Weir

2448. The Deputy Chairperson (Mr Boylan): We come to the Goods Vehicles (Licensing of Operators) Bill report. Does any member have an interest to declare?

2449. The clause-by-clause scrutiny has been completed and the Committee is considering the second draft of its report on the Bill. Sections that have been substantially changed or added to since the first draft have been underlined for ease of reference. Amendments made as a result of last Thursday's meeting have been included.

2450. Members must formally approve each section of the report and the list of appendices, and then order the report to be printed. Are members content to do that today? We can run through it fairly quickly.

Members indicated assent.

2451. The Deputy Chairperson: Is the Committee agreed on membership and powers?

Members indicated assent.

2452. The Deputy Chairperson: Is the Committee agreed to the executive summary?

Members indicated assent.

2453. The Deputy Chairperson: Is the Committee agreed to the report's recommendations?

Members indicated assent.

2454. The Deputy Chairperson: Is the Committee agreed to the report's introduction?

Members indicated assent.

2455. The Deputy Chairperson: Is the Committee agreed to appendix 1?

Members indicated assent.

2456. The Deputy Chairperson: Is the Committee agreed to appendix 2?

Members indicated assent.

2457. The Deputy Chairperson: Is the Committee agreed to appendix 3?

Members indicated assent.

2458. The Deputy Chairperson: Is the Committee agreed to appendix 4?

Members indicated assent.

2459. The Deputy Chairperson: Is the Committee agreed to appendix 5?

Members indicated assent.

2460. The Deputy Chairperson: Is the Committee agreed to the final amendments and the explanations? Are members also agreed to the inclusion of the relevant sections of Tuesday's minutes, and the inclusion of today's minutes as approved and signed by me, along with the Hansard reports of both meetings?

Members indicated assent.

2461. The Deputy Chairperson: Finally, is the Committee agreed to order the report to be printed?

Members indicated assent.

2462. The Deputy Chairperson: Thank you very much.

## **Appendix 3**

### **Submissions Relating to the Report**

#### **Freight Transport Association**

##### **Key Messages**

- The effectiveness, availability, reliability and cost of freight are vital determining factors of the Northern Ireland economic competitiveness
- Freight transport is constantly improving its environmental and safety performance and has already achieved substantial improvements – though as always more can be done
- There will be an increasing need for Freight Transport movements due to the restructuring of the NI economy
- There is a strong expectation within all sections of the Freight Transport sector and its users for the NI Assembly to urgently address the poor operational record of NI operators in terms of Road Safety
- There is an immediate need to raise the image of the Freight Transport sector through better regulation.

##### **Introduction**

###### **The FTA**

The Freight Transport Association is the second largest trade association in the UK and Ireland. It represents the views and interests of over 14,000 members – from large multi-nationals and household names to small and medium sized businesses. FTA represents the interests of companies needing to move goods by road, rail, sea, and air. These include retailers, importers, exporters, manufacturing companies and others. FTA members consign over 90 per cent of the freight moved in GB by rail and over 70 per cent of road, sea and air freight within the UK and Ireland. They also use over 200,000 goods vehicles - almost half the UK fleet.

The FTA has an annual turnover of £25m and with an office in Brussels is represented at International Forums including the UN and OECD.

The FTA is represented in Northern Ireland by five full time members of staff and has permanent offices here.

The FTA Regional Policy Manager, Tom Wilson has over 35 years experience working directly within the industry (with FTA for the past 5 years) providing information and advice for the large number of members with operational depots in both Northern Ireland and the Republic. The FTA provide a wide range of services for its members to enable them to operate efficiently and in an



environmentally sustainable way as well as offering them help to comply with both Government and EU regulations relating to their industry.

## **1. The Local Supply Chain**

- Deliveries to shops, shopping malls, restaurants, public houses, markets and retail parks;
- Fuel to garage forecourts;
- Equipment and supplies to offices and commercial premises;
- Raw materials and finished goods to and from manufacturers / wholesalers;
- Supplies to hospitals, schools, municipal and other public buildings;
- Building materials to construction sites;
- Refuse collection and disposal, street cleansing and maintenance; and
- Domestic deliveries and furniture removal.

Road: The dominant mode of transportation within Northern Ireland is road, accounting for almost 100% of all goods lifted. Users of transport services are placing greater emphasis on agile supply chains that are responsive to customer and consumer needs and can provide door to door services – demands which trucks and light vans are well equipped to respond to. Sectors adopting this approach to supply chain management, such as manufactured white goods, drink and foodstuffs, have become much more significant to the UK economy

Lorries play an indispensable role in this – servicing our towns and cities. The lorry's unique ability to move freight literally from door-to-door determines its pre-eminent role in distributing goods at this level.

## **The Review of the Transport Industry in Northern Ireland**

### **Contents of Briefing Notes**

1. These briefing notes are submitted for the Committee to review prior to the FTA presentation scheduled for Thursday 3rd April.

2. Statistically the UK has the best safety record in Europe, and British registered HGVs are the safest vehicles on the road. However the Department for Transport statistics illustrate that the condition of visiting foreign vehicles and their drivers' non-compliance with drivers' hours rules presents a significant road-safety risk. FTA has campaigned for many years to increase enforcement resources and has long supported the now imminent introduction of graduated fixed penalties and a deposit scheme that ensures sanctions against non-compliant foreign drivers using unsafe vehicles on our roads. FTA welcomed The Government's announcement of an additional £2 million per annum funding to support increased targeting of foreign vehicles by VOSA. It is essential that limited resources should be used efficiently and VOSA's OCSR (Operator Compliance Risk Scoring) scheme will effectively target those operators with a history of non-compliance. FTA believes that OCSR is a model that should be adopted as best practice throughout the EU.

3. Statistically Northern Ireland has one of the worst safety records\* in Europe, and along with Romania and the Republic of Ireland Northern Ireland is in the bottom three of the EU member countries league table.

\* Information presented by DOE Road Safety Branch at eight Public information Road Shows throughout Northern Ireland during February and March 2008.

4. DOE Roads Safety and Policy Standards Branch carry out commercial vehicle enforcement checks annually and their latest findings confirm that the position has worsened significantly in 2007.

	2005	2007
Unroadworthy Condition	44%	40%
Prohibitions issued	21%	30%

5. DOE Test Station findings for commercial vehicle condition\* when presented at annual inspection is equally disturbing: \* statistics provided by DOE Road Safety at Road Show Public information events in 2008.

### **26,267 HGV's were presented for annual test in 2007 at the fifteen DVA Test stations.**

- 37.3% Rigid vehicles failed
- 32.2% Articulated vehicles failed
- 26.1% Trailers failed

### **Issue: Need to improve Road Safety - Weak Enforcement levels compared to GB**

The absence of full Operator licensing in NI means that vehicle owners and drivers do not pay enough attention to the roadworthiness of their vehicles on a daily basis. If all NI operators were required to hold an 'O' licence as is the position in GB, the levels of non-compliance would be significantly less and our roads would be much safer than is the case at present. The powers available to the enforcement authorities in several other EU countries are such that those operators who flaunt the law are less likely to re-offend.

Northern Ireland must aspire to raise the commercial vehicle operational standards by a continuous improvement process. This will raise the image of the Freight Transport industry and make it a more appealing sector to work in than is the case at present. There is pressure from the EU Commission for this situation to improve.

The FTA has lobbied on behalf of its members for the past 15 years to change the law governing commercial vehicles in Northern Ireland.

### **Issue: Need to improve Road Safety - Cost of Road Safety Regulation**

The cost of regulation and enforcement is currently borne by the Hire and Reward transport sector.

There are 35,000 commercial vehicles over 3.5 tonnes registered in Northern Ireland. Only one fifth of these (7,000) are operated by the Hire and Reward sector and subject to current 'O' licence legislation.

The remaining 28,000 vehicles are operated by the 'Own Account' sector and are not regulated. As they pay no 'O' licence fees\* they contribute nothing to Road Safety enforcement.

\*Information supplied by DOE Road Safety Branch.

Almost 2000 registered keepers of HGV's attended the eight DOE Road Shows during February and March 2008.

The feedback has been very positive and the majority stated afterwards that they understood the need for change and the importance to improve the overall standard of vehicle roadworthiness. There has been wide consultation and the Committee for the Environment should be encouraged to take forward the Review of the Transport Industry and ensure the necessary legislation is put into place as soon as possible.

### **Issue: Need to improve operational standards**

Vehicles are tested annually for roadworthiness but then on the days after the test the vehicle roadworthiness condition decreases depending on usage. There should be a requirement for vehicle operators to voluntarily carry out mandatory safety inspections as part of the proposed licensing regime.

### **Issue: Need to ensure fair competition**

This section will deal with overloading vehicles and widespread abuse of EU Drivers Hours regulations.

### **Issue: Need to reduce Criminality**

This section will deal with the FTA oral evidence given to the NI Select Affairs Committee at Westminster in 2004.

The extent of illegal trading in fuel oil is at epidemic proportions and is a huge loss to the NI economy. It is immoral for criminals to be permitted to carry out these activities and the introduction of full 'O' licensing will help to reduce the levels of crime.

T Wilson  
20th March 2008.



**Road Haulage Association**

**Presentation to the Committee for the Environment 24 April 2008**

The Road Haulage Association (RHA) responded to previous 'O' Licence review consultations during the 1990's and 2003 and supported the eight DOE road shows held earlier this year. At these very well attended events, RHA staff were pleased to make presentations on the reasons for the proposed changes and have assisted many of the operators understand the need for change and what effects the changes will have on their operation.

There are more than 15,000 registered keepers of more than 35,000 commercial vehicles over 3.5 tonnes in Northern Ireland. The vast majority appear to be own account though no one knows the exact number as some who have believed they were own account are in fact "hire and reward." Over the past few weeks a considerable number have applied for 'O' licenses as they became aware of the current regulations. Regardless, the vast majority of operators do not need any licence at present and many are unaware of the regulations for drivers' hours, overloading and vehicle standards.

This was highlighted during recent roadside checks throughout Northern Ireland last year. In GB, roadside checks have consistently resulted in Northern Ireland operators having one of the worst records for non-compliance within the EU. Only two E U states have a worse record than Northern Ireland. Northern Ireland operators also have a poor record when presenting commercial vehicles for annual test with more than a third (37.3%) rigid vehicles failing, 32.2% articulated vehicles failing and 26% of trailers failing.

On purely road safety issues RHA supports the proposed changes and would welcome the introduction of "own account" licensing and the changes to bring the whole system more in line with the GB model.

Recently the authorities in the Republic of Ireland have recommended that all commercial vehicle operators be licensed for reasons similar to the situation in Northern Ireland and RHA welcomes this announcement.

Bringing all vehicles over 3.5 tonnes in Northern Ireland into the system would lead to a more equitable cost base for licensing as at present only the "hire and reward" sector pays. As this accounts for about 20% of the vehicles, the economies of scale of bringing the other 80% into the scope would ensure a fairer distribution of the costs.

**Road Haulage Association Ltd**  
Scotland & Northern Ireland      Director Phil Flanders      Email: [scotland@rha.ie](mailto:scotland@rha.ie)  
Roadway House, The Rural Centre, Ingleton, Newbridge EH23 8NZ Tel: +44 (0)44 131 472 4189 Fax: +44 (0) 131 472 4179  
Registered in England No. 391896 Registered office: Roadway House, 35 Monument Hill, Weybridge, Surrey KT13 8RN [www.rha.net](http://www.rha.net)

Overloading offences, drivers' hours infringements and defective vehicles are not mutually exclusive to the current licensed operators. It is unfair that only these operators can lose their good repute for offences that are commonplace across all sectors. The extra funding raised by licensing all operators would ensure a more comprehensive enforcement regime that would improve standards and road safety.

Everyone operating to the same standards would also create fairer competition and reduce the opportunity for criminal organisations to use the road freight sector for their illegal activities.

The review of the 'O' licensing system gives an opportunity for Northern Ireland operators to improve standards and image on a wider E U stage. The benefits of enhanced road safety alone, reducing the possibility of injury or death, should be reason enough to support the proposed changes and RHA hopes that the Committee for the Environment shares this view .

Phil Flanders  
Director Scotland & Northern Ireland  
April 2008



8 July 2008

Patricia Casey  
Clerk to the Environment Committee  
Northern Ireland Assembly  
Room 245  
Parliament Buildings  
Belfast  
BT4 3XX

Dear Patricia,

**Goods Vehicles (Licensing of Operators) Bill**

Please find enclosed the Ulster Farmers' Union views on the above Bill.

1. Introduction
2. PSNI Road Traffic Collision Statistics
3. Unique nature of agriculture/horticulture
4. Maintenance of vehicles
5. The UFU Position

**1. Introduction**

The Ulster Farmers' Union (UFU) is the largest democratic voluntary organization representing farmers in Northern Ireland, with a membership consisting of 12,500 farm families. Whilst the UFU acknowledges and recognizes the need for increased safety for goods vehicles and efforts to address the environmental impact of their use, we are concerned that this legislation could be extended to include vehicles used for agricultural, horticultural or forestry work. The UFU are opposed to any such extension. Should this happen, the potential number of vehicles affected would be immense.

**2. PSNI Road Traffic Collision Statistics**

In the first instance we would want to draw your attention to Table One on the next page, which shows the number of collisions and casualties on Northern Ireland's roads, and the UFU wish to highlight the percentage involving tractors.

**Table One - All casualties PSNI Annual Statistical Report: Injury Road Traffic Collision and Casualties 1/4/07 – 31/3/08**

	2003/2004	2004/2005	2005/2006	2006/2007	2007/2008
<b>Pedestrians</b>	803	678	707	780	818
<b>Drivers of motor vehicles</b>	5156	4446	4284	4681	4987
<b>Motorcyclists</b>	467	467	395	412	470
<b>Pedal cyclists</b>	189	160	154	161	241
<b>Passengers</b>	3749	2934	2786	3125	3156
<b>Pillion passengers</b>	21	20	18	29	23
<b>Other road users</b>	37	41	33	44	53

**Note – Other road users includes drivers, riders and passengers of “other vehicles” including tractors, horse-drawn vehicles.**

If you refer to Table One, there was a total of 9748 casualties in 2007/08. As far as ‘other road users’ are concerned, it was 53, which is only 0.54% of the overall total and is extremely small in comparison. The UFU point out that the number of total collisions and casualties on Northern Ireland’s roads attributable to tractors is negligible.

Having read the details of the Bill, the UFU feel that it will affect many vehicles already involved in agricultural/horticultural/forestry work which previously would not have been impacted upon by the need for an ‘operators license’.

### **3. Unique Nature of Agriculture/Horticulture/Forestry**

Whilst the UFU acknowledges that the new legislation is aimed at those who are accepting higher reward for carrying goods for others, the industries which we represent are in a unique position. As demonstrated in several recent high profile cases, there have been conflicting definitions of what constitutes farming use and haulage when it came down to white/red diesel usage. The enforcing authorities were occasionally unable to differentiate when which type of diesel should be used. Hence, the UFU would be concerned that the same confusion could reign, if it is not established at this early stage that agricultural/horticultural/forestry activities are fully exempt from any ‘operator license’ legislation.

### **4. Maintenance of Vehicles**

The UFU acknowledges the need for maintaining records of vehicle maintenance, however, we do object to over regular checks. Instead, the UFU would favour less stringent checks. The UFU are concerned about the extra regulatory impact of the above legislation upon an industry already under the burden of increased bureaucracy and red tape. For example, vehicles carrying livestock are already subject to stringent regulations - the EU welfare in transport regulation (EC) No 1/2005 governs the vehicles used to transport animals. As well as covering the welfare of animals, this legislation covers the road worthiness of the vehicles being used to carry livestock.

Under existing legislation, it is only those users who move produce for other persons who need to apply for this license. The new regulations mean that any vehicle with a gross plated weight of over 3.5 tonnes will have to obtain an operators license. The UFU believe that this could cover many agricultural/horticultural/forestry operations.

**5. The UFU Position**

The UFU believes that if a vehicle is carrying out a proven agricultural/horticultural/forestry activity, it should be exempt from the need to obtain an 'operators license'. If, however, agricultural/horticultural/forestry vehicles will be affected, the UFU will be asking for a series of exemptions to be introduced. We have been given an assurance by DoE that because this Bill is only the enabling powers, exemptions will be dealt with later at the subordinate stage when the more specific views of the UFU will be considered at that time.

We would ask that the Environment Committee would consult with us as this process evolves and would welcome the opportunity to provide our views to you on this new legislation.

Yours sincerely,

*Chris Osborne*

**Chris Osborne**  
**Policy Officer**





**HORTICULTURE FORUM  
FOR NORTHERN IRELAND**

16 Ballyhenry Road  
Comber  
Newtownards  
Co Down  
BT23 5JY

9 July 2008

Patricia Casey  
Clerk to Environment Committee  
patricia.casey@niassembly.gov.uk

Dear Ms Casey

**Goods Vehicles (Licensing of Operators) Bill**

The Horticulture Forum for Northern Ireland recently met with Donald Armstrong and Gillian McIntyre, Roads Safety Policy Branch, to discuss the implications of the proposed Goods Vehicle (Licensing of Operators) Bill for horticulture in Northern Ireland. The Horticulture Forum which represents all sectors of horticulture both commercial and amenity, welcome initiatives that aim to improve both road safety and the environment. However the Horticulture Forum would also like to express a number of concerns about this Bill and the additional burden it will place on the industry.

- The Horticulture Forum remain unconvinced that the extension of this legislation to agriculture and horticulture will have any significant impact on road safety or indeed the environment in Northern Ireland. PSNI Statistics indicate that the number of collision casualties resulting from Other Road Users (including tractors) is less than 1% of the total in any of the last 5 years.
- The significant costs of the proposed new licence will add an additional financial burden to the industry. The horticulture industry is aggrieved that this additional cost will be used to increase compliance checks. While they are in agreement that monitoring is essential they do not feel they should have to

withstand the costs of others who do not comply with the existing legislation.

- Members of the Horticulture Forum have major concerns about the additional level of recorded vehicle maintenance the new legislation could impose and indeed the additional administrative burden. They are in agreement that the existing PSV monitoring should be sufficient provided resource is made available for additional compliance checks without imposing further legislation.
- Horticultural operators are of the opinion that they should remain exempt from the proposed legislation as in the main they are relatively low road users in the course of their businesses. The Horticulture Forum fully intends to input to any consultations regarding exemptions to the legislation as they arise.

I trust these concerns will be given consideration.

Yours sincerely



**Robin McKee**  
**(Chairman of the Horticulture Forum for Northern Ireland)**

Cc: [william.long@niassembly.gov.uk](mailto:william.long@niassembly.gov.uk)

## **Beverley Bell, Traffic Commissioner, North West Traffic Area**

Having been appointed by the Secretary of State for Transport to the post of Traffic Commissioner for the North West Traffic Area in April 2000 I welcome the opportunity to make representations to the Environment Committee with regard to the current legislation being considered with regard to operator licensing in Northern Ireland.

The main twin objectives of my role are the promotion of road safety and fair competition and my work as a regulator involves licensing, commercial lorry and bus and coach operators in the North West of England. Similarly once that licence has been granted it is my responsibility to ensure that the licence holders' standards do not slip below the requisite minimum standard so as not to jeopardise road safety and fair competition. In carrying out this function I am ably assisted by VOSA (Vehicle and Operator Services Agency) whose enforcement staff regularly report to me.

When I was first appointed the area had suffered from under regulation and my primary objective was to raise the profile of the North West Traffic Commissioner, to raise the standard of operators with licences and to root out illegal activity. My current objective is now to promote best practice, to modernise the way in which I regulate and to modernise the way in which operators ensure licence compliance.

Since my appointment I have been increasingly frustrated by the attempts of the illegitimate haulage industry to circumvent my orders and to continue illegal, unsafe and unfair competition. There are many ways in which this can be done but one of the most effective ways is to apply for (and obtain) an operators licence in Northern Ireland or the Republic. Please note that I am not for one moment being critical of any of the Northern Ireland licensing or enforcement staff as I hold them all in high regard. I am however being critical of the fact that the playing field is not level and that illegal operators can and do gain an unfair advantage by basing their operations in Northern Ireland.

I have been delighted to assist the Department of the Environment in providing evidence to them of such illegal competition and of the effects of operators' failures to observe minimum road safety and fair competition rules. I have been even more delighted to read of the commitment to an operator licensing regime that is very similar to that in Great Britain.

I (and my colleagues in other traffic areas in Great Britain) therefore welcome most warmly the current legislation which the committee is scrutinising as I am absolutely certain that it will result in the promotion of road safety and fair competition. It has always been the case that Traffic Commissioners have regulated with a "light touch" and it appears that this legislation also adopts a similar approach. The key to effective regulation is the granting of discretion to the regulator.

I realise that the legislation represents something of a "sea change" with regard to operator licensing and that the implications for the committee to consider are complex. I hope I will therefore not be considered too impertinent to state that if the committee does receive oral representations or presentations that I am very happy to oblige. Similarly if further written representations or evidence is required I am happy to assist.

Finally if the Committee would like to know more about how I exercise my statutory functions in the North West Traffic Area (and with reference to Traffic Commissioners generally) as an aide to understanding how new powers might be exercised under this legislation I am very happy to provide this.

The Commissioners are required, by statute, to provide an Annual Report and I have put a hard copy of this in the post. It is however, also available online at [www.dft.gov.uk/pgr/roads/tpm/trafficcommissioners/annualreports/](http://www.dft.gov.uk/pgr/roads/tpm/trafficcommissioners/annualreports/) . The key data that you may wish to consider, apart from the text, are table 8 and chart 9 with regard to Goods Vehicle operators.

Finally if you require any further information please do not hesitate to contact me or my secretary, Pauline McEwan, on 01942 295021.

Beverley Bell  
Traffic Commissioner for the North West

## **Appendix 4**

### **List of Witnesses**

Mr Gerry Fleming Freight Transport Association  
Ms Joan Williams Freight Transport Association  
Mr Tom Wilson Freight Transport Association

Mr William Oliver Road Haulage Association  
Mr Phil Flanders Road Haulage Association

Mr Chris Osborne Ulster Farmers' Union  
Mr Gregg Shannon Ulster Farmers' Union  
Mr Harry Sinclair Ulster Farmers' Union  
Mr Bailey Thompson Ulster Farmers' Union

Mr Colin Eve Horticulture Forum for Northern Ireland  
Mr Robin McKee Horticulture Forum for Northern Ireland  
Mrs Bernie Cosgrove Horticulture Forum for Northern Ireland

Mrs Beverley Bell Traffic Commissioner, North Western Traffic Area

## **Appendix 5**

### **Other Papers Submitted to the Committee**

### **Road Freight Licensing of Operators Bill: Policy Memorandum**

#### **Background**

The Department of the Environment through the Driver and Vehicle Agency (DVA) is responsible under the Transport Act (NI) 1967 for the licensing of operators, their drivers and vehicles that carry other people's goods by road for reward.

It also determines the roadworthiness of vehicles and checks the repute of drivers and, together with the Police Service of Northern Ireland (PSNI), is responsible for freight regulation enforcement.

The need for change to the road freight operator licensing system in Northern Ireland has been raised by the freight industry, public representatives and consumer organisations, who are dissatisfied with the way in which freight services are delivered under existing policy and legislation. They are concerned:

- that the burden of regulation falls on one side of the freight industry;

- at the extent of illegal operations;
- about the poor standard of vehicle maintenance and;
- that there should be more and better enforcement.

The Department has consulted twice (in 1998 & 2003) on proposals to bring the NI road freight operator licensing system into line with the system now operating in Great Britain. In March 2004, the then Minister Angela Smith approved the proposals, with the exception of the introduction of a traffic commissioner for Northern Ireland.

## **Issues the Bill is intended to Address**

### **Partial Regulation of Freight Operators**

In Northern Ireland, there are currently over 2,000 operators licensed to carry goods for hire and reward when using a vehicle with a gross plated weight of more than 3.5 tonnes. "Own Account" operators (those operators who carry their own goods in the course of their business or trade), who make up around two thirds of the industry, are not required to be licensed. Industry representatives believe that the hire and reward sector are being treated unfairly as they must bear the cost of licensing in Northern Ireland. In Great Britain all operators must be licensed.

### **Enforcement**

Northern Ireland has much weaker freight licensing enforcement powers than in GB. This issue, combined with the fact that only one sector of the industry is regulated, has given industry representatives and enforcement teams both in NI and GB cause for concern for some time. Traffic commissioners, enforcement agencies and police forces in GB have complained about the standards of NI vehicles crossing to GB and about breaches of traffic and transport laws by them. Illegal operators, who avoid standard checks and controls, pose a major threat to safety and environmental standards within the road haulage industry.

It is the responsibility not only of operators but also of drivers to ensure that they comply with the rules. There is insufficient sanction against operators and drivers who fail to keep their vehicles in a fit and serviceable condition. There are examples of forgery of licensing documents, of overloading, of speeding, of contravention of parking restrictions and prohibitions and of unlawful use of vehicles and insurance.

### **Organised Crime**

The Organised Crime Task Force is a forum where government, law enforcement and a wide range of other agencies set strategic priorities for tackling organised crime. It was created in September 2000 by the then Secretary of State to develop a co-ordinated multi agency approach to confronting the growing problem of organised crime in Northern Ireland.

The Organised Crime Task Force has taken a keen interest in the Review of Road Freight Operator Licensing in Northern Ireland. They requested that the project be accelerated from the original target date of July 2007 and will be carefully watching progress.

### **Road Safety**

Goods vehicles make a significant contribution to the number of people killed or seriously injured (KSI) in Northern Ireland. Changes in legislation and enforcement which will improve the

standard of vehicles, drivers and operators in this sector will be a welcome contribution to the reduction in fatalities and casualties.

There is evidence that illegal operators are undercutting the legitimate freight industry, thus threatening the viability of many within the industry and contributing to the poor road safety record.

One of the main aims of the proposals is to ensure safe and proper use of goods vehicles thus contributing to road safety. The applicant/operator will be required to give undertakings to maintain vehicles in a fit and serviceable condition at all times and comply with traffic and transport related laws.

## **Environmental**

There is presently no sanction within the road freight licensing legislation against operators who do not pay attention to the environmental standards of their operating centre. Operating centres have the potential to affect a considerable number of households in Northern Ireland. Present licensing arrangements fall short of offering any effective environmental safeguards.

## **Purpose and Key Features of the Bill**

The overall aim of the new Bill is to have, in one dedicated statute, the primary powers needed to deal with all matters relating to the regulation of road freight operators in Northern Ireland. The Department wants to bring its system into line with the system currently in place in Great Britain – so the Bill may largely (but not wholly) replicate their Goods Vehicles (Licensing of Operators) Act 1995.

It is proposed that the new Bill will replace the existing provisions contained in the Transport Act (Northern Ireland) relating to:

- (a) the licensing of road freight operators;
- (b) the licensing of road freight vehicles; and
- (c) enforcement.

The Bill will also introduce new powers in relation to:-

“Own account” operators - The new Bill will extend the licensing requirements to the own account sector. This will require operators who carry their own goods in the course of their business to hold an operator’s licence.

Application of environmental conditions to operating centres - The Department will have to be satisfied that the area where vehicles are normally kept is big enough, with safe and suitable access and in an environmentally suitable location.

Continuous licensing - Presently an operator’s licence lasts for five years. It is proposed to mirror GB, where the licence remains in force indefinitely provided the operator remains within the terms on which the licence was granted (subject to periodic review).

Publication of notices of application for a licence - The applicant will be required to advertise their application and the Department will consider certain objections to the grant of a licence.

Maintenance undertakings - Operators will be required to give undertakings in respect of vehicle maintenance and compliance with road traffic and transport law.

New disciplinary procedures and appeals - The Department plans to establish new disciplinary action and appeals procedures which will be human rights compliant

Impounding - The Department plans to introduce an impounding scheme for illegally operating heavy goods vehicles.

## **The Main Options Considered, Options Selected and Why**

### **Background**

A number of factors influenced the drawing up of options for the way forward, the main one being the development of the licensing system in the rest of the UK.

### **Licensing Developments in GB**

In GB the operator licensing requirements have evolved considerably in the past 30 years. Initially, objectives were concerned with mechanical aspects linked principally to road safety - ensuring that fleets were maintained to a sufficiently high standard and that HGVs were not overloaded. The minimum standards of financial capability, business competence and repute set in the 1960s also contributed to road safety objectives as well as protecting the interests of established legitimate operators.

In the 1970s restrictions on drivers' hours were introduced followed by tachograph monitoring. The minimum standards of business competence, financial standing and repute, which applicants to the freight and passenger transport markets had to meet, were also enhanced and made more uniform throughout the EC.

In the 1980s concerns turned to environmental issues. The publication in 1980 of the Armitage Report (a report of the Inquiry into Lorries, People and the Environment, A. Armitage HMSO1980) highlighted the environmental threat posed by HGVs in GB, especially those in the over 38 tonnes category, which, under proposed EC law, were likely to be admitted to the UK for the first time.

Licensing procedures in GB have therefore evolved progressively since the 1960s to accommodate changing objectives.

### **Licensing in Northern Ireland**

In Northern Ireland similar concerns for road safety were reflected in the provisions of the Transport Act (Northern Ireland) 1967, covering the licensing of goods and passenger operators. The 1967 Act was however restricted to those involved in commercial haulage and passenger transport and did not cover those hauling their own goods. This was perhaps due to an expectation that vehicle testing (then the responsibility of the Ministry of Home Affairs), which applied to all HGVs, would provide a sufficient safeguard against unroadworthy vehicles being used by anyone involved in freight transport, either for reward or simply in respect of their own goods. Whatever the reason, at the very outset a significant part of the road freight business lay outside the scope of operator licensing legislation in Northern Ireland – it still does.

In the 1970s the EC directives which standardised licensing of those involved in the commercial haulage of goods applied to Northern Ireland also. Subsequently, requirements for entry to the industry became more explicit, more exacting in certain respects and consistent with those elsewhere in the EC.

The Armitage Enquiry did not cover Northern Ireland and, as a consequence, there are no explicit environmental provisions within Northern Ireland legislation or practice.

While the basic requirements of the EU are presently met by the NI system, it is out of line with the rest of the UK by not applying to the own account sector.

## **Options**

Recognising the deficiencies in the Northern Ireland road freight operator licensing system the Department considered a number of options for the way forward.

### **Option 1**

Do nothing - As the road freight operator licensing system in Northern Ireland meets the basic EU requirements the Department considered that doing nothing might be an option.

#### Advantages

- System meets EU requirements
- No regulatory change for the industry

#### Disadvantages

- Unfair competition due to lack of consistency in legislation throughout the UK and one section of the industry remaining unregulated
- Weaker enforcement powers than the rest of the UK
- Lack of resource for enforcement activity
- No environmental standards at operating centres
- Unlike GB, no requirement to give maintenance undertakings
- No improvement in road safety
- No improvement in tackling organised crime

### **Option 2**

Replicate the GB provisions

#### Advantages

- Consistency of policy and legislation throughout the UK – creating a fairer basis for competition
- Improved enforcement powers including impounding of vehicles
- Regulation of the whole industry
- Improved maintenance standards



- Application of environmental standards at operating centres
- Spreading the burden of regulation equitably across the whole industry
- Improving enforcement effectiveness against organised crime

#### Disadvantages

- In terms of economies of scale, full replication of GB provisions may not be the best option as this may not suit the needs of all stakeholders in NI

### **Option 3**

Replicate the GB provisions with local variations

#### Advantages

- Consistency of policy and legislation throughout the UK – creating a fairer basis for competition
- Improved enforcement powers including impounding of vehicles
- Regulation of the whole industry
- Improved maintenance standards
- Application of environmental standards at operating centres
- Spreading the burden of regulation equitably across the whole industry
- Improving enforcement effectiveness against organised crime
- Given NI's size, there is insufficient volume/market size to justify a traffic commissioner for freight alone. Local variation will enable consideration of the wider implications including taxis and public transport.

### **Discussion of Options**

Having carried out a review of the system in 1991 and two public consultations in 1998 and 2003, which all supported aligning the system with that in operation in GB, the Department rejected option 1 (no change).

Consultation on the proposals revealed that there was a need for some local variation, for example, with regard to the appointment of a traffic commissioner for Northern Ireland. This was also considered to be a much wider issue as policy options for other operator licensing areas (taxis and public transport) are currently being considered, so the Department rejected Option 2 (align with GB).

It was decided that option 3 would be most suitable as it aligns the powers of the Department with those currently available in GB but gives some scope for the system in Northern Ireland to have slight variations.

### **Consultative Process Undertaken**

The Department has reviewed the road freight operator licensing system in Northern Ireland on three occasions.

In 1991 the Department commissioned a review of the road haulage industry, carried out by Dr Gerry Mulligan. This was instigated as a result of the increasing disparity in the legislation, policy and practice in the licensing of freight operators between GB and NI and by the fact that GB was also undertaking a major review of operator licensing. The fact that many of the objectives of operator licensing were the same throughout the UK, such as road safety and safeguarding the interest of legitimate operators and consumers, called the existing differences in GB and NI legislation and policy into question. The prospect of even greater disparity increased concerns further.

Dr Mulligan reviewed the existing policy, practice and procedure for the licensing of road freight operators in the light of needs in Northern Ireland and developments in GB and the EC. Having consulted with Government in GB and NI, industry representative groups and a number of interested bodies, he made a series of recommendations which were in line with the system in operation in GB at that time.

Unfortunately, however, bids for funding were unsuccessful and the majority of Dr Mulligan's recommendations were not implemented.

In 1998, following representations from the Freight Transport Association (FTA), the Department published a consultation document containing proposals to bring the Northern Ireland road freight operator licensing system into line with the system operating in Great Britain. The proposals included:-

- extending licensing requirements to the own account licensing sector
- continuous licensing
- new requirements in relation to maintenance of vehicles
- establishing environmental considerations in relation to operating centres
- new disciplinary and appeals procedures
- the appointment of a traffic commissioner for Northern Ireland.

The consultation document issued to over 2000 consultees including the FTA, Road Haulage Association (RHA), Confederation of British industry, Federation of Small Businesses, employers associations and licensed haulage operators as well as to district councils and other interested parties. There were 34 replies to the consultation and most of the substantive responses including those from FTA and RHA supported the proposals. Of the few objections received, one of the most common was that the annual road freight vehicle licence should be renewed every five years in line with the operator's licence. However, since this is a vehicle excise revenue issue, an "excepted matter" under the NI Act 1998 and not within the legislative competence of the Assembly, it is out with the scope of this review.

Following this consultation in 1998, the then Minister Lord Dubs concluded that the proposals should be left to be progressed by the new Northern Ireland Assembly in due course. However, due to lack of resources and other competing priorities, an opportunity to take the matter forward did not arise.

In 2003, the Department revisited and updated the 1998 review and issued a new consultation document. It took account of developments since 1998 eg new legislation introducing an impounding scheme for illegally operating heavy goods vehicles and their contents which has been in operation in GB since January 2002, and the Human Rights Act, which came into operation in October 2000, and requires appeals procedures to comply with the European Convention on Human Rights.

The revised consultation document issued on 14 March 2003 to a wide range of bodies representing road safety, transport and motoring interests, trade associations and employee representative bodies, insurance industry representatives, courts and legislative interests, government departments, local authorities and agencies as well as NI political parties, MPs and MEPs.

Nineteen replies were received of which four offered no comments, eleven made a few comments and four provided detailed responses. The response to the consultation was generally positive, with the major concerns being increased costs for legitimate operators, significant constraints on existing operators' ability to compete in a highly competitive market and the need for actual enforcement of the regime.

The Department considered carefully all comments received in response to the consultation and concluded that all the proposals included in the consultation should be implemented with the exception of the appointment of a traffic commissioner for Northern Ireland. The issue of a traffic commissioner was to be considered further in the light of the Department's ongoing review of the regulation of the taxi industry and the Department for Regional Development's review of the regulation of the bus industry.

## **Cost Implications**

The proposed new regulatory system is expected to run on a full cost recovery basis.

The resources to progress the Road Freight Licensing of Operators Bill through its legislative stages are available within the Department. Enacting the legislation will have no financial implications for public sector expenditure.

Enactment of the subsequent subordinate legislation programme will have some financial implications. Resources are required to introduce new regulations and administrative and IT systems.

While expenditure will be required to put these new systems in place, all licensing functions are expected to run on a full cost recovery basis, which would include recouping these initial set-up costs. Business cases will be developed in tandem with the subordinate legislation to inform future funding bids.

A partial regulatory impact assessment (RIA) is being prepared and will be available with the draft primary legislation. A full RIA will be prepared along with the subordinate legislation.

## **Human Rights Issues**

As the Bill is drafted, its provisions will be examined to ensure compatibility with the Convention on Human Rights.

## **Lifetime Opportunities**

No implications

## **Equality Impact Assessment**

As this involves enabling legislation, an equality impact assessment will be considered with all subordinate legislation.

## **Impact on North-South and East-West Relations/Co-operation/Common Action**

North / South

There will be improvements in enforcement cooperation

East/ West

The Bill will have a positive impact on East West relations in terms of:-

- consistency of approach and improvements in road safety and regulation of the industry and,
- improvements in enforcement cooperation

## **Relevant EU Issues**

Freight regulation for the "own account" sector is a matter for individual Member States. Freight regulation for the hire and reward sector is governed by EU Directives and both NI and GB are in compliance with these directives.

# **Legislation re Safety of Passengers in Goods Vehicles (Licensing of Operators) Bill**

Central Management Branch  
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BELFAST  
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Northern Ireland Assembly  
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Your reference:  
Our reference: CQ/36/07

Date: 28 November 2007

Dear Patricia,

## **Legislation Re Safety of Passengers in Goods Vehicles Road Freight (Licensing of Operators) Bill**

Following its meeting on 8 November 2007 the Committee requested further information on:

### **Legislation re safety of passengers in goods vehicles**

### **Seating**

Legislation in NI relating to construction, use and testing of goods vehicles makes provision for seat belts and seat belt anchorage points but no specific legislative requirement is made in relation to the provision of seating in such vehicles.

#### Seat belts

1. There is a legal requirement to have seat belts fitted on all forward facing front seats in goods vehicles (by virtue of the Motor Vehicles (Construction and Use) (Amendment No. 2) Regulations (NI) 2002 [SR 2002 No. 256].

2. There is no legal requirement for seat belts to be fitted in the rear of such vehicles. However, the Department of the Environment's advice is that the safest way for passengers to travel is in a proper seat (i.e. a forward or rearward facing seat) with an appropriate seat belt fitted. Moreover the Construction and Use Regulations make important provision intended to ensure that such vehicles are used safely viz:

Regulation 115 of the Construction and Use Regulations provides, among other things, that the number of passengers carried by a motor vehicle or trailer, and the manner in which they are carried, shall be such that no danger is caused, or is likely to be caused, to any person in or on the vehicle or on a road.

3. Article 71 of the Road Traffic (NI) Order 1995 provides that, subject to certain specified exceptions, no passenger shall be carried on a goods vehicle except on permanently attached seats placed beside the driver's seat. Exceptions to this requirement include:

(i) any passenger on a goods vehicle which is a "dual purpose" vehicle; and

(ii) any authorised passenger on a goods vehicle which is not a dual-purpose vehicle. Such authorised passengers would include the owner of the vehicle; or an employee of the owner being carried in connection with his employment; or up to 2 persons with the consent of the owner in connection with the load.

4. The afore-mentioned Article 71 gives flexibility to industry and has been a feature of Northern Ireland road traffic law since at least 1955. It should however be noted that such provision is still subject to Regulation 115 of the Construction and Use Regulations (paragraph 2 (above) refers).

[NOTE: A dual purpose vehicle is defined in Article 2(2) of the Road Traffic (NI) Order 1981 and essentially comprises a vehicle which is constructed or adapted for the carriage both of passengers and goods or a burden of any description with an unladen weight of not more than 2040 kilograms. An example of a dual purpose vehicle would be a 4 wheel drive jeep such as that manufactured by Land Rover, Nissan etc.].

### **Road Freight (Licensing of Operators) Bill – Proposed Timetable**

Target date for completion of drafting	Feb 08
Consultation on draft Bill [8 weeks]	Mar -April 08
Re-drafting following consultation	May 08
Executive Paper on Bill to Ministers	June 08
Executive Paper to Executive	June 08

Introduction to Assembly [First Stage]	June 08
Second Stage	July 08
Committee Stage [incl 30 days]	Sept - Dec 08
Consideration Stage	January 09
Further Consideration & Final Stage	February 09
Royal Assent	March 09

It should be noted that the timetable sent with our previous submission to the Committee in October included a timetable up to Introduction Stage. We did not project the timetable any further at that time as once the Bill enters Introduction Stage timing is beyond the Department's influence and control.

The above timetable projects the complete passage of the Bill, although, as pointed out above, much of it is outside the Department's control. It is a best guess at a timetable based on the experience of the Taxis Bill.

Yours sincerely,

Una Downey

DALO  
[By Email]

## **Goods Vehicles (Licensing of Operators) Bill Briefing for Environment Committee on 24th January 2008**

Attending  
Donald Armstrong - Road Safety Policy Branch,  
Gillian McIntyre - Road Safety Policy Branch  
John Brogan – Road Transport Legislation Branch

Presentation:

Background: Commitments  
Consultations  
Communications

Current Situation: Problems  
Proposed Options  
Proposal Overview

Legislation: Goods Vehicles (Licensing of Operators) Bill  
Subordinate Legislation

Way forward: Freight Industry Briefings  
Primary legislation Timetable  
Final Operational Timescale

Implementation: IT Systems  
Administration Systems  
Transitional arrangements  
Resources  
Communication with the Industry

## **Report on the Briefings given by DOE to the Freight Industry February – March 2008**

### **Public Briefing Sessions**

#### **Overview:**

Some 15000 operators were invited to attend a series of industry briefing sessions held at eight venues throughout Northern Ireland during February and March 2008. The purpose of the briefings was to begin a process of communication with the industry by giving them an overview of the proposals for operator licensing in Northern Ireland. The Department was supported at each of the briefing sessions by representatives of both the Road Haulage Association (RHA) and Freight Transport Association (FTA).

The response was overwhelming. Some 1800+ people attended, representing around 12% of the industry. Presentations were well received and the general response to the briefings was positive. The majority of attendees sought information to enable them to operate legally and indeed quite a few discovered they should have an operator's licence already.

The Department expected certain issues to cause the industry concern, for example cost and operating centres and these issues were raised. However, whilst they were discussed, they did not seem to be as problematic as at first anticipated. The issue of competition from Irish operators and potential flagging out was also expected to be an issue in border areas but in fact this issue was rarely mentioned.

The majority of queries centred around individual circumstances and Northern Ireland exemptions.

The Department also issued questionnaires at each venue to begin building up a better picture of the industry and the problems operator licensing might cause. Around 10% of attendees completed a questionnaire which asked about the nature of their business, fleet size, operating centres, costs and the impact of operator licensing on their business. Responses to these were also generally positive and they are presently being used to inform the development of a Regulatory Impact Assessment.

### **Main Issues Raised**

#### **Maintenance**

Officials outlined the requirements of the proposed Bill in relation to undertakings, daily checks, regular safety inspections and record keeping.

Discussion centred on the frequency of maintenance checks, cost of maintenance and the qualifications required by maintenance providers.

Concerns were also expressed at the inconsistency at DVA Test Centres and the fact that failure at test could impact on the operator's risk rating, repute and, ultimately, operator's licence. It was accepted though that DVA Tests were being used to advise operators of defects for repair.

Some attendees questioned whether improved roadworthiness of vehicles would improve road safety.

There was also some confusion about requirement for a transport managers certificate of professional competence (CPC) for a restricted licence and confusion with driver's CPC.

## **Operating Centres**

Officials outlined the requirement for operators to have an operating centre or operating centres to park their vehicles when not in use. Operating centres would have to have sufficient space to park all vehicles and trailers, be environmentally suitable and have safe access/ egress. Operators would be required to advertise details of operating centres in a local newspaper and local residents would have the opportunity to make representations on environmental grounds. A number of statutory objectors e.g. PSNI, Government Departments would also have the right to make objections.

The most frequently asked questions were how the Department would handle applications where operators parked their vehicles at home or where existing operating centres had become surrounded by housing over a period of years. There were also concerns about those who could make representations and how the Department would satisfy itself that these were genuine and not made in an attempt to put someone out of business.

Requests were made for the Department to think carefully about the transitional arrangements and about granting grandfather rights for existing operators.

## **Cost**

Officials outlined the Department's plans to introduce fees in line with GB, at least in the first instance. They showed examples of the two tier application fee and vehicle fees for operators with one, three and ten vehicles. Officials also explained that regulation is self funding and that all the money brought in from fees would go towards the costs of administration, IT, staffing and enforcement.

Some attendees viewed the development of 'O' Licensing as a money making ploy by government and a stealth tax. They were concerned at having to pay another cost on top of rising fuel costs and other costs of regulation. They also queried how the Department could justify the two tier fee.

Some small operators felt that the fee was too much for them in addition to the costs associated with maintenance and paying for an operating centre. Some larger operators also felt that the cost structure disadvantaged them.

## **Exemptions**



Attendees were given a handout showing the current list of GB exemptions. Officials explained that while these could be perceived as archaic, complex and difficult to understand they were the best guide available at present. They explained that it was hoped to simplify the NI exemptions which were still under consideration. NI exemptions would be included in regulations and these would be subject to public consultation in due course.

Many of the queries at the public briefings were requests for clarification of specific circumstances. Some of the most common questions were about agricultural tractors, recovery vehicles, skip hire, horse lorries and emergency vehicles.

Officials were asked to simplify the GB exemptions and to draw up a list of NI exemptions sooner rather than later.

## **Enforcement**

Officials explained that two of the main drivers for the Bill were the need for fair competition and to contribute to a reduction in organised crime. The Bill would generate significantly increased funds for enforcement and also provide the Department with tougher enforcement powers.

Enforcement was not raised at every venue but some concern was expressed at the lack of enforcement action to tackle unlicensed operators and those using red diesel. There were also calls for a Transport court with prosecutors and magistrates with specialist transport knowledge

## **Other Issues**

At each of the venues, officials offered attendees the opportunity to ask questions about any aspect of operator licensing. Some of the most common questions / views were:

- Queries about the need for a CPC, how and where to get one etc, drivers' CPC and livestock CPC
- Questions about tachographs:- who needs them, what the rules are and why certain groups are exempt
- Queries about the need for a licence – some of those attending discovered they should have been licensed already and whether or not a licence is needed if only carrying goods for one day.
- Concern at the number of tractors being used for construction and general haulage
- Concern at the state of NI roads
- Concern at competition from foreign operators with lower fuel duty and no licensing costs
- Queries about insurance
- Requests for the Department to adopt a pragmatic approach to implementation of operator licensing in NI
- Concern at rising fuel costs

## **Other Briefings**

In addition to the public briefing sessions, the Department has also held a number of briefings for specific groups within the public and private sectors. These include NILGA, Rivers Agency, Roads Service, Belfast City Council, NI Bakeries Council and the Federation of Small Businesses.

The Department has offered to brief any interested groups if requested. A number of groups including the Ulster Farmers' Union and Federation of Small Business are to respond to the Department on this but future planned briefings include DARD, Fruit and Vegetable growers and Belfast Chamber of Commerce.

## **Other Queries**

In addition to the briefings, the Department has also been inundated with telephone calls and e-mail queries, responding in writing to over 160 queries during this period. Again, the majority of queries have been objective, with operators requesting advice on the detail of the scheme and what they need to do to comply.

## **Industry Briefing 19 February 2008 The Lodge Hotel, Coleraine**

Attendees: Circa 200 people attended. Presentations were well received and comments were generally supportive.

### **Issues Raised:**

#### Maintenance

- Some people wanted information generally on maintenance requirements, and to know whether the NI proposals would be the same as currently in GB?

### **Operating Centres**

- Encroachment from existing or new housing developments was a concern to those with existing operating centres. They wished to know how the Department would view objections from local residents in these circumstances.
- One person asked for guidance on whether a private house could be used as an operating centre.

### **Cost**

- There were some attendees who viewed the development of O Licensing as a money making ploy by government. They thought it would prove difficult to pay the cost of licensing as well as meeting the ever rising level of fuel for lorries.
- One person was keen to know how the two-tier application fee could be justified – i.e. an application fee, followed by another fee if and when the application was granted and was being issued.

### **Exemptions**

- No real concerns expressed. There were a number of specific questions on whether, for example, a horse-box, a mobile crane or cattle truck would be exempt.

### **Enforcement**

- There were no comments on this issue.

## **Other Issues**

- There were a number of questions around the area of Certificates of Professional Competence (CPC) – will it be needed for a restricted licence – is there a difference in CPC for standard national and standard international licence?
- One person was concerned about how the Department could remove CPC status from a person.
- There was a question on the tachograph requirements for privately owned and used HGVs.

## **Industry Briefing 20 February 2008 The St Patrick Centre, Downpatrick**

Attendees: Circa 140 attendees. The room was spacious and comfortable and everyone was seated. Presentations were well received and comments were generally supportive. The questions following presentation were generally specific to their own situation.

### **Issues Raised:**

#### **Maintenance**

- One person wanted to know if the existing licensing system in Scotland required the 6 weekly vehicle check to be carried out by a qualified mechanic.

#### **Operating Centres**

- There was some concern about the number of people who will be able to raise objections to the siting of an operating centre.
- One person was concerned that his existing centre (used to park up to 50 vehicles) may be deemed too large under any new licensing system.
- The sub-contracting of operating centres was discussed.

#### **Cost**

- There were no comments on the cost of the new system.

#### **Exemptions**

- Specific questions on personal circumstances
- Farming vehicles and use of agricultural vehicles seemed to be a confusing issue.
- The issue of skip lorries was discussed. There appeared to be a grey area in terms of who owns the rubbish/rubble contained in the skip on its way to landfill site – the hirer or the skip owner?

#### **Enforcement**

- There were no comments on this issue.

## **Other Issues**

- When a person hires a vehicle over 3.5t will that person require an O licence if he is using the vehicle to carry goods? If the hire period is for one day?
- One person was keen to know whether the owner and user of an operating centre would be charged rates for an operating centre.
- There was a question on the future Driver CPC requirements and qualifications.
- A discussion on livestock CPC took place – where animals are being transported over long distances.

## **Industry Briefing 25 February 2008 Broomhill Hotel L'derry**

Attendees: Circa 80. It appeared the majority of those attending came from a rural background and this was backed up from the details recorded in the completed questionnaires. Presentations were well received and comments were generally supportive.

### **Issues Raised:**

#### **Maintenance**

- DVA vehicle examiners should come out to inspect vehicle maintenance facilities to ensure repairs are being carried out properly. Standards of maintenance and repairs are generally poor. This would be an effective way of raising those standards.
- DVA is too often used by hauliers as an advice centre – hauliers will send a goods vehicle to annual test unprepared, with the intention of using the test to identify defects – then repair the defects to enable a pass certificate. There is little recognition among hauliers that the test pass certificate only indicates minimum standard has been achieved.
- Will the Freight Transport Association maintenance audit facility be available at weekends when vehicles are off the road? [This was in response to earlier comments made during the FTA presentation that they offer a service where qualified mechanics can visit premises to carry out roadworthiness checks on goods vehicles]
- Further to the figures outlined in Road Safety Division's presentation on HGV roadworthiness failure rates – is there any evidence that those failure rates were higher in the own-account sector compared to the hire & reward sector?

#### **Operating Centres**

- Concern about the transition process – if an own account operator has an operating centre at present, how will it be dealt with by the Department during the application process?

#### **Cost**

- Some concern about affordability was expressed.
- Small operators will not be able to afford the cost of application and grant of a licence even though it will last for a five year period. Some attendees were of the opinion that

small operators were, largely, already compliant with road safety and vehicle maintenance standards and that regulation was not, therefore, necessary.

- The Department should be offering to small operators a grant towards the cost of a licence.

## **Exemptions**

- Some attendees were keen to learn about the vehicles that will be exempt from licensing.

## **Enforcement**

- There were no comments on this issue.

## **Other Issues**

- Some interest in the general area of CPC was expressed – how will CPC be gained? Will there be a test? Who does the training and where is it conducted?
- There was general concern about the growing number of tractors and trailers that are essentially agricultural vehicles are being used systematically for general haulage purposes. The tractors are mainly of the fast-track type and many owners are using red diesel while on the road for haulage hire & reward work. There was a call for more and better enforcement against this practice.
- One attendee was concerned about the growing number of vehicles that are registered in Republic of Ireland and being used in haulage for hire & reward in NI.
- A number of attendees felt that the high number of people killed or seriously injured on the road was not due to the condition of HGVs, but rather the state of the roads throughout NI. They felt that not enough was being done to improve the condition of the roads.

## **Industry Briefing 27 February 2008 The Comfort Hotel Antrim**

Attendees: Circa 300 people attended. Due to the limited size of the room, around 50 people were unable to take part – the hotel manager was reluctant to allow overcrowding for health and safety reasons. There were 2 additional members of Road Safety Division available to talk with those unable to attend the briefing.

### **Issues Raised:**

#### **Maintenance**

- There was a feeling among a small number of attendees that there was no justification for introducing the new legislation on road safety grounds. They felt the whole emphasis on extending operator licensing was being “sold” on road safety issues and that improved vehicle maintenance would inevitably result in reduction in the number killed or seriously injured on the roads. They contended that road safety would be improved if Government were to spend more on improving the state of roads in NI.

- There was a discussion around the links between vehicle maintenance and health and safety in the road haulage industry. For example, it was pointed out that training on maintenance should include the ability to safely decouple trailers from the lorry.

## **Operating Centres**

- Questions were asked about how the Department will deal with applications from own account operators who already have an operating centre. Will there be grandfather rights? Who will be able to object?

## **Cost**

- There were a small number of attendees who felt that the Department were introducing this legislation to make more money. They asked how the licence fees will be composed and how the income from fees will be used.

## **Exemptions**

- There were no comments on this issue.

## **Enforcement**

- There were no comments on this issue.

## **Other Issues**

- There was some concern about competition from operators in the Republic of Ireland insofar as the cost of fuel is much dearer in NI, making it much more difficult for operators here to compete.
- The industry representatives from RHA and FTA were asked whether they would lobby the insurance industry for lower insurance rates after operator licensing was introduced. If regulation of the industry was to bring about the improvements mentioned in the earlier presentations, then it was their belief that insurance costs should be reduced.
- Question on whether hire vehicle companies need to be licensed – and what of those who may hire goods vehicles long-term – on whose licence should they be specified?

## **Industry Briefing 28 February 2008 The City Hotel, Armagh**

Attendees: Circa 300 people attended. The room had 200 seats and there were about 100 people standing in what was a large, comfortable room. No-one was turned away from the event. A PA system ensured everyone heard the presentations which were well received. Comments were generally supportive.

### **Issues Raised:**

#### **Maintenance**

- There was great concern that the Department would monitor the pass/failure rate of an operator's vehicles subject to vehicle testing and take failures into account when

reviewing an operator licence. Even failure for minor issues – and failure for, say, a van that is under 3.5 tonnes and therefore not specified on the licence - may have an effect on the continuance of a licence.

- There was also some concern about handing responsibility for the preparation of a vehicle for testing to a repairs agent. If the vehicle subsequently fails, then the failure will reflect on the operator rather than the agent.
- Some people thought that operators in GB were at an advantage in this respect because they could take their vehicles to a garage where it will be examined and repaired – and then tested by the same garage. The operator will not face the same level of risk because the vehicle is unlikely to fail!
- There was a call for DVA to improve their level of communication when there are changes to regulations that may affect an operator's status of repute. An example was given of an operator being convicted recently for failing to have a speed limiter fixed on a vehicle, when the operator was unaware of a recent change to the regulations.

## **Operating Centres**

- There were some general questions about the typical conditions that would be required for a private home to be licensed as an operating centre.
- Transitional arrangements for those already using an operating centre.
- There was concern about an operator who has an established centre – and over a period of time, there are significant changes to the surroundings [development of housing etc.] – how would the Department view the situation. Would people who have moved into an area where there had been an operating centre have the right to object when the licence was up for review?
- One person asked about whether local government vehicles could be kept at home or if it would have to be at an operating centre.

## **Cost**

- Comments that this was a stealth tax by the Government.
- Some people felt that it would be unfair to include own account operators in the new licensing system, because own account operators only use their vehicles to carry goods. The goods make money. They do not make money, per se, from their vehicles.

## **Exemptions**

- There was a need for the Department to issue its proposals for the list of exemptions sooner rather than later.
- The GB list of exemptions is very ambiguous.
- Agricultural vehicles should be exempt whether it's a tractor, trailer lorry, land-rover and trailer combination.

## **Enforcement**

- One comment on enforcement – is GB's good record on vehicle maintenance compliance down to the fact that they have more enforcement officers, rather than down to O licensing?

## **Other Issues**

- Question on whether the Department had discussed operator licensing with the Ulster Farmers Union.
- One attendee asked that the Department adopt an understanding and pragmatic approach in introducing operator licensing. He wanted the Department to avoid conflict with the industry by taking a hard, unsympathetic or rigid approach.

## **Industry Briefing 3 March 2008 The Ramada Hotel, Belfast**

Attendees: Circa 290 attended. The room was large and comfortable with 250 seats. Unfortunately there was no PA system available; the difficulty in hearing the presentations drawing one comment from the audience. Overall, the presentations were well received, despite the PA difficulty.

### **Issues Raised:**

#### **Maintenance**

- Contract with a maintenance provider – what type of paperwork would the Department need – should the operator send a copy of a contract to the Department?
- Qualification requirements for maintenance staff.
- Some people thought there would be extra costs to pay for regular [6 weekly] vehicle inspections/checks by professional staff.
- There was concern about the effect that even a minor failure on a goods vehicle test would have on an operator's reputation status.
- One person asked for further specific statistics on the HGV compliance records and incidents of HGV involvement in collisions involving KSIs.

#### **Operating Centres**

- Encroaching development on an existing operating centre. There was general concern about potential loss of operating centre where housing development encroaches over a period of years.
- One single vehicle operator was concerned about the potential cost of finding an operating centre. He currently uses his house to park up and feels that it is the safest place for it. He had already experienced loss of a previous business and was worried that O licensing could have a similar effect on him.

#### **Cost**

- One person asked for a breakdown of the cost.
- Some feeling that imposing the licensing requirement to so many was government stealth tax. If not a tax, then what is the £180 fee per vehicle for?
- One person felt that the facility to prove financial standing by offering evidence of an unused bank overdraft was simply a conspiracy by government – to gain access to



people's bank accounts through the details provided in an application – and thereby monitor income for taxation purposes.

## **Exemptions**

- Some general queries about type of vehicles that will be listed as exempt including:-
- Roads Service vehicles
- Lorries carrying vintage cars to exhibitions

## **Enforcement**

- There was some concern about the lack of enforcement action by the Department, especially on the level of unlicensed operators already in the Hire & Reward sector and on the widespread use of red diesel by hauliers.

## **Other Issues**

- Who will have to be licensed – a firm who hires a goods vehicle to a client, or the client who then uses the vehicle on the road?
- Why has the Department decided not to appoint a Traffic Commissioner in NI?
- Many vehicles over 3.5t are merely carrying tools for a trade or business, not carrying goods as part of their trade. Why are such people required to become licensed?

## **Industry Briefing 5 March 2008 The Killyhevlin Hotel, Enniskillen**

Attendees: Circa 200 people attended. The room was large and very comfortable. The availability of a PA system meant that everyone was able to listen in complete comfort. The presentations were generally well received, although some of the comments were challenging.

## **Issues Raised:**

### **Maintenance**

- There were a number of complaints about a perceived problem with the testing of vehicles at DVA test centres. Too many goods vehicles fail on what they believe to be minor faults – and there is now concern about minor failures having an effect on the status of an operator's licence.
- One person gave an example relating to a tyre loading index – the vehicle's tyres matched the manufacturer's recommendation at the time of the test, but DVA examiners opinion did not match the manufacturer's opinion, and the vehicle failed.
- One person stated that he thought DVA staff were not wholly qualified and, at times "don't know what they're doing"
- Questioned the KSI figures used in DOE presentation – some people felt that driver error and speed were major factors in the level of collisions involving HGVs, not just poor maintenance of HGVs.

### **Operating Centres**

- Discussed the relationship between planning permission and an application for use of an operating centre.
- Concern about continuing housing development encroaching on an existing operating centre – what attitude would the Department take in such circumstances.

## **Cost**

- There was some concern generally about the level of fee for an operator licence.
- There was a general feeling that the new licensing system was a means of raising more money for government. Hitting the working man once again.
- There was a very strong feeling that money raised from this scheme should be spent on improving the state of roads in Fermanagh.
- The additional demands on vehicle maintenance would result in vehicles being off the road for periods of time – and this would result in loss of earnings.
- There was a call for help in coping with the additional paperwork that O Licensing would bring to the business.

## **Exemptions**

- There were some general, individual, questions on vehicles that are to be exempt.

## **Enforcement**

- There was a concern that HGVs were the target of enforcement action, while other industries like taxis were less likely to be targeted.
- One person felt it unfair that HGV drivers were subject to tachograph regulations – while taxi drivers and other drivers were not. He used as an example, a tourist who could drive a large camper van across Europe for as long as he could stay awake. He would never be subject to enforcement action, but could be the cause of major collision.

## **Other Issues**

- EC legislation has resulted in many foreign vehicles using UK roads. Experience of VOSA would suggest that they target drivers from NI and ROI – not on the basis of poor vehicle maintenance records as suggested in the presentations – but on the basis of ease of language. It was a perception among drivers, that VOSA are reluctant to stop a foreign registered HGV because of language barriers. One driver gave an example of an Irish haulier who was constantly stopped by VOSA staff in GB and who then used a Portuguese-registered vehicle – and found that he was largely ignored by the same VOSA staff while travelling throughout GB.

## **Industry Briefing 12 March 2008 The Silverbirch Hotel, Omagh**

Attendees: Circa 200 people attended. The room was rather small, but reasonably comfortable. The hotel did not supply a PA system because the volume would have disturbed those attending another function in an adjoining room. Therefore, it was difficult to hear. Around 20 people (of the 200) did not go into the room due to it being so full and the sound was poor at the back.

DoE staff were available to talk to each of them, and offered to arrange another presentation on another date, if it was felt necessary.

## **Issues Raised:**

### **Maintenance**

- one person was concerned about the relationship between maintenance requirements and health & safety issues – citing a recent fatality in Co Antrim where a man was killed while changing a HGV tyre that exploded during the process.
- There was a little confusion about CPC requirements in relation to restricted and standard licence holders.
- One person asked whether the regular FTA maintenance checks [as mentioned in the presentation previously] would satisfy O Licensing requirements.

### **Operating Centres**

- There was some concern about operators, who currently allow drivers to park-up at night in their homes and on roadside locations, having to find dedicated locations for an operating centre. One current operator wanted the Department to look favourably on such situations.
- Hauliers who operate both in GB and in NI – will they have to apply for a licence to work in NI? And will the standards required for operating centres in GB be applied in NI?

### **Cost**

- There were no concerns raised about cost.

### **Exemptions**

- Queries were of a general nature including the use of tractors in agricultural business.

### **Enforcement**

- There was a call for a Transport Court. One person felt that prosecutors and magistrates in NI have no working knowledge of road transport issues. Fines issued to hauliers can be, in his opinion, exorbitant/ In the interest of fairness, he felt that enforcement cases should be heard by a transport court.

### **Other Issues**

- Rising fuel costs were crippling many hauliers.
- There was some discussion on the tachograph regulations and in particular those vehicles that are exempt. One person was aggrieved that while coal delivery lorries were currently exempt from tacho regulations, oil delivery lorries were not. There was also a query about the tacho requirements for concrete pumping lorries.

### **Further Briefing Sessions**

Allied Bakeries / NI Bakeries Council – 26 November 2007

- Meeting with Alan Hempton, Managing Director of Allied Bakeries Ireland & Chairman of the NI Bakery Council
- Positive meeting
- Only concern was operating centres subsequently surrounded by housing development

### **Freight Transport Association – 15 January 2008**

- Meeting with GB and NI Policy Managers(2)
- Very supportive
- Took an active role in industry briefing sessions

### **Road Haulage Association AGM & Members' Briefing– 22 January 2008**

- RHA is very supportive of 'O' Licensing
- Around 80 members present
- Some criticism of DVA
- Some criticism of cost
- Some criticism of responsibilities of own account operators

### **Federation of Small Business – 15 January 2008**

- Meeting with 2 Policy Managers
- Supportive
- Article in FSB in-house magazine
- May request further briefings

### **NILGA – 1 April 2008**

- 14 officers from around Northern Ireland present
- Queries about licence type required
- Criticism of inconsistencies with DVA testing
- Query as to who would hold the licence

### **Ulster Farmers Union**

- Meeting with Gillian Cheatley, Policy Officer responsible for poultry, legislation and rural affairs
- Generally supportive
- May request further briefings

### **Rivers Agency – 20 March 2008**

- Meeting with Plant management team
- Positive

- Concerns re operating centre requirements and taking vehicles home at night – deemed to be emergency vehicles
- Request for an exemption

### **Roads Service – 11 April 2008**

- Meeting with 8 staff - section engineers, fleet manager and fleet maintenance staff
- Roads Service fleet 625 vehicles and 2300 plant items
- Request for exemption as their business is road maintenance and is non competitive. It has a statutory basis. Many of the vehicles are specialist in nature.
- Confident that they meet the standards required for 'O' Licensing

### **Federation of petroleum suppliers - 3 April 2008**

- Meeting of petroleum suppliers and oil distributors.
- Around 280 – 300 operators/ distributors in NI
- Around 30 attendees representing single vehicle operators through to large companies
- Concern that enforcement should be across the board
- Problem of getting information from HMRC
- Complaints about foreign drivers
- Request to have a Regulation 11 certificate a requirement of a PSV test

### **PSNI – 10 April 2008**

- Meeting with Inspector R Leech, Road Policing Branch
- Agreement that PSNI would wish to be statutory consultees
- Resourcing issues re role in enforcement

### **Belfast City Council – 11 January & 4 April 2008**

- Meeting with Terry Mitchell & Gerry Fleming
- Very positive
- Fleet size – 390 vehicles and 25 trailers
- A lot of preparation work for 'O' Licensing already done

## **Departmental Reply re Fees, Illegal Operations and KSI's**



Clerk to the Environment Committee 10-18 Clarence Court

Northern Ireland Assembly

BELFAST

Parliament Buildings

BT2 8GB

Stormont

Telephone: 028 90 5 40855

Facsimile: 028 90 5 41169

Belfast BT4 3XX

Email: una.downey@doeni.gov.uk

Your reference:

Our reference:

Date: 4 February 2008

Dear Patricia,

### **Goods Vehicles (Licensing of Operators) Bill**

The Department agreed at the Environment Committee meeting on 24th January to provide the following information: -

1. Comparisons of fees applicable in Northern Ireland, Republic of Ireland and GB.
2. Information on the extent of illegal operations i.e. no. of vehicles not up to standard and no. of illegal operators, and
3. Statistics on KSIs

A subsequent request was also received from the Clerk to the Committee for supply of a list of key stakeholders.

Please see the comments on each below:

#### **1. Fees Comparisons**

The fees comparisons are set out for the current fees in each jurisdiction and are shown for operators having 1, 3 and 10 vehicles respectively.

The fees for Ireland are much lower than that for GB or NI, having been unchanged since 1994. The Irish Department of Transport will be reviewing the fee structures and levels in the near future and have indicated a significant rise in the fee level within the next 12 months.

The fee structure in Great Britain is also being reviewed. A consultation is presently underway and it is expected that changes will be made there too.

In the Road Freight Review Consultation the Department gave an undertaking that the fees in Northern Ireland would initially be at the same levels as those in GB.

Fee comparison

	Great Britain	Northern Ireland	Ireland
--	---------------	------------------	---------

	VOSA FEES (5 year)	DVA FEES (5 year)	DoT FEES
Operator with 1 vehicle	Application £227 Grant £354 £581 Vehicles £180 Total £761	Grant £150 Vehicle £60x5= £300 Total £450	Application £52 Vehicle (National) £72 (I'national) £172 Total £124 / £224
Operator with 3 vehicles	Application £227 Grant £354 £581 Vehicles £540 Total £1121	Grant £150 Vehicle £60x5x3= £900 Total £1050	Application £52 Vehicle x 3 (National) £216 (I'national) £516 Total £268 / £568
Operator with 10 vehicles	Application £227 Grant £354 £581 Vehicles £1800 Total £2381	Grant £150 Vehicle £60x5x10= £3000 Total £3150	Application £52 Vehicle x 10 (National) £720 (I'national) £1720 Total £772/ £1772

## 2. Extent of Illegal Operations

In 2005 a roadside road freight compliance survey was conducted on a random sample of 900 commercial vehicles (+3.5Tonnes). It included both Own Account and Hire for reward sectors of the Industry. The results showed:

- Vehicles not roadworthy 44%
- Tachograph / Drivers' hours offences 18%
- Overweight 2.4%

- Motor Tax Offences 3%
- Operators not properly licensed 6%
- Drivers not properly licensed 2%
- Lack of proper insurance 1%

#### Outcome

- Vehicles subject to prohibitions 21%
- Operators subject to prosecution 9%

The survey was repeated in Autumn 2007 but full results are not yet available. Headline statistics, however, are not encouraging.

### 3. Statistics on KSIs (Killed or Seriously Injured)

Based on the Northern Ireland Transport Statistics 2006/07, heavy goods vehicles represented 2.6% of the overall total number of motor vehicles licensed in Northern Ireland.

A breakdown of figures for 2007 is not yet available.

Number of KSI collisions and casualties where a driver of goods vehicles > 3.5T was deemed responsible: 2006

Severity	No	Severity	No
Fatal collision	3	Killed	3
Serious collision	28	Seriously Injured	36
KSI Collision	31	Total KSI	39
% of all fatal collisions	2.7	% of all fatalities	2.4
% of all serious collisions	3.1	% of all serious injuries	3.0
% of all KSI collisions	3.1	% of all KSIs	2.9

Source: PSNI - Central Statistics Unit

### 4. A list of some key stake holders is requested.

Many 'own account' operators are single vehicle organizations and not represented by any organization or body. The list below is just a sample of the key stakeholders of the road freight industry:

- The Road Haulage Association
- The Freight Transport Association
- The Police Service of Northern Ireland
- The Federation of Small Businesses
- The Vehicle Operator Services Agency (GB)
- Northern Ireland Local Government Association
- Quarry Products Association NI
- Belfast Health and Social Care Trust



- Southern Education and Library Board
- Confederation of British Industry (NI)

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Una Downey

DALO  
[By Email]

## **Presentation to the Environment Committee on 7th February 2008**

### **Goods Vehicles (Licensing of Operators) Bill – Key issues**

#### **Agenda**

##### **1. Overall purpose of the Bill**

The Bill places a requirement on all operators of goods vehicles of weight over 3.5 Tonnes to have an operators licence for those vehicles.

##### **2. Basic Requirements for an Operators Licence**

- All operators must have a licence
- All Operators required to satisfy the standards of fitness/repute, financial standing and professional competence (for standard licences)
- All operators required to have a designated Operating Centre in Northern Ireland
- All applicants must advertise their application in the press
- All operators are required to give undertakings

##### **3. Key Measures and Powers**

The Department will acquire new powers in relation to Enforcement, Public Inquiries, Discretion and Impounding/immobilisation of vehicles

Departmental Officials:

- Donald Armstrong - Road Safety Policy Branch
- Gillian McIntyre - Road Safety Policy Branch
- John Brogan - Road Transport Legislation Branch

# HGV Survey Results on Compliance of the Fleet on NI Roads

Central Management Branch  
10-18 Clarence Court  
BELFAST  
BT2 8GB

Ms Patricia Casey	Telephone: 028 90 5 40855
Clerk to the Environment Committee	Facsimile: 028 90 5 41169
Northern Ireland Assembly	Email: una.downey@doeni.gov.uk
Parliament Buildings	Your reference:
Stormont	Our reference:
Belfast BT4 3XX	Date: 21 February 2008

Dear Patricia,

## **Heavy Goods Vehicle (HGV) survey on levels of compliance of the fleet on NI Roads. Vehicle Excise Duty (VED) survey on levels of evasion.**

1. Surveys have recently been completed on the levels of compliance of the HGV fleet on NI roads and on the level of VED evasion.
2. The HGV survey results will be published on DVA's website later this month. VED is an Excepted Matter and overall responsibility rests with Department for Transport (DfT). The VED evasion results were published by DfT on 14 February 2008.

### **HGV Survey**

3. As part of its Enforcement Strategy, developed in 2005, DVA identified the need for information regarding the compliance level of the HGV fleet on NI roads.
4. A baseline compliance survey on the levels of non-compliance was completed in 2005, and a follow up survey was completed in 2007.

### **Survey Detail**

5. The survey was carried out in May to July of 2007; it encompassed 957 motor vehicles and 463 trailers. 86 check site locations across Northern Ireland were randomly selected and vehicles at each check site were randomly selected by independent selectors.
6. Questionnaires were completed for each vehicle checked and completed forms were input to a database for further analysis.
7. Analysis of the information from the survey was carried out by In House Analytical Consultancy (IHAC) the statistical section of the Department for Transport in GB.

### **Survey Results**

8. The levels of non-compliance within the HGV fleet have increased significantly since 2005 especially within the more serious defects where the level of non-compliance has gone up from 28.6% to 50.8%.

9. There are a number of possible reasons for the increase in the levels of non-compliance. These include:

- DVA Enforcement officers have received a significant amount of training since the 2005 survey and it is therefore possible that they have been able to identify offences in 2007 that were not recognised in 2005,
- Equipment available for the survey in 2007 was more specialised and advanced than in 2005,
- Improved check site locations used in 2007 allowed enforcement officers to carry out more efficient checks of vehicles stopped,
- HGV Operators and drivers may be spending less time on maintenance of vehicles and as a result the level of compliance may be reduced.
- The four main defects and offences detected were:
  - Condition of tyres
  - Brake systems and components
  - Lights
  - Tachographs/drivers hours.

## **Action Plan**

It is recognised that the position is very disappointing and that urgent action needs to be undertaken.

10. DVA Enforcement will make use of the information from the survey to identify operational targets that will have the maximum impact and in particular against the four major defects/offences.

11. Funding and approval have been given for the recruitment of additional enforcement officers.

12. DVA will continue to develop intelligence-led enforcement with the use of ANPR's and undertake in-depth investigations.

13. DVA will work with the Industry on a programme of education to improve the roadworthiness of the HGV fleet.

## **Vehicle Excise Duty Evasion**

14. Vehicle licensing is an Excepted Matter and is the responsibility of the Secretary of State for Transport but it is administered in NI by DVA on behalf of DVLA, under the terms of an agency agreement between the two respective parent Departments, Department for Transport (DfT) and DoE.

15. The level of evasion of vehicle excise duty is measured annually by a roadside survey carried out across the UK by DfT. The report of the 2007 survey was published by DfT on 14 February

2008. The survey was undertaken in June 2007 by private contractors operating on behalf of DfT. The results are based on the sighting of 64,590 vehicles at 20 sites across NI.

## Detail

16. The report shows that the rate of evasion "in traffic" (i.e. observed at the roadside sites), the only measure used in NI due to the limited size of the survey, was 2.3%, compared to 1.1% in GB. The corresponding rates in NI in recent years were:

2004	2005	2006	2007
7.2%	5.4%	5.0%	2.3%

However, due to a change in the methodology in collecting data in 2007 (using Automated Number Plate Readers systems for the first time), DfT states that "effectively, the 2007 estimates are the first data point in a new statistical series and are not directly comparable with earlier years".

17. Although we have been making a sustained effort to crack down on road tax dodgers, especially through the use of wheelclamping and ANPR units. We have to accept that the new methodology used has been a factor.

## Other Surveys

18. DVA is currently working on surveys on Taxis and MOT evasion. These reports will be available in late March/early April.

You may wish to bring this information to the attention of the Environment Committee.

Yours sincerely,

Una Downey

DALO  
[By Email]

## Departmental Response to Environment Committee Request for Further Information

Central Management Branch  
10-18 Clarence Court  
BELFAST  
BT2 8GB

Ms Patricia Casey	Telephone: 028 90 5 40855
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Northern Ireland Assembly	Email: una.downey@doeni.gov.uk
Parliament Buildings	Your reference:
Stormont	Our reference:
Belfast BT4 3XX	Date: 26 February 2008

Dear Patricia,

## **Goods Vehicles (Licensing of Operators) Bill**

Following the presentation by officials to the Environment Committee on the 7th February, William Long has requested further information on the following points raised in the meeting:

1. Tractors used for purposes other than farming
2. Definitions of tractors and trailers for the purpose of the Bill
3. Figures on vehicles not affiliated to main organisations

Please see the comments on each below:

### **1. Tractors used for purposes other than farming**

Power to exempt the use of certain vehicles from the requirement to hold an operators' licence is included in the draft Bill. The Department will specify all those vehicles in detailed regulations before the new licensing system is introduced, and those regulations will be subject to the Committee's scrutiny in draft form.

In Great Britain, agricultural and forestry vehicles are generally exempt so long as they are used for hauling equipment and produce in connection with, and to/from the farm or estate.

Subject to further consideration, a person using a tractor for purposes other than farming would be required to hold an operator's licence.

### **2. Definitions of tractors and trailers for the purpose of the Bill**

Tractors and trailers are not defined in the draft Bill. The basic requirement is that a person shall not use a goods vehicle on a road for the carriage of goods except under an operator's licence.

Ultimately, it will be for a court to determine whether a tractor and trailer combination, and its use at the time of detection, would fall into the definition of a goods vehicle.

### **3. Figures on vehicles not affiliated to main organisations**

We do not record or keep any data on the organisation affiliation of the registered keepers of motor vehicles in Northern Ireland. To gather such would be a costly exercise and not justifiable in terms of the value of the information.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Una Downey

DALO  
[By Email]

# Departmental Reply re Planning Permission and Operating Centres

Central Management Branch  
10-18 Clarence Court  
BELFAST  
BT2 8GB

Ms Patricia Casey  
Clerk to the Environment Committee  
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Your reference:  
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CQ/31/08  
Date: 16 April 2008

Dear Patricia,

I refer to your request for further information on the Goods Vehicles (Licensing of Operators) Bill, contained in your memo of 10 April 2008.

## **Background:**

The Committee Members have asked for clarification on a number of points relating to the issue of planning permission for operating centres and on the co-ordination of legislation with Ireland.

## **Current Position**

### **1. Planning permission and operating centres**

Under proposals contained in the Bill, the Department, when considering an application for an operator's licence, will need to be satisfied that an operating centre is suitable – big enough, safe enough and environmentally suitable. Additionally and separately, an operator will have to ensure that any proposed operating centre meets the requirements of planning law. The granting of an operator's licence (and acceptance of the suitability of the operating centre) will not convey any approval under planning law; and planning approval will not be a pre-condition for approval of an operator's licence application.

The administration of planning consent will rest with Planning Service.

### **2. North/South Co-ordination**

There is no proposal to co-ordinate equivalent or parallel legislation between Ireland and Northern Ireland. Officials from DOE met with Irish officials in Dublin earlier this year and they indicated that Ireland had no immediate plans to reform their operator licensing legislation to bring the own account sector into the licensing regime.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Una Downey

DALO

[By Email]

## **Road Haulage Association Presentation to the Committee for the Environment 24 April 2008**

The Road Haulage Association (RHA) responded to previous 'O' Licence review consultations during the 1990's and 2003 and supported the eight DOE road shows held earlier this year. At these very well attended events, RHA staff were pleased to make presentations on the reasons for the proposed changes and have assisted many of the operators understand the need for change and what effects the changes will have on their operation.

There are more than 15,000 registered keepers of more than 35,000 commercial vehicles over 3.5 tonnes in Northern Ireland. The vast majority appear to be own account though no one knows the exact number as some who have believed they were own account are in fact "hire and reward." Over the past few weeks a considerable number have applied for 'O' licenses as they became aware of the current regulations. Regardless, the vast majority of operators do not need any licence at present and many are unaware of the regulations for drivers' hours, overloading and vehicle standards.

This was highlighted during recent roadside checks throughout Northern Ireland last year.

In GB, roadside checks have consistently resulted in Northern Ireland operators having one of the worst records for non-compliance within the EU. Only two E U states have a worse record than Northern Ireland. Northern Ireland operators also have a poor record when presenting commercial vehicles for annual test with more than a third (37.3%) rigid vehicles failing, 32.2% articulated vehicles failing and 26% of trailers failing.

On purely road safety issues RHA supports the proposed changes and would welcome the introduction of "own account" licensing and the changes to bring the whole system more in line with the GB model.

Recently the authorities in the Republic of Ireland have recommended that all commercial vehicle operators be licensed for reasons similar to the situation in Northern Ireland and RHA welcomes this announcement.

Bringing all vehicles over 3.5 tonnes in Northern Ireland into the system would lead to a more equitable cost base for licensing as at present only the "hire and reward" sector pays. As this accounts for about 20% of the vehicles, the economies of scale of bringing the other 80% into the scope would ensure a fairer distribution of the costs.

Overloading offences, drivers' hours infringements and defective vehicles are not mutually exclusive to the current licensed operators. It is unfair that only these operators can lose their good repute for offences that are commonplace across all sectors. The extra funding raised by licensing all operators would ensure a more comprehensive enforcement regime that would improve standards and road safety.

Everyone operating to the same standards would also create fairer competition and reduce the opportunity for criminal organisations to use the road freight sector for their illegal activities.

The review of the 'O' licensing system gives an opportunity for Northern Ireland operators to improve standards and image on a wider E U stage. The benefits of enhanced road safety alone, reducing the possibility of injury or death, should be reason enough to support the proposed changes and RHA hopes that the Committee for the Environment shares this view .

Phil Flanders

Director Scotland & Northern Ireland  
April 2008

## Research and Library Services



### The Goods Vehicle Industry in GB

Jeff Mochan, Research Officer

#### Background

This paper provides a breakdown of the goods vehicle industry in GB, covering: operators and fleet issues; freight issues; operator costs; infrastructure issues; and environment and safety issues. This paper draws on information from 3 sources:

- Department for Transport 'Road Freight Statistics 2006' (RFS 2006)[\[1\]](#)
- Department for Transport 'Transport Statistics GB 2007' (TSGB 2007)[\[2\]](#)
- National Statistics 'Annual Business Inquiry – Transport, Storage and Communication' (ABI)[\[3\]](#)

#### Operators and Fleets

Operator Licences. RFS 2006, Table 4.11. The number of goods vehicle operator licences issued in GB fell steadily between 1995-1996 (118k issued) and 2005-2006 (100k issued).

Road Haulage Operators. RFS 2006, Table 4.13. The number of road haulage enterprises in operation in the UK fell between 39k in 1995 and 35k in 2005.

Fleet Size. RFS 2006, Tables 4.11 and 4.12. The average fleet size in GB rose steadily from 3.4 vehicles in 1995-1996, peaking at 4.0 vehicles in 2003-2004, before falling to 3.7 vehicles in 2005-2006. In 2005-2006, the majority of GB operators (73%) had fleets of 2 vehicles or less, while a small section (6%) had fleets of 10 or more vehicles.

Employment in Transport Related Occupations. TSGB 2007, Tables 1.16, 1.17 and 1.18. The transport sector is a significant employer in GB, with more than 1.5m workers employed in transport related occupations in the spring quarter of 2006[\[4\]](#), including: transport and distribution managers (78k); transport and distribution clerks (64k); HGV drivers (306k); van drivers (209k). In addition, the transport sector employs more than 570k workers in non-



transport related occupations in transport industries. In the road freight sector in GB, the number of jobs rose steadily, from 399k in 1996 to 478k in 2007 (478k), and the number of women employed rose faster than the number of men, from 389k men and 27k women in 1990 to 394k men and 84k women in 2007.

Gross Value Added (GVA)<sup>[5]</sup>. ABI. The Transport, Storage and Communication sector (which includes road freight) saw GVA rise from £77bn in 2004 to £82bn in 2005 (a rise of 7%), and turnover rise from £200bn in 2004 to £231bn in 2005 (a rise of 6.5%). Within that turnover total, the road freight component rose from £30bn in 2004 to £34bn in 2005 (a rise of 11.5%).

Vehicles Licenced. TSGB 2007, Table 9.1. The number of goods vehicles licenced in GB generally increased from 439k vehicles in 1950 to 507k vehicles in 1980, before reverting roughly to 1950 levels at 446k vehicles in 2006. The highest number registered was 593k vehicles in 1967, and the lowest was 412k in 1998.

HGV Tax Classes. TSGB 2007, Table 9.7. The number of goods vehicles over 3.5 tonnes licenced in GB rose slightly from 311k rigid vehicles and 110k articulated vehicles in 1996 to 325k rigid vehicles and 122k articulated vehicles in 2006.

## Freight

Freight Modes. TSGB 2007, Table 4.1. The amount of goods moved<sup>[6]</sup> as road freight in GB rose steadily from 32bn tonne km in 1953 to 167bn tonne km in 2006, and the amount of goods lifted as road freight in GB also rose from 889m tonnes in 1953 to 1936m tonnes in 2006.

Freight by Commodity. TSGB 2007, Table 4.2. The breakdown of freight moved by commodity in GB in 2006 is: 40% as machinery, transport, equipment and manufactured articles; 22% as food stuffs; 16% as minerals and building materials; 8% as agricultural products and live animals; 5% as chemicals; 3% as petroleum products; 1% as solid mineral fuels; and 1% as fertilisers.

Goods Moved/Lifted. TSGB 2007, Tables 4.3 and 4.5. The percentage of domestic freight traffic moved by road remained stable from 1996 to 2005. The percentage of goods moved by road was 65% in 1996 and 64% in 2005, and the percentage of goods lifted was 81% in 1996 and 82% in 2005. The amount of goods moved by vehicles over 3.5 tonnes increased from 147bn tonne km (of which 109bn was by mainly public haulage) in 1996, to 156bn tonne km (of which 112bn was by mainly public haulage) in 2006. Similarly, the amount of goods lifted by vehicles over 3.5 tonnes increased from 1628m tonnes (of which 1011m was by mainly public haulage) in 1996 to 1810m tonnes (of which 1123m was by mainly public haulage) in 2006.

Length of Haul. TSGB 2007, Table 4.6. The average length of haul for goods vehicles over 3.5 tonnes fell from 90km for all vehicles (133km for articulated and 47km for rigid vehicles) in 1996 to 86km for all vehicles (124km for articulated and 43km for rigid vehicles) in 2006

## Operator Costs

Road Tax Revenue. TSGB 2007, Table 7.15. Revenue from Vehicle Excise Duty in GB in 2005-2006 for all vehicles was just over £5bn from almost 33m vehicles, of which 433k goods vehicles paid £290m.

Diesel Price. TSGB 2007, Table 3.3. While all the costs of diesel rose from 1997 (price 60p, duty 37p and VAT 9p) to 2007 (price 95p, duty 48p and VAT 14p), tax as a percentage of the price of diesel fell from 1997 (76%) to 2007 (66%).

Retail Price Index (RPI)<sup>[7]</sup>. TSGB 2007, Table 1.19. The transport components of the Retail Price Index rose less by 2006 in motor vehicles (119) than in rail fares (136), bus fares (147), or other travel costs (140), against a baseline of 100 in 1996.

## Infrastructure

Investment in Transport. TSGB 2007, Table 1.14. Investment in transport in GB fell from £4.3bn in 1995-1996 to £3.1bn in 1999-2000, before gradually rising again to \$4.4bn in 2005-2006.

Transport Expenditure. TSGB 2007, Table 1.15. Government (central and local) expenditure on transport in GB rose from £15.5bn in 2002-2003 to £23bn in 2006-2007 (central government expenditure rose from £8.7bn to £12.7bn, while local government expenditure rose from £6.8bn to £10.2bn). Central government spending on strategic roads rose from £2.6bn in 2005-2006 to £3.1bn in 2006-2007, while spending on other roads rose significantly from £200m to £525m.

Road Construction Pricing. TSGB 2007, Table 7.13. Road construction pricing rose steeply from 122 in 1996 to 187 in 2006, against a baseline of 100 in 1990.

Road Building. TSGB 2007, Table 7.16. New road building (started) fell from 159km in 1996-1997 to 65km in 2006-2007. New road building (completed) also fell from 74km in 1996-1997 to 50km in 2006-2007.

Infrastructure Density. TSGB 2007, Table 10.2. Road network density<sup>[8]</sup> in GB rose marginally from 1.676million km per 1k sq km in 1994 to 1.786million km per 1k sq km in 2004.

Road Traffic. TSGB 2007, Tables 7.2 and 7.4. Distance covered by goods vehicles over 3.5 tonnes in GB rose from 26bn vehicle km in 1996 to 29bn vehicle km in 2006 (of which 12bn vehicle km was on motorways, 10bn vehicle km on rural 'A' roads, 3bn vehicle km on urban 'A' roads, and almost 4bn vehicle km on minor roads). When looking at all goods vehicles, including light vans, the figures rose significantly from 78bn vehicle km in 1994 to 90bn vehicle km in 2004.

Vehicle Speeds. TSGB 2007, Tables 7.10 and 7.11. On non-built-up roads in GB in 2006, heavy goods vehicles averaged 55mph on motorways, 54mph on dual carriageways, and 44mph on single carriageways. On built-up roads in GB in 2006, heavy goods vehicles averaged 29mph on roads with 30mph limits, and 36mph on roads limited to 40mph.

## Environment and Safety

Fuel Consumption. TSGB 2007, Table 3.4. Fuel economy fell for rigid HGVs from 8.2mpg in 1996 to 7.8mpg in 2003, while fuel economy rose for articulated HGVs from 7.3mpg to 7.5mpg in the same period.

CO2 Emissions. TSGB 2007, Table 3.7. Projections (to 2020) show that CO2 emissions from road transport are expected to rise, while those from the rest of the economy fall.

Road Deaths and Casualties. TSGB 2007, Table 8.2. Road deaths in GB fell from 3.6k in 1995 to 3.2k in 2005.

Vehicle Tests. TSGB 2007, Table 9.12. The percentage of goods vehicles over 3.5 tonnes which failed tests fell slightly from 21% in 1996-1997 to 20% in 2006-2007.

## April 2008

[1]

<http://www.dft.gov.uk/pgr/statistics/datatablespublications/freight/goodsbyroad/roadfreightstatistics2006>

[2] <http://www.dft.gov.uk/pgr/statistics/datatablespublications/tsgb/2007edition/>

[3] [http://www.statistics.gov.uk/abi/section\\_i.asp](http://www.statistics.gov.uk/abi/section_i.asp)

[4] Details of transport-related employment by occupation are available from the Labour Force Survey (LFS). The LFS is a survey of households living at private addresses in GB.

[5] GVA measures the contribution to the economy of each individual producer, industry or sector. GVA is used in the estimation of Gross Domestic Product (GDP), a key indicator of the state of the whole economy.

Source: <http://www.statistics.gov.uk/CCI/nugget.asp?ID=254&Pos=5&ColRank=1&Rank=176>

[6] Freight activity is measured in terms of the weight of goods (tonnes) handled, taking no account of the distance carried; this is termed 'goods lifted'. 'Goods moved' (tonne km), which takes account of distance, is the weight of the load multiplied by the distance it is carried. 'Goods moved' is therefore a better measure of the work done by HGV.

Source: <http://www.dft.gov.uk/pgr/statistics/datatablespublications/tsgb/2007edition/>

[7] RPI is the most familiar general purpose domestic measure of inflation in the UK, available continuously from June 1947. Government uses it for uprating pensions, benefits and index-linked gilts; it is commonly used in private contracts for uprating maintenance payments and housing rents; it is also used for wage bargaining.

Source: <http://www.statistics.gov.uk/CCI/nugget.asp?ID=21&Pos=6&ColRank=1&Rank=160>

[8] The distance of roads in a given geographical area; in this case, the number of km in an area of 1sq km.

## Research and Library Services



### The Goods Vehicles (Licensing Of Operators) Bill

Jeff Mochan

Research Officer  
Research and Library Service

The Goods Vehicles (Licensing of Operators) Bill is intended to address regulatory imbalances within the industry and between GB and NI, illegal operations, poor safety and maintenance standards and enforcement issues.

This paper provides information on: the bill context; its overview; issues to be addressed; its purpose and key features; policy options and consultations undertaken; costs of the bill; and its impact on external relations.

Research Papers are compiled for the benefit of Members of The Assembly and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public. Northern Ireland Assembly, Research and Library Service

## **Summary of Key Points**

The Department of the Environment is the primary department responsible for regulation of freight operators.

Impetus for change comes from the freight industry, public representatives and consumer organisations.

Regulation in GB and NI has evolved considerably in the last 30 years, but NI still falls behind that of GB.

The Bill is intended to replicate provisions in GB, with some local variations, by addressing issues including:

- The partial regulation of freight operators;
- Enforcement;
- Organised crime;
- Road safety;
- Environmental standards.

The Department has formally consulted on 2 occasions, with largely positive results, but some concerns relating to increased operators' costs, constraints on competition and the need for enforcement.

The proposed system is intended to run on a full cost recovery basis. Northern Ireland Assembly, Research and Library Service

## **Contents**

1. Bill Context
2. Bill Overview
3. Issues Intended To Be Addressed By The Bill
4. Purpose And Features Of The Bill

5. Policy Options And Consultations Prior To The Bill

6. Costs Of The Bill

7. North-South And East-West Relations And Cooperation

## 1. Bill Context

1.1 The Department of the Environment in NI (via the Driver and Vehicle Agency) is responsible for:

- Licensing of operators, drivers and vehicles that carry other people's goods for reward, under the Transport Act (NI) 1967.
- Determining the roadworthiness of vehicles.
- Checking the repute of drivers.
- Enforcing freight regulation, together with the PSNI<sup>[1]</sup>.

1.2 The impetus for change comes from the freight industry, public representatives and consumer organisations, dissatisfied with the way in which freight services are delivered presently. Specific concerns relate to:

- Burden of regulation falling on only 1 part of the industry ('own account' operators are not currently required to be licensed).
- Extent of illegal operations.
- Poor standards of vehicle maintenance.
- Need for more and better enforcement<sup>[2]</sup>.

1.3 Licensing requirements in GB have evolved considerably since the 1960s:

- Initially, objectives were concerned with mechanical aspects linked principally to road safety, minimum standards of financial capability, business competence and repute, and the interests of established legitimate operators.
- In the 1970s, restrictions on drivers' hours and tachograph monitoring were introduced, and minimum standards of business competence, financial standing and repute were enhanced and made more uniform throughout the EU.
- In the 1980s, concerns turned to environmental issues, and the Armitage Report<sup>[3]</sup> of 1980 highlighted the environmental threat posed by HGVs in GB.

1.4 Licensing requirements in NI have also evolved considerably since the 1960s, but to a lesser extent than in GB:

- Initially, similar concerns to those in GB resulted in the Transport Act (NI) 1967, but its provisions were limited to those involved in commercial haulage and passenger transport, and did not cover those hauling their own goods; at the very outset, therefore, a significant part of the road freight industry lay outside the scope of operator licensing legislation in NI, and still does.
- In the 1970s, the EC issued directives, applied in NI as well as GB, which standardised licensing of those involved in the commercial haulage of goods.

- In the 1980s, the Armitage Report did not cover NI, so there are no explicitly environmental provisions in NI legislation or practice to date.

## 2. Bill Overview<sup>[4]</sup>

2.1 The Bill (of 61 clauses and 6 schedules<sup>[5]</sup>) proposes to have primary powers needed to deal with all matters relating to the regulation of road freight operators in NI.

2.2 The Bill covers:

- The requirement to hold an operators' licence.
- The application and determination process.
- The ability to apply conditions to, and vary, a licence.
- Powers for the revocation, suspension and curtailment of licences.

2.3 The Bill provides for:

- The regulation of operating centres.
- The review of decisions, including appeals, enforcement and penalties.

## 3. Issues Intended to be Addressed by the Bill

The Bill is intended to address<sup>[6]</sup>:

- Partial regulation of freight operators. 'Own account' operators<sup>[7]</sup> are not required to be licensed, and industry representatives believe that the hire and reward sector is being treated unfairly, as they must bear the cost of licensing in NI. In GB, all operators must be licensed.
- Enforcement. NI has much weaker freight licensing enforcement powers than GB, and only 1 sector of the industry is regulated. Statutory agencies have complained about the standards of NI vehicles crossing to GB, and illegal operators<sup>[8]</sup> are a major threat to safety and environmental standards within the road haulage industry.
- Organised crime. The aims of the Organised Crime Task Force would likely be supported by stronger and more comprehensive regulation of the road freight industry, and it has taken a keen interest in the review of licensing in NI.
- Road safety. Goods vehicles make a significant contribution to the number of people killed or seriously injured in NI. HGVs represent 2.6% of the overall total number of motor vehicles licensed in NI in 2006, but HGV drivers in 2006 were responsible for 2.7% of fatal collisions (3) and 3.1% of serious collisions (28), resulting in 2.4% of road deaths (3) and 3% of serious injuries (36)<sup>[9]</sup>. Positive changes would be a welcome contribution to reduction in fatalities and casualties. Illegal operators are believed to undercut the legitimate operators, and threaten the viability of the industry while contributing to the poor road safety record.
- Environmental standards. Present licensing arrangements offer no effective safeguards against operators who pay no attention to the environmental standards of their operating centre, such as: the suitability of an operating centre on environmental grounds; the attachment of conditions to a licence to prevent or minimise any adverse effects on using a place as an operating centre; the effect on environmental conditions in a locality of the use of the place as an operating centre. This has the potential to affect a considerable number of NI households.

## 4. Purpose and Key Features of the Bill

4.1 The aims<sup>1</sup>[\[10\]](#) of the Bill are to:

- Have, in one dedicated statute, the primary powers needed to deal with all matters relating to the regulation of road freight operators in NI.
- Bring the NI system into line with the system currently in place in GB (with some local variations<sup>1</sup>[\[11\]](#)).

4.2 The Bill may largely replicate the GB Goods Vehicles (Licensing of Operators) Bill 1995<sup>1</sup>[\[12\]](#).

4.3 It is proposed that the Bill will replace existing provisions contained in the Transport Act (NI) relating to:

- Licensing of road freight operators.
- Licensing of road freight vehicles.
- Enforcement.

4.4 It is proposed that the Bill will introduce new powers relating to:

- 'Own account' operators.
- Application of environmental conditions to operating centres.
- Continuous licensing.
- Publication of notices of application for a licence.
- Maintenance undertakings.
- New disciplinary procedures and appeals.
- Impounding.

## 5. Policy Options and Consultations Prior to the Bill

5.1 The Department considered 3 policy options<sup>1</sup>[\[13\]](#) for the Bill:

- Option 1: 'do nothing' (rejected as the DOE 1991 review and 1998/2003 consultations all supported alignment with the GB system).
- Option 2: replicate the GB provisions (rejected as consultations revealed a perceived need for some local variation).
- Option 3: replicate the GB provisions with local variations (adopted as it aligns powers in NI with those currently available in GB, but gives some scope for slight local variations).

5.2 The Department has formally consulted on reform of the road freight operator licensing system on 2 occasions<sup>1</sup>[\[14\]](#):

- 1998, after representations from industry associations, a consultation paper on proposals to bring the NI system into line with GB was issued to over 2000 consultees, of whom 34 responded, and most of those supported the proposals.
- 2003, after the previous review was not taken forward, a revised and updated consultation was issued to a wide range of bodies, of which 19 responded, mostly

positively, with concerns relating to increased costs for operators, constraints on competition and the need for actual enforcement.

5.3 The Department recently invited some 15000 operators to a series of industry briefings<sup>[15]</sup>, supported by the Road Haulage Association and the Freight Transport Association, on the proposals for operator licensing. More than 1800 people attended, representing c12% of the industry. Presentations were well-received, the general response was positive, and issues expected to cause the industry concern did not appear to do so. Most queries related to individual circumstances (maintenance, operating centres, costs, enforcement and other issues) and NI Northern Ireland Assembly, Research and Library Service exemptions (which will be specified by the department prior to enactment of the new regulations, and subject to committee scrutiny in draft form<sup>[16]</sup>).

## 6. Costs of the Bill

6.1 Enacting this enabling legislation will have no financial implications for public sector expenditure. While resources are required to enact the subsequent subordinate legislation programme, to introduce new administrative and IT systems, the new licensing system is expected to run on a full cost recovery basis, including recouping these initial set-up costs<sup>[17]</sup>.

6.2 Business cases and full Regulatory Impact Assessments will be developed in tandem with the subordinate legislation to inform future funding bids<sup>[18]</sup>.

6.3 In the Road Freight Review Consultation, the department gave an undertaking that fees in NI would initially be at the same levels as fees in GB. The fee structure in GB is currently under review, and changes are expected there. Fees in RoI are currently much lower than GB or NI, having been unchanged since 1994; the RoI Department of transport will review fee structures and levels in the near future, and have indicated a significant rise in fee levels within the next 12 months<sup>[19]</sup>.

## 7. North-South and East-West Relations and Cooperation

7.1 North-South, there will be improvements in enforcement cooperation<sup>[20]</sup>, but there are no plans to coordinate equivalent legislation between NI and RoI<sup>[21]</sup>.

7.2 East-West, there will be positive impact in terms of:

- Consistency of approach and improvements in road safety and industry regulation.
- Improvements in enforcement cooperation<sup>[22]</sup>.

[1] DOE: Road Freight Licensing of Operators Bill: Policy Memorandum

[2] DOE: Road Freight Licensing of Operators Bill: Policy Memorandum

[3] Report of the Inquiry into Lorries, People and the Environment, A Armitage, HMSO 1980 Northern Ireland Assembly, Research and Library Service

[4] DOE: Goods Vehicles (Licensing of Operators) Bill: Explanatory and Financial Memorandum

[5] The Explanatory and Financial Memorandum provides commentary on individual clauses



[6] DOE: Goods Vehicles (Licensing of Operators) Bill: Explanatory and Financial Memorandum

[7] Operators who carry their own goods in the course of their business or trade

[8] Operators who might, for example, avoid checks and controls, fail to keep their vehicles in a fit and serviceable condition, forge licensing documents, overload, speed, contravene parking restrictions or fail to insure vehicles

[9] Sources: PSNI Central Statistics Unit and NI Transport Statistics 2006-2007.

[10] DOE: Goods Vehicles (Licensing of Operators) Bill: Explanatory and Financial Memorandum

[11] For example, NI has insufficient volume or market size to justify a traffic commissioner for freight alone (DOE: Road Freight Licensing of Operators Bill: Policy Memorandum)

[12] [http://www.opsi.gov.uk/acts/acts1995/Ukpga\\_19950023\\_en\\_1](http://www.opsi.gov.uk/acts/acts1995/Ukpga_19950023_en_1)

[13] DOE: Goods Vehicles (Licensing of Operators) Bill: Explanatory and Financial Memorandum

[14] DOE: Goods Vehicles (Licensing of Operators) Bill: Explanatory and Financial Memorandum

[15] DOE: Report on the Briefings given by DOE to the Freight Industry, February-March 2008

[16] Letter: DOE LO to Environment Committee Clerk dated 26 February 2008

[17] DOE: Goods Vehicles (Licensing of Operators) Bill: Explanatory and Financial Memorandum

[18] DOE: Road Freight Licensing of Operators Bill: Policy Memorandum

[19] Letter: DOE LO to Environment Committee Clerk dated 4 February 2008

[20] DOE: Road Freight Licensing of Operators Bill: Policy Memorandum

[21] Letter: DOE LO to Environment Committee Clerk dated 16 April 2008

[22] DOE: Road Freight Licensing of Operators Bill: Policy Memorandum

## **Departmental Reply re Current and Future Levels of Enforcement**

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Northern Ireland Assembly  
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Telephone: 028 90 5 40855  
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Your reference:  
Our reference:  
Date: 28 May 2008

Dear Patricia,

I refer to your request for further information on the Goods Vehicles (Licensing of Operators) Bill, contained in your memo of 28 April 2008.

## **Background:**

The Committee Members have asked for details on the current and future levels of enforcement, answers to the stakeholders' questions from the public briefing sessions and a copy of the DVA report on their survey of roadworthiness compliance. I understand that members have already received a copy of the DVA compliance survey report.

## **Current Position**

### **1. Current and future levels of enforcement**

1. There are currently eight officers within a dedicated Goods Vehicle Enforcement Team.
2. In addition, three staff within the Intelligence & Special Investigations Section, three staff within the Policy Section and five staff within the Operational Support Section also contribute to improved road safety through the targeting of non compliant operators, development of associated policy in respect of Goods Vehicle Enforcement and back office administrative support in relation to the processing of prosecution files to the Public Prosecution Service. Staff within these sections also provide support, as required, during Goods Vehicle Enforcement activities.
3. DVA has been successful in securing additional financial resources following a Comprehensive Spending Review bid (CSR2) submitted during 2007. As a result, the number of enforcement officers dedicated to Goods Vehicle Enforcement activities will increase progressively from eight to twenty. This progressive staffing increase is necessary to align with a year on year increase in the Agency's projected baseline funding between 2008/09 and 2010/11.
4. Staffing levels within the Intelligence & Special Investigations Section, Policy Section and Operational Support Section will also increase as a result of the successful CSR2 bid and these additional members of staff will also provide support, as required, during Goods Vehicle Enforcement activities.
5. A range of initiatives have been developed to address the high level of non compliance identified during the 2007 Goods Vehicle Compliance Survey, these include:
  - the development of an intelligence led and targeted approach to reduce non compliance in the road transport sector and the deployment of Automated Number Plate Recognition (ANPR) system which will assist operational enforcement officers in targeting high risk offenders at the roadside;

- the deployment of specialist enforcement equipment / vehicles during enforcement operations, these include livery cars / vans, portable brake tester, portable weigh pads to assist the identification of un-roadworthy and overweight vehicles;
- enforcement operatives undertaking compliance checks at operator premises, maintenance assessments, education visits including attendance at special events such as the Taxi Show and Balmoral Show to highlight the importance of road transport compliance and the development of a comprehensive range of educational material to ensure the industry understands its legal obligations.

## **2. Questions and answers from Public Briefing Sessions**

One of the committee members suggested it might be helpful to them to have the answers we gave to the questions asked in the industry briefings. Rather than providing an exhaustive list of all the questions, they have been grouped under the main headings and answers supplied. These are attached in Appendix A.

Yours sincerely,

Una Downey

DALO  
[By Email]

## **Appendix A**

### **Questions and answers from the Freight Industry Briefings**

#### **Maintenance**

##### **What are the maintenance requirements of the Bill?**

An operator must ensure that their vehicles are maintained in a safe and roadworthy condition at all times when in use on a road. There are two types of essential inspections:-

- i) daily walkaround checks which cover the external condition, ensuring in particular that the lights, tyres, wheel fixings, bodywork, trailer coupling, load and ancillary equipment are serviceable and
- ii) regular safety inspections which cover all the items included in the statutory annual test.

##### **What records must be kept?**

Systems must be in place to record defects and their repair. Safety inspection and repair work records must be kept for at least 15 months as part of a vehicle's maintenance record.

##### **How often are safety checks required?**

In addition to the daily walkaround checks, regular safety inspections are required. The frequencies are in weekly increments to take account of the type of work undertaken, the operating conditions and mileages covered and range between every 4 to 13 weeks.

## **Can an operator do his own maintenance?**

An operator may decide to undertake his own safety inspections and maintenance work in-house or to contract all or part of the work to someone else. If they decide to provide their own safety inspection facilities, they must ensure they are adequate for the job.

## **What will the cost of maintenance be?**

The maintenance as required by the proposed legislation should not be an additional cost to any operator.

## **Can failure at annual test count against an operator's licence?**

The Department plans to introduce operator compliance risk score which is a mechanism used to calculate which operators are most likely to be non-compliant when checked at the roadside. First and annual test data, including any defects resulting in a failure will be used in the calculation of the score.

## **Will improved roadworthiness of vehicles improve road safety?**

Yes

## **Why is there so much inconsistency at DVA test centres?**

This is not an issue for these briefings. DVA has a complaints procedure which can be followed if there are specific complaints.

Is a Certificate of Professional Competence (CPC) required for a restricted licence (Own Account)?

No. A Certificate of Professional Competence is an EU requirement for all holders of standard national and standard international operators' licences.

## **What is the difference between the Transport Manager CPC and the Drivers' CPC?**

A transport manager's certificate of professional competence is a qualification in the management of transport operations. An operator who holds a standard national or standard international licence is required to nominate a Transport Manager with a CPC to demonstrate that they are continuously and effectively responsible for the management of the transport operations.

The Driver Certificate of Professional Competence (CPC) is a new qualification for professional bus, coach and lorry drivers, which is being introduced across the EU. In the future, drivers will be required to hold a Driver CPC in addition to their vocational driving licence.

## **Operating Centres**

### **What are the requirements for operating centres?**

An operating centre is the place where vehicles are normally kept when not in use. The operating centre should provide sufficient off street parking for all vehicles and trailers.

The Department will need to be satisfied that operating centres are suitable - for example, that they will be big enough, with safe access, and be in an environmentally acceptable location. Details of the operating centre will have to be advertised in a local newspaper to allow local residents the right to make representations on environmental grounds.

An operator will need additionally and separately to ensure that his proposed operating centre use will meet the requirements of planning law.

### **Can an operator park in their driveway?**

It may be possible in certain cases for an operator to park in the driveway but each case will be considered in its own merits.

### **Can an operator park on the street?**

No, vehicles must be parked off the public road.

### **What happens if an existing Operating Centre is subsequently surrounded by housing?**

Each case will be treated on its own merits. However, it is unlikely that an Operating Centre would be disallowed just because there are representations against it. It is too early in the legislative process to be more specific on details.

### **Who can make objections / representations?**

A number of statutory consultees will have a right to object to the granting of an application for a licence or variation to a licence. These may include:

- Police
- Government departments
- Local councils
- Prescribed Trade Unions / Trade Associations

The owners or occupiers of land, or buildings, in the vicinity of an operating centre, who feel that the use of a site as an operating centre will prejudicially affect their use or enjoyment of their land, will have the right to make representations to the Department about an application for a new licence or a variation. Representations may be made only on environmental grounds.

### **How will the Department be satisfied that objections / representations are genuine?**

The representor / objector will have to prove the case they make against an operating centre. Representors will have to live within sight, smell or sound of the operating centre before their representations can be considered.

### **Will there be grandfather rights for existing operators?**

Granting of grandfather rights is just one of the options being considered.

## **Cost**

### **How is the fee made up?**

The fee is made up of three parts:-

- i) An application fee
- ii) A fee payable for the grant of the licence and
- iii) A fee payable for each vehicle notified on the licence.

Based on the current GB fee structure:-

- An operator with one vehicle would pay £761 every 5 years;
- An operator with three vehicles would pay £1121 every 5 years;
- An operator with ten vehicles would pay £2381 every 5 years;

### **How does the Department justify the two tier fee?**

The fee charged with the initial application covers the cost of processing the application. The fee for grant of a licence will be charged initially and every five years after that as a continuation fee. It would be unfair to apply this part of the fee if an application was refused.

### **Why is the fee the same for all operators?**

The cost of administration is the same for all categories of licence hence the same fee structure.

### **What will the revenue go towards?**

All funds generated from the fees will go towards the cost of regulation. This will cover staff, administration, IT costs and enforcement.

### **Is this not just a stealth tax?**

No. All the money generated will be used to cover the cost of regulating the industry.

This cost, on top of rising fuel costs will put operators out of business.

The fees required for operator licensing are not sufficient to impact on the viability of a business.

## **Exemptions**

### **Will agricultural tractors be exempt?**

It is not clear at this time whether agricultural tractors will be exempt from the requirements of operator licensing in Northern Ireland. In Great Britain some agricultural tractors are exempt in certain circumstances but this is a grey area and will need to be looked at carefully.

### **Will the NI exemptions be the same as the GB exemptions?**

The GB exemptions are being used as a guide at present. However, it is the Department's view that the GB exemptions are complicated and it is hoped to simplify them for Northern Ireland.

### **When will the NI exemptions be worked out?**

Work on deciding the NI exemptions is already underway and will continue throughout the development of the regulations. The regulations will be subject to public consultation in due course.

## **Enforcement**

### **Why is there so little enforcement to tackle illegal operators?**

Currently only around one quarter of the industry is licensed and therefore paying for the regulation of the entire industry. When the own account sector is licensed the revenue for enforcement will increase substantially.

### **Will the Bill improve enforcement?**

Extension of operator licensing to the own account sector will greatly increase the revenue collected by the Department and enable an increase in enforcement resources. In addition to this, the new legislation will strengthen the Department's enforcement powers.

## **Other Issues**

### **Where can an operator get a CPC?**

A Certificate of Professional Competence is gained by passing the Certificate of Professional Competence (CPC) examinations set by the Oxford, Cambridge and Royal Society of Arts Examinations Board (OCR). [A detailed syllabus and a list of approved training providers was available on request at each briefing].

### **Who needs a tachograph?**

Questioners were referred to the representatives from RHA and FTA who were present at the briefings.

### **Would the Department not be better to put some money into improving NI roads?**

This is a matter for the Department for Regional Development and representations should be made to it.

### **What action will be taken against tractors being used for general haulage?**

Any vehicle detected being operated illegally will be subject to enforcement action.

### **Will Northern Ireland operators be disadvantaged compared to operators in Ireland?**

The Department is not aware of evidence to suggest any disadvantage. Attendees were invited to complete a questionnaire which included questions on the potential impact of the proposals on competition from cross border operators.

### **Is there a danger that operators might flag out to Ireland?**

It is an individual operator's choice as to whether or not they wish to flag out. It was pointed out that an NI operator must have an NI operating centre and all vehicles on the licence must be registered under VERA (i.e. within the UK).

### **Does Ireland have any plans to bring in similar legislation?**

We are not aware of any proposals by Ireland to bring in similar legislation.

### **Will the Department adopt a pragmatic approach to enforcement?**

We will be taking a pragmatic approach to enforcement, particularly during the period of transitional arrangements.

### **Will insurance costs come down if the standard of NI vehicles improves?**

Indications from the trade representatives are that insurance costs will fall with an improvement in the compliance of the freight fleet.

## **Goods Vehicles (Licensing of Operators Bill) Presentation to the Environment Committee – 5th June 2008**

The overall purpose of presentation

The thinking behind the Bill

- Enabling powers as opposed to detailed provisions
- Drivers for change

The powers in the Bill

- What they are
- Where in the Bill
- What they are intended to achieve and why
- Schedules

Specific areas under consideration

- Operating Centres
- Traffic Commissioner Role in NI
- Exemptions



- Cross Border Issues
- Transitional Arrangements

#### Documentation

- Policy Memorandum
- Consultation documents and responses
- Draft Goods Vehicles (Licensing of Operators) Bill
- Explanatory and Financial memorandum
- Summary of Main Provisions
- Notes of Stakeholder Meetings
- How Road Freight (Operator Licensing) Functions Under Existing Legislation
- Changes to the Licensing System Enabled by the Bill

Road Safety Division support for the Committee

Concluding goals

## **Briefing by UFU on the need for Exemptions**

**Clarke Black  
Chief Executive**

To : Environment Committee

From : Chris Osborne, UFU Policy Officer 22 September 2008

### **Goods Vehicles (Licensing of Operators) Bill - The Need for Exemptions**

The Ulster Farmers Union acknowledges the importance and need for road transport safety. However, we do not believe that proposals contribute to this.

The proposed legislation duplicates the present MOT/PSV arrangements. In the context of operational safety, it will increase red tape and paperwork without providing the assurance of enhanced maintenance and safety.

Proper maintenance of vehicles is not achieved by creating a paper trail of increased bureaucracy. This can only be achieved by efficient enforcement. Northern Ireland has one of the most stringent and efficient MOT-testing regimes in Europe. However, the very nature of MOT confirms that on the actual day of the test, it is the inspector's eye which decides and confirms as to whether or not a vehicle is roadworthy.

It should be noted as well that in terms of the proposed legislation, the UFU is opposed to the introduction of an external organisation to enforce this legislation; Vehicle and Operator Services Agency (VOSA).

The UFU has forecasted that if the proposals are implemented without specified exemptions, it will create c.15,000 extra operator centres in the agricultural industry.

We do however welcome the primary legislation's powers to exempt whole groups. It is our view that very serious consideration is needed about those groups who should be included in the list of exemptions.

It is the UFU's strong belief that there is a case for exemptions to be applied to agriculture and horticultural activities.

Tractors are built to different constructional standards and are slower on the road. Consequently are self-restricting in terms of distance travelled. However, the UFU wish to draw your attention to the following points in support of our call for exemptions for our sector;

- Due to the nature of the farming industry, the majority of farmers have no choice when driving their tractor and trailers on a public road, as this is often the only way to get to their fields to carry out their work.
- Agriculture has a burden red tape already and this will contribute significantly to this growing load.
- Many vehicles on farms do not operate all year, often only for a very small proportion of the year.
- The UFU also contends that reliance on a reduced number of operators would put the haulier and the livestock owner at risk of contravention of Health and Safety and time of transport rules for livestock. The UFU is concerned at the possibility of reduced competition.

The subject of existing legislation was mentioned. To elaborate upon this the UFU wishes to draw your attention to HM Revenue and Customs policy in relation to the tractors on the road. A tractor is allowed to travel on the road using rebated fuel (red diesel) when they are carrying out an agricultural activity. This would counter any query the DOE would have in relation to "fairness of competition". This was raised in relation to tractors being used in competition for road haulage. Existing legislation means that this is not a issue.

Consequently, the UFU is asking for the following exemptions to be applied for our industry;

## **Exempted Vehicles and Operations**

### **Agricultural Tractors**

An Agricultural Tractor licensed as an "Agricultural Tractor under the Special Concessionary class" for Vehicle Excise Duty (VED) purposes should be exempt from any licensing requirement, when being used on a public road to haul:

- Farm implements or trailed appliances;
- Fuel or water required for the tractor;
- Articles for the farm (inputs) or forestry estate by the occupier or a contractor employed to do agricultural work by the farm occupier; this includes all agricultural inputs, such as, fertilisers, seed or feed;
- Agricultural or woodland produce from a farm or forestry estate within 15 miles of land occupied by the keeper;

- Material to be spread on roads to deal with frost, ice or snow from a farm or forestry estate within 15 miles of land occupied by the keeper;
- A snow plough or similar equipment for clearing snow.

## Other vehicles

As well as agricultural tractors there are a number of other vehicles that should be exempt from the requirements to hold an operator licence.

The ones relevant to agriculture are listed here:

- A dual-purpose vehicle, (i.e. vehicles constructed or adapted for the carriage of both goods and passengers within unladen weights less than 2040 kg, and with four-wheel drive or prescribed seating and window arrangements) such as a 4 x 4 utility vehicle, for instance, a Land Rover Defender, and any trailer it draws.
- A vehicle used on a road that only passes between private premises in the immediate vicinity. Where the premises belong to the same person and the road distance travelled in a week does not exceed six miles (usually licensed for on-road use in the Limited Use Class for VED purposes).
- A vehicle fitted with a machine, appliance, apparatus or other device, which is permanent or essentially a permanent fixture, if the goods carried on the vehicle are:
  - Required for use in connection with the machine, appliance, apparatus, device or the running of the vehicle (e.g. pesticides on a self-propelled sprayer);
  - To be mixed by the machine, appliance apparatus or device with other goods not carried on the vehicle on a road in order to trash, grade, clean or chemically treat grain;
  - To be mixed by the machine, appliance, apparatus or device with other goods not carried on the vehicle to make fodder for animals (e.g. feeds carried on a mobile mixer); or
  - Mud or other matter swept up from the road by the vehicle.

## Operational Considerations

When considering whether operations fall within any of the exemption areas covered under this section, the following points should be noted:

- The Operator Licensing exemption above for Agricultural Tractors should apply to Agricultural Tractors alone.
- There should be no distance limitation on collection of inputs for a farm.
- The 15 miles radius applies only to the transport of produce of the farm or ice or snow clearing materials. Anything else hauled outwards in connection with a business will have no exemption (e.g. agricultural waste).
- Farmers often carry out work for neighbours as contractors. They or any other contractor should not haul another farmer's produce unless it is from the field to the same person's farm store. Haulage of produce by an agricultural contractor to a third party site (e.g. a mill or merchant's store) does not fall within the scope of any exemption.
- Vehicles that are used solely for private purposes, non-profit making activities or hobbies should not fall within the scope of the Regulations. This is because they are not being used in connection with a business or trade or for hire or reward. This would include as the use of horseboxes used to convey animals to non-commercial shows.

# Briefing Notes from Planning Officials

Central Management Branch  
10-18 Clarence Court  
BELFAST  
BT2 8GB

Ms Patricia Casey	Telephone: 028 90 5 40855
Clerk to the Environment Committee	Facsimile: 028 90 5 41169
Northern Ireland Assembly	Email: una.downey@doeni.gov.uk
Parliament Buildings	Your reference:
Stormont	Our reference:
Belfast BT4 3XX	Date: 28 September 2008

Dear Patricia,

I refer to your request for briefing from Planning Service officials on the Goods Vehicle Bill.

I understand that the Committee wants advice on a number of planning related issues which is set out below:

## **Planning Permission for Operating Centres both newly established and existing**

Planning permission is required for any new distribution centres / haulage businesses or extensions to existing centres in the normal manner and any approval would be subject to planning conditions relevant to the specific case. This relates to the change of use of land and buildings and to any operational development (new buildings etc.). However, the new licensing arrangements in terms of the Goods Vehicle Bill do not have any impact in terms of the planning status of existing centres that are already operating with the benefit of planning permission or have an established lawful status due to the length of time they have been operating. Any unauthorised distribution centres / haulage businesses that do not have planning permission and are not established as lawful may be the subject of enforcement action by Planning Service in the normal manner.

## **Planning Service position on lorries being parked at a dwelling**

The parking of a lorry or van at a dwelling does not in itself constitute development requiring planning permission. For example, a delivery driver or owner of a commercial vehicle who parks the vehicle at his home address over night does not require planning permission to do so. However, if there was a greater degree of activity such as a number of vehicles, loading / unloading etc. a change of use of the site or part of the site may have occurred. It is a matter of fact and degree and planning judgement when a material change of use requiring planning permission has taken place. If this occurred in a residential area Planning Service would anticipate local objection possibly leading to enforcement action.

## **Planning Service position on operating a business from a private dwelling**

The position very much depends on the scale and nature of the business and the exact location of the dwelling. Working from home is very often considered ancillary to the main use of the

dwelling and does not constitute a material change of use requiring planning permission. As I have stated the parking of a commercial vehicle at a dwelling does not constitute operating a business. In general terms commercial activities requiring planning permission are not acceptable in residential areas due to the threat to the amenity of other residential properties (noise, nuisance and general disturbance).

I trust this information is of assistance, should you require anything further please contact me directly. Mr Simon Kirk, Professional Services Manager, Planning Service Headquarters, will attend and provide oral briefing to the Committee.

Yours sincerely,

Una Downey

DALO  
[By Email]

## **Briefing by Enforcement Officials on Goods Vehicle Bill**

Central Management Branch  
10-18 Clarence Court  
BELFAST  
BT2 8GB

Ms Patricia Casey	Telephone: 028 90 5 40855
Clerk to the Environment Committee	Facsimile: 028 90 5 41169
Northern Ireland Assembly	Email: una.downey@doeni.gov.uk
Parliament Buildings	Your reference:
Stormont	Our reference:
Belfast BT4 3XX	Date:

Dear Patricia,

The Committee for the Environment has requested officials from DVA Enforcement to attend the Environment Committee meeting on the 2 October 2008 to brief them on enforcement of the Goods Vehicle Bill.

DVA welcomes the opportunity to discuss the enforcement aspects of the draft Bill with the Committee.

The Department have responsibility for development of legislation and policy and DVA, as an Executive Agency of the Department are responsible for the operational implementation of the legislation/policy.

Recent roadside goods vehicles compliance surveys carried out by the Agency indicate that the vehicle fleet in NI is approximately 50% non-compliant – this is among the highest in Europe.

Enforcement activities are now targeted at the most none compliant operators and drivers. This approach re-enforces the need to comply and assists the licensing authorities to take more effective and proportionate actions against operators who continually ignore the legislative requirements.

The draft provisions within the Bill will bring Northern Ireland broadly into line with the rest of the UK both in terms of Licensing and Enforcement.

Key provisions within the draft Goods Vehicles Licensing of Operators Bill that enhance effective enforcement

- Article 12 (8)

Powers to require operator undertakings – Fleet maintenance requirements and records

- Article 38 Powers of Entry

Powers of entry and seizure extended to all the operators for licensing purposes.

- Article 39 Powers to seize documents

Powers of seizure extended to all operators

- Article 40 Obtaining information

Extended to all operators

- Article 41 Obstruction of authorised persons

Extended to all operators.

- Articles 23, 24 & 25 Revocation, Suspension or Curtailment of Licences

Enhanced ability to suspend, revoke or curtail Ops licences for convictions, prescribed events and breach of condition.

- Article 44 & Schedule 3 Detention of vehicle used without Operators licence

Enable vehicles operated without an operators licence to be detained subject to regulatory provisions.

Regulation powers include:

- Immobilisation with offences for removing immobilisation devices etc
- Return or disposal of vehicles and/or contents
- Custody of property
- Proceeds of sale

Additional resources required

In order to carry out effective enforcement additional resources are required.

During 2007 a Comprehensive Spending Review bid was submitted for additional funding for enforcement staff. This bid was approved and a recruitment exercise has been initiated, with new staff to be phased in over the next three years.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Una Downey

DALO  
[By Email]

## Horticulture Forum NI Briefing Notes



**HORTICULTURE FORUM  
FOR NORTHERN IRELAND**

**Witness to Environment Committee**

**Thursday 2<sup>nd</sup> October 2008**

**Re: Proposed New Goods Vehicle (Licensing of Operators) Bill**

Current legislation:

At present the current legislation allows for exemptions for the Agriculture, Horticulture and Forestry industries.

At the time of introducing this current legislation these exemptions were introduced with good reason. We are not hauliers. We do not have our vehicles on the roads on a daily basis, making a living from haulage. The majority of our members may have their vehicles on the roads for a very small percentage of the year, and in carrying out their tasks, inadvertently fall into the category of 'carrying goods for reward'

Eg: the apple grower who uses a vehicle to transport their harvest for eight weeks in the year  
The farmer who cuts and collects his neighbour's silage once or twice a year  
the landscape gardener who cuts the grass and prunes the shrubs for Mrs Smyth and removes the cuttings to a registered waste centre.

In no way can these activities in our industries be used to imply that we are the same as Hauliers.

Nor can it be claimed that our activities on the road are a risk to road transport safety. According to PSNI statistics collision casualties resulting from other road users (including tractors) is less than 1% in any of the last 5 years. This is a strong indicator that the current exemptions work.

The National Haulage Association is arguing strongly for an 'all in' legislation; their argument being that there are companies out there who should be currently operating under an 'Operators License' and because they are not, they are endangering lives on the road.

We cannot emphasize enough that these law breakers should not be confused or grouped with those industries currently working legally and safely within the current legal exemptions. Our members are not law breakers.

In respect of the NHAs concerns on this matter, current legislation already provides for the prosecution of those companies who are breaking the law. However, the real truth of the matter is that with only approximately 20 enforcement officers in Northern Ireland, it is not a lack of current legislation that allows these individuals to continue breaking the law, but a lack of manpower on the ground to catch them.

It has been quoted that the preferred number of enforcers is 50, and we would suggest that drawing in all of these new industries such as Horticulture/Farming and Forestry is not based on improving road safety but spreading the cost of enforcement.

The problem with this plan is that by bringing in all industries, an increase of enforcers from 20 to 50 will be completely lost. To implement this new legislation with no exemptions similar to the current ones, every single farmyard (about 15,000) will become an operational centre, additionally, every premise of landscapers and gardeners will become an operational centre, every grower's premises will become an operational centre. The percentage increase in the population to be policed will far outstretch the percentage increase of law enforcers. If the current level of law enforcers is currently stretched and unable to reach law breakers now, what chance have they when they have to police virtually everyone? Those individuals who dare to operate illegally on a daily basis outside the current law will simply disappear into the massive sea of bureaucratic visits and policing of all of these new Operational Centres.

Surely it makes more sense to increase the number of law enforcers from 20 to 50 to enforce current legislation and the current number of vehicles on the road that should be operating under current legislation.

We are wary of the department's suggestion that the introduction of this new legislation will cost so little to our members that it is not worth worrying over. The amount quoted to ourselves and probably to the committee is approximately £47.62. This quote is indicative of how loaded this new



legislation is to the advantage of the haulage industry and to the disadvantage of those represented by the Horticultural Forum.

This figure is based on those companies that have 10 vehicles with a cost of £2381 for a 5 year license. Indeed it does amount to £47.62 per vehicle per annum . – as so frequently banded about – the price of a tyre, and not very much at all if your vehicle is out on a daily basis making you money from hauling.

However, our members are not hauliers- they do not fall into this category. Some will fall into the category of 3 vehicles but the majority fall into the category of 1 vehicle – costing them £152.20 per vehicle. A vehicle that they may only use for one month of the year or even less.

For those of you who believe that £152 does not sound very much, the additional and real cost will not stop there. I would refer you to the additional record keeping, auditing, additional vehicle maintenance requirements (despite the fact that we're already paying for annual MOT/PSVs to prove our vehicles road worthiness) and the required proof of sufficient financial resources.

For a haulage company all of these requirements are already part and parcel of their daily administration. Indeed the majority are already required under current legislation. Therefore the cost and impact is minimal to them. For our industries it is all new – additional to the costs and overheads we are already straining under. As per statistics from the Federation of Small Businesses, Northern Ireland is unique in its very high percentage of small businesses, particularly small family run businesses where the existence of a large, experienced administrative team is an unknown luxury. We would emphasize to the committee today, the cost of this proposed legislation to our members is by no means simply the cost of a new tyre every year. These extra costs constantly add to a bureaucratic noose!

In closing, let us make the following observations on the Bill Research Paper of May 2008 – Issues Intended to be Addressed by the Bill.

The impetus for change comes from the freight industry – their concerns are the extent of illegal operations and the need for more and better enforcement. They are losing business to these illegal operators. Their concerns may be justified but why are our industries, entirely unlike the freight industry, being asked to contribute to the cost of responding to these concerns. Our industries do not ask for the freight industry to share the cost of legislation affecting us.

If there is a need for more and better enforcement why are the freight industry looking to increase the numbers out of all proportion? If you can't find a needle in a hay stack, you don't make the hay stack bigger!

Also it is stated that Northern Ireland has a much weaker freight licensing enforcement powers than GB and statutory agencies have complained about the standard of NI vehicles crossing to GB – well farmers don't go over to GB to bring in their neighbours silage, gardeners and landscapers don't take the boat across to England and Scotland to landscape Mrs Smyth's garden. It is not the vehicles belonging to our industries that are raising these concerns.

Road Safety: as previously stated PSNI statistics collision casualties resulting from other road users (including tractors) is less than 1% in any of the last 5 years.

And finally, Environmental Standards: it is said that present licensing arrangements offer no effective safeguards against operations who pay no attention to the environmental standards of their operating centres. By all means change legislation to give enforcement officers this facility, but how can this be achieved by creating in excess of 15000 more operating centres; law enforcers will be overwhelmed, the cost to decent law abiding people will be increased and the lawbreakers will be hidden in the sheer volume of operating centres.

In conclusion, the members of the Horticulture Forum welcome **effective** legislation that brings about road safety, however, we do not believe the proposals will achieve this by roping in our industries, and that we are being rounded up and herded in to reduce the financial burden of addressing the dissatisfaction of the haulage industry.

## **Departmental Briefing on Secondary Legislation Making Powers**

Central Management Branch  
10-18 Clarence Court  
BELFAST  
BT2 8GB

Ms Alex McGarel  
Clerk to the Environment Committee  
Northern Ireland Assembly  
Parliament Buildings  
Stormont  
Belfast BT4 3XX

Telephone: 028 90 5 40855  
Facsimile: 028 90 5 41169  
Email: una.downey@doeni.gov.uk  
Your reference:  
Our reference:  
Date: 10 October 2008

Dear Alex

I refer to your request for further information on the secondary legislation making powers that are contained within the draft Goods Vehicles (Licensing of Operators) Bill.

Background:

The Second Stage of the Goods Vehicles Bill was completed on 20 May 2008 and the draft Bill was referred to Committee Stage. The Committee issued a public notice seeking written evidence on the draft Bill by 11 July 2008 and an extension of time for Committee Stage was sought and granted up to 12 December 2008.

Current Position

The Committee has taken evidence from a number of respondents over the last few weeks and, in preparation for the detailed scrutiny of the provisions of the draft Bill, has asked for a list of the secondary making powers contained within the draft Bill.

A list of the clauses that contain powers to make secondary legislation, along with a brief description of each, is contained in the table attached below.

I trust this information is of assistance. Should you require anything further please contact me directly.

Yours sincerely

Una Downey

DALO  
[By Email]

## **The Goods Vehicles (Licensing of Operators) Bill**

### **Regulation Making Powers**

Clause	Purpose
1	To outline classes of vehicles that will be out of scope of operator licensing requirements
4(3)	To describe the meaning of "relevant weight" that is referred to in the previous subsection
7(3) and (4)	To set out the information and declarations that will be included in the application form and (4) for a licence.

Clause	Purpose
8(1)	To prescribe a list of events, the occurrence of which must be notified to the Department. The events will, essentially, be a list of notifiable convictions relating to road traffic and transport offences.
9(1)	To outline the details that will be included in the Department's notice of an application to be published in the Applications & Decisions.
10(2)	To outline the details that will be included on the applicant's notice of an application to be published in local newspapers.
11(2)	To prescribe the particular trade unions or associations that will be able to make an objection
11(6) and (7)	To prescribe the nature and form of an objection or representation including the timescale for submission.
12(3)	To set out the details relating to good repute, financial standing and professional competence. To include the requirements of each and how the Department will determine that an applicant fulfils each category.
12(12)	Power to prescribe a date when the wording of subsection 4 may be changed. It will, if commenced, apply stricter "professional competence" requirements on applicants for a restricted licence.
16(2)	To set out the information and declarations that will be included in the application form for a variation of a licence.
17(3)	To outline the details that will be included on the applicant's notice of an application for a variation to be published in local newspapers.
18(10)	To prescribe the nature and form of an objection or representation including the timescale for submission.
19	A specific regulation making power relating to an application for a variation - to convert from a restricted licence to a standard licence or from a standard national to standard international
20	Power to prescribe other purposes for which conditions may be attached.
27 (3)	The amendment of subsection (2) to allow a higher or lower period between reviews of operating centre
28(5)	To prescribe the nature and form of any representation made under clause 28
31(1)	To outline what the Department will take into consideration when it is making a determination in relation to environmental matters in relation to the suitability of a site as an operating centre
32	To provide for a public inquiry to be held in private.
34(2)	To set a period of time, within which a review may be held.
35(7)	To compile a list of persons [other than those outlined in clause 35] who may appeal to the Upper Tribunal, along with the circumstances in which the appeal may be made.
36(2)	To set out a list of documents etc that are to be subject to the offence of forgery – other than those documents identified within the subsection.
37(1)	To set out a list of documents etc that are to be subject to the offence of making a false statement – other than those documents identified within the subsection.
47(1)	Provision for fees – the level of fee; when the fees should be paid, whether by instalment or in one sum
47(8)	To allow for refunds of fees and for the remission of fees.
48(2)	To outline the circumstances in which the Department will be able to allow another person to use a licence if the holder has died or has become a patient within the meaning of the Mental Health (NI) Order 1986.

Clause	Purpose
48(3) and (4)	A more general power to set out circumstances in which a licence may be used by someone other than the licence holder for a period of time. Subsection (4) will enable any action necessary as a result of circumstances at (2) or (3) above. It gives the Department power to specify modifications in relation to the person who is to be treated as the new holder of the licence.
49(2)	To set out the nature and form of the certificate of qualification.
52	To enable a company with one or more subsidiaries to hold an operator's licence – and the vehicles listed on it may belong to any of its subsidiaries.
53	To enable the Act to apply to partnership arrangements.
56	A general power for the Department to make any incidental, supplementary, consequential, or transitional orders that are necessary to enable it to carry out its functions under the Bill. An order made under 56(2) may amend repeal or modify primary legislation including this Bill
57	A general regulation making power to allow the Department to carry out its functions under the Bill. Subsection (1) is of a general nature, while (2) provides a more specific range of matters that regulations may deal with. These matters have not featured within the body of the Bill and generally relate to the administration of the licensing function.
60	To set commencement dates for bringing certain clauses into operation.
Sch 3	A series of regulations will be made on foot of Schedule 3. The regulations will cover the details of the entire "detention of vehicles" scheme from detention itself, through the immobilisation and removal of the vehicle and its contents, the return or disposal, custody of property, proceeds of any sale, resolution of disputes to offences and penalties
Sch 4	Under paragraph 2, the Department will outline the nature and form of "consignment notes" that are to be carried on large goods vehicles

Regulations [other than any made under clause 27(3)] are subject to negative resolution

Orders made under clause 56 are subject to affirmative resolution

## **Departmental Response re Committee Request for Statistics on Enforcement Action**

Central Management Branch  
10-18 Clarence Court  
BELFAST  
BT2 8GB

Ms Alex McGarel  
Clerk to the Environment Committee  
Northern Ireland Assembly  
Parliament Buildings  
Stormont  
Belfast BT4 3XX

Telephone: 028 90 5 40855  
Facsimile: 028 90 5 41169  
Email: [una.downey@doeni.gov.uk](mailto:una.downey@doeni.gov.uk)  
Your reference:  
Our reference:  
CQ/137/08  
Date: 16 October 2008

Dear Alex,

I refer to your request for further information.

## Background

The Committee was briefed on the Goods Vehicles (Licensing of Operators) Bill by officials from DVA and they requested details/statistics of all cases where enforcement action has been taken over the last five years. Details of relevant fines and convictions should be included along with details of repeat offenders

In consultation with the Industry in 2005 it was agreed the Agency needed to focus on the high level of non-compliant operators and use intelligence led targeted enforcement to achieve this and to allow operators who were legal to continue to operate without the unfair competition of illegal operators.

As a consequence of this the focus has been to reduce the number of vehicles inspected overall and to target the non-compliant sector, increase enforcement operational effectiveness and the number of detections and to adopt a more robust licensing system for the operators who have a high level of non-compliance.

## Statistics

Due to the requirements of The Data Protection Act 1998, we cannot disclose personal data in respect of naming operators who have been subject to prosecution action including disclosing any relevant fines and convictions. However, statistical information on DVAs performance from 2004/05 to date is outlined in Appendix 1.

Statistics on the number of operators who have been subjected to suspension/revocation action or refusal to renew an operators licence as a consequence of the number of convictions they have incurred is set out within Appendix 2.

Details of the number of convictions for the most habitual offending operators over the last 5 years and the total fines imposed are included within Appendix 3.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Una Downey

DALO  
[By Email]

## Appendix 1

	2004/05	2005/06	2006/07	2007/08	2008/09 (April to Sept)
Number of Goods Vehicles Checked	24,163	12,077	10,523	7,003	1,269

	2004/05	2005/06	2006/07	2007/08	2008/09 (April to Sept)
Offences detected	5774	5407	6051	6518	2755
Goods Cases Forwarded to PPS	509 (2.1%)	721 (6%)	674 (6.4%)	701 (10%)	253 (21%) **
Total Penalties (Goods / Taxi / Buses)	£233,473	£295,494	£118,637	£224,177	***
Effectiveness Ratio (Goods) ****	N/A	N/A	N/A	36.4%	50.8%

\*\* There is a three/quarter month time lag in respect of vehicles being checked and a case file being forwarded to the Public Prosecution Service.

\*\*\* Due to the time lag of files being processed through the PPS and results being notified no meaningful information is available on the level of fines.

\*\*\*\* The Effectiveness Ratio is a measure between the number of vehicles subjected to either a defect notice, prohibition notice or prosecution action in relation to the volume of vehicles scrutinised for compliance. This data has been collated from 07/08 onwards.

## Appendix 2

Status	April 2006 to March 2007	April 2007 to March 2008	April 2008 to Present Date
1st Warning Letter	63	60	20
2nd Warning Letter	35	29	21
Number of Operators subject to suspension and revocation action.	2	1	11 (3 under appeal) (1 to be issued)
Number of discs suspended/revoked	3	1	20 (6 under appeal) (1 to be issued)
Revocation of Operator Licence	0	2	2 (under consideration)
Refuse New Operator Application	2	4	1
Refuse To Renew Operator Application	1	2	4 (3 under appeal)

Status	April 2006 to March 2007	April 2007 to March 2008	April 2008 to Present Date
			1 (under consideration)

### Appendix 3

Operator	Period of Convictions	No of convictions	Total Fines
A	Jan 04 to Aug 08 with 2 more cases pending	36	£10350
B	Nov 06 to July 07	26	£9300
C	Nov 03 to May 08	26	£10950
D	Oct 07 to Feb 08	12	£2100
E	Oct 03 to Aug 08	26	£4525
F	Aug 04 to June 05	28	£3225
G	June 04 to Aug	24	£5275
H	Nov 03 to Feb 08	19	£2215
I	April 05 to March 08	10	£5800
J	May 05 to June 08	27	£5550
K	March 04 to April 08	52	£27650
L	May 04 to Aug 08 with 5 cases pending	38	£6770
M	Dec 03 to Aug 08	41	£11550
N	Nov 05 to June 08	18	£4200
Totals	14 Operators	383 offences	£109,460

## Letter from Federation of Passenger Transport re GV Bill

Mr Patsy McGlone, Chairperson  
 Environment Committee  
 Room 245, Parliament Buildings, Stormont  
 Belfast BT4 3XX 21st October 2008

Dear Mr McGlone

As you may remember , I was in attendance at the committee meeting on the 16th October 2008 reference the Yellowline complaint.

On the same day, there was a briefing on the Goods Vehicle (Licensing of Operators) Bill and I was there for part of the briefing.



Prior to the 16h, it was my understanding that as a result of this Bill, there would be an Independent Regulator and all the associated powers required for this position.

However, from the Departmental briefing on the day, this does not seem to be the case and as I was not able to attend for this full session, I would seek clarification on what the actual situation is regarding the Independent Regulator.

I think by now we are all aware of the fact that Northern Ireland has much weaker licensing and enforcement powers than is satisfactory to guarantee safety on our roads or safety for our passengers. The role of an Independent Regulator is vital to the protection of our passengers and industry.

We have submitted evidence to the committee in the past concerning the weaknesses that currently exist within the passenger transport industry and the only fair and effective way to deal with these current inadequacies is to ensure that the appropriate powers are in place and that there is an Independent Regulator.

We have been fighting for a review of the passenger transport industry for 6 years and are deeply concerned at the fact that as recently as June 2008, we are still told by DOE Ministers that there are no resources for this review. We believe that our passengers are the most important 'cargo' and fail to understand why the taxi and freight industries have been reviewed without the passenger transport industry being included or considered.

However, having said all this, we were heartened by the fact that there had been movement with the other industries especially when we believed that as a result of the freight industry review, there was to be an Independent Regulator which would eventually be responsible for all road transport industries.

As far as the passenger transport industry is concerned, the reality of the current licensing and enforcement regime allows basically anyone to enter the passenger transport market and start to carry passengers without proper control or any deterrents for non compliant operators or illegal activity. Obviously this situation needs to change and we are currently fighting for changes to our industry and part of the change required includes an Independent Regulator to ensure a proper regulation and compliance of operators and also a fair and legal structure where one government department is judge and jury.

Should you require further please do not hesitate to contact me.

Assuring you of our best attention at all times.

Karen Magill, Chief Executive  
Federation of Passenger Transport , N.I. Ltd.

## **Departmental Response re Position of Potential Operating centres**

Central Management Branch  
10-18 Clarence Court  
BELFAST  
BT2 8GB

Mrs Alex McGarel  
Clerk to the Environment Committee  
Northern Ireland Assembly  
Parliament Buildings  
Stormont  
Belfast BT4 3XX

Telephone: 028 90 5 40855  
Facsimile: 028 90 5 41169  
Email: [una.downey@doeni.gov.uk](mailto:una.downey@doeni.gov.uk)  
Your reference:  
Our reference: CQ/135/08 Date: 23 October 2008

Dear Alex,

I refer to your request for further briefing on the Goods Vehicle Bill with regard to the position of potential operating centres where there is a meaningful change of use from residential to business. Members have also requested clarification on the issue of storage and movement of goods from residential properties which might subsequently need to be classified as an operating centre.

The first issue relates to the situation where a driver operates a vehicle from his home and at what point is there a material change of use of part the site. In general terms home working does not necessarily require planning permission. Permission is not normally required where the use of part of a dwelling house for business purposes does not change the overall character of the property's use as a single dwelling, for example, the use by a householder of a room as an office. Similarly the parking of a single commercial vehicle over-night within the curtilage of a dwelling house would not normally be regarded as a material change of use of part of that curtilage, provided there was no other commercial activity over and above the parking of the vehicle.

However, as Planning Service has pointed out to members a material change of use is a matter of fact and degree based on the particular circumstances of each case. This means Planning Service must give careful consideration to the scale and nature of any activities being carried out. Any activity over and above using a room in a dwelling for an office and over-night parking of a single vehicle might therefore be considered a material change of use. In assessing whether a change of use has taken place Planning Service would consider the following:

- Is work is carried out primarily by persons living in the residential unit or are there other persons employed at the site?
- Is the scale of the business use clearly secondary to the main use of the property as a dwelling house?
- Will there be a loss of amenity for neighbouring residents from any increase in noise or fumes, advertising, impact on visual amenity, traffic generation and road safety?
- Is there any specialist equipment installed not normally found at a dwelling?
- Does the use attract more than just occasional visitors?

Therefore, if the scale of the activity at a residential property increased to include the regular movement of vehicles throughout the day and night and week-ends, parking of more than one vehicle, creation of additional hardstanding areas, unloading and loading of vehicles, storage of goods, maintenance and repair of vehicles, etc. then it is likely that Planning Service would consider a change of use of part of the curtilage of the dwelling had occurred. This relates to the

second matter members have raised. Loading, unloading and storage of goods on a regular basis would clearly point to a material change in use but on a limited and infrequent basis it might not. However, continuous open storage of goods at a residential property is likely to be considered a material change. This is the key point about "fact and degree" or "nature and scale" of an activity in that Planning Service must look carefully at the facts in relation to each specific case.

It also is important to clarify the issue that was raised on 2 October 2008 in relation to change of use and the planning unit. A dwelling and garden / yard are one planning unit. However, a planning unit may be subdivided to create two distinct uses even if they are in one defined curtilage. For example the use of a yard area as a haulage business would be a separate use to the dwelling and the overall site might be described as a mixed use dwelling and haulage yard.

A haulage yard is not specified in any class in the Planning (Use Classes) Order (Northern Ireland) 2004 and to establish a new haulage business or change the use of existing land or premises to such a use would require express planning permission. Clearly a haulage business which includes the parking of a number of vehicles, large areas for parking, loading / unloading, storage and maintenance / repair would not be acceptable in a residential area in terms of its impact on surrounding dwellings. In the rural area such a use could potentially be damaging to visual amenity and in some circumstances could impact on road safety.

However, as previously stated the parking of a single commercial vehicle at a residential property over-night does not constitute a haulage business and in these cases the licensing of the vehicle and designation of an operating centre would not require an owner driver to apply for planning permission as long as there was no intensification of the use as noted above.

In summary the introduction of the Goods Vehicle Bill has no impact on operational planning matters where:-

1. A haulage business is operating with benefit of planning permission.
2. A haulage business has not been granted planning permission but is lawful and immune from enforcement action because of the length of time it has been operating.
3. Where the nature of the activity at a residential property does not constitute a material change in use of part of the site (i.e. use using a room in a dwelling for an office and over-night parking of a single commercial vehicle).

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Una Downey

DALO  
[By Email]

## **Departmental Response on the Parking of Goods Vehicles in Residential Areas**

Central Management Branch  
10-18 Clarence Court  
BELFAST  
BT2 8GB

Mrs Alex McGarel  
Clerk to the Environment Committee  
Northern Ireland Assembly  
Parliament Buildings  
Stormont  
Belfast BT4 3XX

Telephone: 028 90 5 40855  
Facsimile: 028 90 5 41169  
Email: una.downey@doeni.gov.uk  
Your reference:  
Our reference: Date: 24th October 2008

Dear Alex,

I refer to the Committees request of 9th October 2008 for details of current restrictions on the parking of goods vehicles in residential areas.

## **Background**

In the scrutiny of the Goods Vehicles (Licensing of Operators) Bill the issue of parking of goods vehicles on the roadway and private driveways at night has been raised.

## **Current Position**

There is no legislation on the parking of goods vehicles that is specific to residential areas. Legislation relating to the parking of goods vehicles is as follows:

### **A. On the road verge, footway or central reserve**

Article 30 of the Road Traffic (NI) Order 1995 renders it an offence (with certain exceptions) to park a heavy commercial vehicle (HCV) on a road verge, central reserve or footway. A HCV is defined as a vehicle that has an operating weight exceeding 7.5 tonnes.

There is no general offence preventing the parking of non-HCV's on footways, though the Footways (Prohibition of Waiting) (No.2) Order (Northern Ireland) 1981 prohibits waiting by motor vehicles on a footway adjacent to a clearway.

### **B. On the road**

By virtue of Article 5 of the Roads (Restriction of Waiting) Order (NI) 1982 it is an offence for a person to cause or permit a vehicle to wait in a public road, except in a lay-by or a designated parking place, within 15 metres of its junction with any other road.

Article 32 of the Road Traffic (NI) Order 1995 makes it an offence for a person to cause a vehicle or trailer to remain at rest on a road in such a position or such a condition or in such circumstances as to involve a danger of injury to other persons using the road.

The Road Vehicles Lighting Regulations (NI) 2000) state that no person shall allow to remain at rest, or cause or permit to be allowed to remain at rest, on a road any vehicle between sunset and sunrise, unless every front position lamp, rear position lamp, rear registration plate lamp, side marker lamp and end-outline marker lamp with which the vehicle is required by these Regulations to be fitted is kept lit and unobscured.

There are exceptions for goods vehicles of an unladen weight of less than 1525Kgs in streets where the speed limit is 30mph or less.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Una Downey

DALO  
[By Email]

## **Departmental Response re Committee Issues Paper**

Central Management Branch  
10-18 Clarence Court  
BELFAST  
BT2 8GB

Mrs Alex McGarel  
Clerk to the Environment Committee  
Northern Ireland Assembly  
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Stormont  
Belfast BT4 3XX

Telephone: 028 90 5 40855  
Facsimile: 028 90 5 41169  
Email: una.downey@doeni.gov.uk  
Your reference:  
Our reference: Date: 31 October 2008

Dear Alex,

I refer to your request for Departmental comments to be inserted into the Issues Paper on the Goods Vehicles (Licensing of Operators) Bill.

Background:

You have prepared the Issues Paper that lists all of the issues that were raised by the Committee in evidence sessions and by individuals and organisations either to the Committee or to the Department itself. That Paper will be used during the clause-by-clause scrutiny of the Bill in the coming weeks.

Current Position

Officials from the Bill Team have provided comments on each of the issues and these can be found in the Paper attached with this letter.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Úna Downey

DALO [By Email]

## **Departmental Response re 'In Scope' and 'Out of Scope' Vehicles**

Central Management Branch  
10-18 Clarence Court  
BELFAST  
BT2 8GB

Mrs Alex McGarel  
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Email: [una.downey@doeni.gov.uk](mailto:una.downey@doeni.gov.uk)

Your reference:

Our reference: CQ/153/08 Date: 31 October 2008

Dear Alex,

I refer to the Committees request, following the meeting of 16th October 2008, that the Department provide them with examples (photographs) of vehicles 'in scope' and 'out of scope' in relation to the 3.5 tonne limit.

Background

In the scrutiny of the Goods Vehicles (Licensing of Operators) Bill the issue of what vehicles are within the scope of the legislation has been raised.

Current Position

The attached document shows samples of vehicles in and out of scope of the legislation as per Clause 1 and Schedule 1 of the Bill. Medium to large vehicles are not shown as they are obviously within the scope of the Legislation. The Clause and Schedule are almost identical to

that currently in place in GB and is also presently applied by DVA in NI for the regulation of the hire or reward sector.

The document is not dealing with the issue of maximum towing weights for vehicles, as it purely considers vehicles and combinations and their respective weights within the terms of the requirements of the Bill. As such the document is not on general release by the Department but solely for the purpose of enabling Committee members to understand the application of the legislation.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Úna Downey

DALO [By Email]

# Scope of Operator Licensing

If a vehicle is used for hire and reward, or in connection with any trade or business an operator's licence may be required:

## **Unplated Vehicles and Trailers**

A vehicle weighing less than 1525 Kgs unladen drawing a trailer weighing less than 1020 Kgs unladen does not need an operator's licence. (i.e. a car and light trailer)

Legally, if either the vehicle or the trailer is not plated and the combined unladen weight (exclusive of any small trailer i.e. less than 1,020 Kgs) is less than 1525 Kgs, an operator's licence is not required.

## **Other Vehicles**

Vehicles of 3.5 T gross weight or less do not need an operator's licence unless they are drawing a trailer which exceeds 1,020 Kgs unladen weight AND the combined gross weight exceeds 3.5 tons.

Vehicles which exceed 3.5 tons gross weight will need an operator's licence whether or not they draw a trailer.

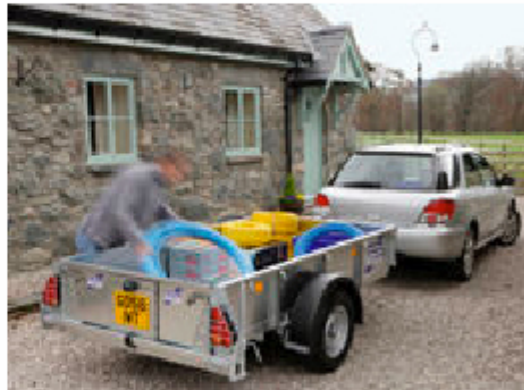
Please note: these pictures show examples of how the new Operator Licensing rules will apply but the examples should NOT be taken as implying that these vehicles can legally tow the trailers shown. Operators will still have to operate within the manufacturer's guidance and legal requirements on what any particular vehicle is allowed to tow or what any particular trailer can carry.



# Examples in and out of scope



Out of scope - vehicle plus trailer is 3.5 tons gross weight or less.



Out of scope - vehicle plus trailer is 3.5 tons gross weight or less - light car and trailer



In scope - vehicle plus trailer exceeds 3.5 tons gross weight and trailer exceeds 1020Kgs unladen weight

# In scope or out?

(A)



Vehicle gross weight = 3.5 tons  
Trailer unladen weight = 650 Kgs

Out

(B)



Vehicle gross weight = 3.5 tons  
Trailer unladen weight = 500 Kgs







Out

(C)



Vehicle gross weight = 3.5 tons  
Trailer unladen weight = 1100 Kgs

In

		(D)
<p>Vehicle Gross weight = 3.6 tons Trailer unladen weight = 403 Kgs</p>		In
		(E)
<p>Gross Vehicle Weight 3000Kgs Trailer unladen weight 1100 Kgs</p>		In
		(F)
<p>Vehicle Gross weight = 1,500 Kgs Trailer unladen weight = 1000Kgs</p>		Out

## Proposed Amendments to Goods Vehicles (Licensing of Operators) Bill

**Amendments**

1. - Clause 1 and Schedule 1 [pages 1 and 42 respectively].

Remove Schedule 1 altogether and insert a basic definition of "small goods vehicle" into clause 1(2) (a) and take the power to define that term for

**Effect**

The current definition of "small goods vehicle" is a replication of the definition that is contained in the equivalent GB Act of 1995. It would appear that the definition is the cause of problems in GB in that it is loosely worded and a considerable number of vehicles are deemed to be out-of-scope of operator licensing as

## Amendments

vehicles that forms part of a vehicle combination.

2. - Clause 4 (5) and (6) [page 4, lines 4 and 5]

At the end of clause 4(5) after the words "a prescribed fee" add "if any". Similarly, in the first line of clause 4(6) after the words "a prescribed fee" add "if any".

3. Clause 26 [page22]

To impose a duty on the Department to notify a licence holder of its intention to give a direction to revoke, suspend or curtail a licence and of his right to request a public inquiry before any direction can be given.

4. Clause 55 [page 36]

To replace references to "harbour commissioners" with harbour authorities".

5. Schedule 3 [page 46]

To amend Schedule 3 to the Bill by substituting paragraph 8 with a new paragraph 8 [power to make regulations for return of detained vehicle]:-

"Regulations may make provision authorising a vehicle detained by virtue of paragraph 2 to be returned to the owner, in prescribed circumstances, without the need for any application under paragraph 9."

6. Schedules 1 and 4 [pages 42 and 50 et seq]

## Effect

a result. This amendment will allow the definition to be made clear and unambiguous.

The Local Transport Bill that is currently progressing through Westminster is to amend the Goods Vehicles (Licensing of Operators) Act 1995 in GB. The Department would like to amend the equivalent provisions in the Bill to ensure that it is up-to-date with the GB legislation. It is a minor amendment that relates to fees and is necessary to take account of situations where no such fee is prescribed.

This is to remove an anomaly whereby the Department "shall not" give a direction to revoke, suspend or curtail a licence without first holding a public inquiry if the licence holder requests the Department to do so. The problem is, how does the licence holder know to ask for an inquiry when there is no requirement to inform him that the Department is considering making the direction?

To make clause 26 work correctly, it will be necessary to amend the Bill to include a specific duty to inform the licence holder.

In clause 55, the provisions of the Bill have been applied to areas in the control of harbour commissioners. The intention was to ensure the requirements of operator licensing would apply within all harbour areas. However, the Department has learned that the Larne and Warrenpoint harbour areas are not under the control of commissioners, so these two harbours would be outside the scope of the Bill as currently drafted. The term "harbour authority" will ensure that all harbour areas are included within the scope of the Bill.

Another amendment taken from the Local Transport Bill - relating to the return or disposal of goods vehicles that have been impounded. Regulations made under paragraph 8 of Schedule 1A to the 1995 Act provides for a vehicle to be returned to its owner. Further regulations, made under paragraph 9, require the owner to apply to the traffic commissioner for the return of the vehicle. The amendment is to paragraph 8 and is designed to make it easier for the owner to have his vehicle returned. It will make it possible for the return of the vehicle without the need for the owner to apply to the traffic commissioner in certain prescribed circumstances. The Department would seek to replicate this amendment so that the two systems [GB and NI] remain consistent.

The term "relevant plated weight" was drafted into the Bill from the equivalent passages in the GB 1995 Act. However, the term is not used in Northern Ireland. It will be necessary to amend the Bill to remove the GB

Amendments	Effect
To replace all references to the term “relevant plated weight” with the term “permissible maximum weight”.	term and replace it on each occasion with the correct NI term “permissible maximum weight”.
7. To take power to pay grants to persons or bodies as the Department considers appropriate in connection with the provisions of the Bill. Subject to terms and conditions, with the approval of DFP.	The Environment Committee have expressed concern about the impact that the Bill may have on small businesses. The addition of a clause, that will provide the Department with power to pay grants to persons or bodies in connection with the provisions of the Bill, may allay the concerns. The clause would replicate a similar provision that was included in the recent Taxis Act (NI) 2008.

## **Annex 2 - How Road Freight (Operator Licensing) Functions Under Existing Legislation**

### **Introduction**

1. The purpose of this paper is to give an overview of existing road freight operator licensing legislation in Northern Ireland, how it compares with what happens in the rest of the UK, and the main problems associated with it.

### **Legislation Overview**

2. The existing provisions are contained in the Transport Act (Northern Ireland) 1967. This Act contains powers relating to (i) the licensing of road freight operators, (ii) the licensing of road freight vehicles and (iii) enforcement.

3. The Department of the Environment (DOE) is responsible for the licensing of road freight operators and vehicles. Its executive agency the Driver and Vehicle Agency (DVA) administers the licensing function – processing and determining applications, issuing operators’ licences and road freight vehicle licences, conducting reviews and disciplinary measures.

4. DVA is also responsible for goods vehicle testing under the Road Traffic (NI) Order 1995, and, together with the Police Service of Northern Ireland (PSNI) for enforcement.

5. EC Directives require all member states to regulate their hire or reward sectors through operator licensing. There is no requirement to include the own account sector in the licensing regime.

### **Responsibility**

6. DOE has been responsible for road haulage licensing and enforcement since local government re-organisation in 1973. Prior to that, it was the responsibility of the Ministry of Development.

7. This contrasts considerably with Great Britain. There, the relevant primary legislation allows independent Traffic Commissioners appointed by the Secretary of State for Transport to administer Goods Vehicle Operator licensing and, in so doing, to exercise considerable discretion in how they apply the legislation. In practice, the day-to-day administration of the licensing

function is delegated and carried out by Vehicle & Operator Services Agency (VOSA) on behalf of the Traffic Commissioners, but the Commissioners retain overall responsibility, decide on difficult or contentious cases, review decisions and hold inquiries.

8. The creation of a Traffic Commissioner in NI was included as an option in the most recent policy consultation exercise (2003). However, it was considered to be a much wider issue as policy options for other operator licensing areas (taxis and public transport) were being considered so the Department deferred any decision on the option at the time.

## **Who currently needs an operators licence?**

9. The term used for the current licence is a "Road Freight Operators Licence".

10. You have to hold an operators licence if you are carrying goods for hire or reward using vehicles with a gross plated weight of more than 3.5 tonnes.

11. In addition, you also need a "Road Freight Vehicle Licence" for each vehicle that you intend to use.

12. If you are carrying only your own goods as part of your business or trade, rather than for reward, then you do not need to hold an operators licence.

13. Vehicles over 3.5 tonnes are called heavy goods vehicles (HGVs) while those under this weight are called light goods vehicles (LGVs).

14. For an articulated vehicle (i.e. a tractor unit with a semi-trailer), you need a licence if the gross plated weight of the combined tractor and semi-trailer is over 3.5 tonnes.

15. There are two types of licence:-

a. National Road Freight Operators Licence – allows you to carry goods for other people for reward in the UK;

b. International Road Freight Operators Licence – allows you to carry goods for other people for reward in the UK and on international journeys including Ireland.

## **Size and Nature of the Road Haulage Industry**

16. In NI, there are currently over 2,350 operators licensed to carry goods by road. Almost 80% hold an international road freight licence

17. There are over 12,000 "own account" operators (those who carry their own goods in the course of their business or trade) who are not required to be licensed.

18. The freight industry is one of significant importance to the Northern Ireland economy. In 2006 alone some 25,000 goods vehicles lifted 60.8 million tonnes of freight in Northern Ireland and transported it by road.

19. Evidence gathered from questionnaire responses during a recent series of industry briefings suggest that

- 56% of operators use 1 or 2 vehicles

- 27% of operators use 3-9 vehicles
- 16% of operators use 10+ vehicles

## **Key Features of the Licensing System**

### **Partial Regulation of Freight Operators**

20. The current operator licensing system in Northern Ireland, while only partial, does meet current EC requirements.

21. In GB, the own account sector have been required to be licensed for over 40 years – exceeding EC requirements. However, in Ireland (like NI) the own account sector remains outside their licensing system.

22. Industry representatives believe that the hire or reward sector are being treated unfairly as they must bear the cost of licensing in NI.

### **Duration of Licences**

23. The operator licence lasts for 5 years at which point the operator must apply for a new one. The associated vehicle licence lasts for 1 year and must be renewed annually.

24. In GB, there is no separate vehicle licence. The operator's licence specifies each vehicle that can be used under it. The licence runs continuously and is subject to a 5-yearly review.

### **Disciplinary Measures**

25. There are powers currently in place in NI to suspend or revoke a licence in certain defined circumstances.

### **Enforcement**

26. NI has much weaker freight licensing enforcement powers than GB. This issue, combined with the fact that only one sector of the industry is regulated, has given industry representatives and enforcement teams both in NI and GB cause for concern for some time. Traffic commissioners, enforcement agencies and police forces in GB have complained about the standards of NI vehicles crossing to GB and about breaches of traffic and transport laws by them. Illegal operators, who avoid standard checks and controls, pose a major threat to safety and environmental standards within the road haulage industry.

27. It is the responsibility not only of operators but also of drivers to ensure that they comply with the rules. There is insufficient sanction against operators and drivers who fail to keep their vehicles in a fit and serviceable condition. There are examples of forgery of licensing documents, of overloading, of speeding, of contravention of parking restrictions and prohibitions and of unlawful use of vehicles and insurance.

### **Road Safety**

28. Goods vehicles make a significant contribution to the number of people killed or seriously injured (KSI) in NI.

- HGVs represent 2.6% of the overall total number of motor vehicles licensed in NI.
- In 5.3% of KSI collisions, goods vehicle drivers are involved;
- In 3.1% of KSI collisions, goods vehicle drivers are deemed to be responsible;
- In 9% of injury collisions, goods vehicle drivers were deemed to be involved.

Source: -PSNI Central Statistics Unit 2006

29. At present goods vehicles must, like cars, undergo an annual roadworthiness test. But the test only certifies that the vehicle met the minimum standards expected of it on the day of the test. Many vehicles, especially those being driven thousands of miles per month, develop serious defects soon after the test.

30. There is evidence that illegal operators are undercutting the legitimate freight industry, thus threatening the viability of many within the industry and contributing to the poor road safety record.

31. In GB, the applicant/operator is required to give undertakings to maintain vehicles in a fit and serviceable condition at all times and to comply with traffic and transport related laws. There is legislative provision to discipline any operator who fails to comply with any of the maintenance or other undertakings.

## **Suitability of Operating Centres**

32. An operating centre is the place where vehicles are normally kept when not in use. Operator licence holders must own or have permission to use a suitable operating centre rather than 'park up' at the side of a road, beside a house or on the street. The centre should be suitable in terms of size, location and means of access.

33. In NI, as this obviously applies only to operators in the hire or reward sector, the majority of operators are not required to have a suitable centre being outside the scope of the licensing system. Furthermore, there is no sanction within current operator licensing legislation against operators who do not pay attention to the environmental standards of their operating centre.

34. In GB, not only are all operators required to have an operating centre, but the centre is also subject to certain environmental standards. The Traffic Commissioner will take into account a number of issues including:-

- The nature and use of the land in the vicinity of the operating centre and the effect that granting the application would have on the environment
- The number, type and size of authorised vehicles using the centre and the parking arrangements and frequency of vehicles entering and leaving the centre
- The nature and times of use (especially night-time use)

## **Reviews and Appeals**

35. There is no statutory provision for the conduct of reviews or an appeals procedure. In practice, the Department will conduct a review of any decision taken by DVA in exercise of its licensing function. The review is heard by a panel of experienced civil servants who are wholly removed from the licensing function. They do not have any executive decision making role but review the DVA decision and make recommendations to the Agency Chief Executive. The



applicant, if still unsatisfied with the decision has general right of access to a judicial review process.

36. In GB, the Traffic Commissioner will conduct public inquiries on any issue but particularly on disciplinary measures (suspension, revocation, curtailment or disqualification) and will carry out reviews of decisions in the determination of applications.

37. There is a further right to appeal a decision to the Transport Tribunal – an independent judicial body set up to hear and decide on appeals against decisions of Traffic Commissioners.

## **Organised Crime**

38. The Organised Crime Taskforce has taken a keen interest in the Review of Road Freight Operator Licensing in NI and its implementation through legislation. There appears to be an element of criminal activity involving the carriage of goods by road – particularly fuel smuggling – and the Taskforce feels that the licensing of all road freight operators and improved enforcement powers will be critical in the fight against organised crime.

39. Current enforcement legislation does not include the power to impound a vehicle (and its contents) when detected being used without an operator's licence. In GB, there is a power to impound in place since 2000.

## **Problems Associated with Existing Legislation**

40. To summarise, the main problems relating to how road freight operators in Northern Ireland are regulated under existing legislation are:

- The partial regulation of the industry – the own account sector is excluded and the hire or reward sector must bear the burden of financing the entire licensing and enforcement system.
- Enforcement – poor image of NI freight operators in GB and abroad due to (i) partial regulation of the industry and (ii) weaker enforcement powers than in GB
- Road Safety – many HGVs continue to be used on our roads despite having serious mechanical defects. The lack of responsibility on the part of operators and drivers and the lack of sanctions against those who flout the law contribute to this situation.
- Operating Centres – the own account operators are not required to have an operating centre at all, while those who do need one, are not subject to any meaningful environment factors.
- Organised Crime – own account operators can become involved in illegal operations and organised crime - the requirement for all operators to be licensed, and powers to impound would be a significant deterrent.

Prepared by:

Road Transport Legislation Branch  
DOE  
May 2008

# **Annex 3 - Changes to the Licensing System Enabled By the Bill**

## Introduction

1. The purpose of this paper is to explain the measures this legislation would enable the Department to introduce.
2. Many of the provision in the Bill are enabling powers and the Department will have to bring in further, more detailed subordinate legislation before the new licensing system can be introduced in NI.

## Key Measures in the Bill

3. The overall aim is to have, in one dedicated statute, the primary powers needed to deal with all matters relating to the regulation of road freight operators in Northern Ireland. The Department wants to bring its system into line with the system currently in operation in Great Britain – so the Bill will largely (but not wholly) replicate their Goods Vehicles (Licensing of Operators) Act 1995.
4. “Own Account” operators - the Bill will extend the licensing requirements to the own account sector. This will require operators who carry their own goods in the course of their business to hold an operator’s licence. This will mean that ALL operators will become licensed (bar those who may be exempt under regulations to be developed later).
5. New types of licence – there will be 3 new types of licence:-
  - A Restricted Licence will allow the operator to carry his own goods as part of his trade or business
  - A Standard National Licence will allow the operator to carry his own goods – or goods for hire and reward – across Northern Ireland and Great Britain.
  - A Standard International Licence will extend the Standard National to permit travel to other Member States. This is done through the issue of an EU required ‘community authorisation’ certificate for each vehicle engaged in cross border travel
6. Publication of notices of application for a licence - the applicant will have to advertise the application and the Department will consider certain objections to the grant of a licence. Anyone living near a proposed operating centre will be able to submit a “representation” against the application on environmental grounds only.
7. Continuous licensing – presently an operator’s licence lasts for 5 years. It is proposed to mirror GB, where the licence (subject to periodic review) remains in force indefinitely provided the operator remains within the terms on which the licence was granted.
8. Variation of licenses - the licence holder will be able to apply to have a licence varied to take account of changing circumstances.
9. Conditions of licences – the Department will be able to attach conditions to the licence. This is seen as a key control measure, where the holder will be expected to fulfil the conditions or face disciplinary procedures. Typical conditions will include:-
  - Preventing vehicles from causing danger in or around operating centres when entering or leaving the centre;

- The duty to inform the Department of any event that could affect the Department's control of the licence;
- Environmental conditions in or around the operating centre;

10. Maintenance undertakings – operators will be required to give undertakings in respect of vehicle maintenance and compliance with road traffic and transport law.

11. Application of environmental conditions to operating centres - The Department will have to be satisfied that the area where vehicles are normally kept is big enough, with safe and suitable access and in an environmentally suitable location. It will be able to attach conditions or undertakings to the licence that may, for example, restrict the movement of vehicles to certain times of the day - to avoid vehicles entering or leaving an operating centre in a built-up area during the night.

12. The operating centre will be reviewed every 5 years to ensure that standards have been maintained and that it remains suitable.

13. Disciplinary and appeal measures – the Department plans to establish new disciplinary action and appeals procedures which will be human rights compliant. It will be able to revoke, suspend or curtail a licence under a number of circumstances. Decisions may be subject to review (within the Department) and the applicant will have the right to formally appeal to the “Upper Tribunal” – which is the new term for the former Transport Tribunal that has been established in GB to hear appeals against the decisions of the Traffic Commissioner.

14. Enforcement – the existing powers of enforcement are satisfactory and will be restated in the Bill. Importantly, the Department also plans to introduce an impounding scheme – where it will be able to order the immediate impounding of any goods vehicle that is detected being used without a proper operator's licence.

## **Letter from FTA re Function of Independent Regulator for the GV Bill**

### **Northern Ireland: Goods Vehicle Operator Licensing**

#### **Freight Transport Association**

The Freight Transport Association represents the transport needs of Northern Ireland's industry. Its membership is comprised of manufacturers, retailers, logistic companies, hauliers and organisations in the public and private sectors. These range from well known large multi-national companies to small and medium sized businesses in both the hire and reward and own account sectors. The Association's members operate in excess of 200,000 goods vehicles, approximately half the UK fleet of commercial vehicles. Many of its Northern Ireland members have depots throughout Ireland and GB and regularly carry out work throughout other European countries.

#### **Background**

FTA and its members in Northern Ireland strongly support the extension of the Operator Licensing regime to own account operations and has pressed the Department of the Environment (DOE) and its Ministers over the last fifteen years to introduce a licensing system

that controls the quality of operation of all goods vehicles. The Association therefore welcomes the Goods Vehicles (Licensing of Operators) Bill. FTA would however urge that the Committee consider amending the Bill to facilitate the introduction of an independent Traffic Commissioner.

## **Independent Regulator**

FTA is greatly disappointed that DOE has failed to take this opportunity to make a vital change to the Regulatory process that would provide industry with a specialised dedicated independent Regulator. The Northern Ireland road transport industry supports the introduction of a judicial role, similar to the GB Traffic Commissioner (TC), who applies specialist knowledge and expertise when measuring and considering the suitability of an operator, from their first application throughout the life span of their authorisation to operate goods and public service vehicles. Whilst operators who offend may still be penalised in Court, an independent Regulator could and should pre-empt this by calling 'at risk' operators to Public Inquiry to account for any failure to comply with the conditions of their licence. Experience in GB has demonstrated that operators respond well to this system that inevitably relieves pressures on Court time.

To ensure a fair and transparent judicial system it is also essential that this role is wholly independent of enforcement agencies – it is not equitable in any sense that a Government department or agency responsible for detecting offences should also sit in judgement and take action against the authorisation to operate. The appointment of an Independent Regulator would also re-assure vehicle operators that no outside influences were brought to bear in granting of licences to operate or in dealing with industry operational issues. Industry support for these principles was aptly demonstrated when recent Department for Transport proposals to amend the GB structure, deemed by industry to threaten the Traffic Commissioners' independence, were unanimously and strongly rejected by the road transport industry.

FTA encourages the Committee to take advantage of seventy-five years experience of the Traffic Commissioner system in GB to gauge the benefits of an Independent Regulator for the Northern Ireland road transport industry. The Northern Ireland road transport industry views a dedicated Independent Regulator as a positive step in supporting the industry and at the same time would undoubtedly be the catalyst for delivering much needed improvements in compliance with the necessary requirements for road safety.

Prepared by - Joan Williams; Head of Road Freight and Enforcement Policy; Freight Transport Association - 2 October 2008

## **Amendments to be Moved at Consideration Stage**

Clause 1, page 1, line 10, leave out 'within the meaning given in Schedule 1'

Clause 1, page 1, line 16, at end insert —

'(2A) For the purposes of subsection (2)(a) a goods vehicle is a small goods vehicle if —

(a) it does not form part of a vehicle combination and —

(i) it has a relevant plated weight not exceeding 3.5 tonnes, or

(ii) in the case of a vehicle which does not have a relevant plated weight, it has an unladen weight not exceeding 1525 kilograms;

(b) it forms part of a vehicle combination and complies with such conditions as may be prescribed;

and "relevant plated weight" in paragraph (a) means a plated weight of the description specified in relation to that paragraph by regulations;

Clause 4, page 4, line 4, at end insert '(if any)'

Clause 4, page 4, line 5, after 'fee' insert '(if any)'

Clause 24, page 20, line 36, leave out subsection (3)

Clause 24, page 20, line 39, leave out 'subsection (3)' and insert 'section 26(1)'

Clause 26, page 22, line 17, after 'first' insert 'giving the holder of the licence or (as the case may be) the person concerned notice that it is considering doing so and'

After clause 51 insert —

### **'Payment of grants**

51A.— (1) The Department may, with the approval of the Department of Finance and Personnel, pay such grants to such persons or bodies as it considers appropriate in connection with any provision of, or the purposes of, this Act.

(2) Grants under this section shall be subject to such terms and conditions as the Department may, with the approval of the Department of Finance and Personnel, determine.'

Clause 55, page 36, line 19, omit 'commissioners' and insert 'authority'

Schedule 3, page 47, line 29, leave out from 'for' to end of line 30 and insert 'authorising a vehicle detained by virtue of paragraph 1 to be returned to the owner, in prescribed circumstances, without the need for any application under paragraph 8.'

Schedule 1

The Minister of the Environment gives notice of his intention to oppose the question that Schedule 1 stand part of the Bill.

## **Departmental Response re further Information on the Secondary Legislation Making Powers Contained in GV Bill**

Central Management Branch  
10-18 Clarence Court  
BELFAST  
BT2 8GB

Ms Alex McGarel Telephone: 028 90 5 40855  
Clerk to the Environment Committee Facsimile: 028 90 5 41169

Northern Ireland Assembly  
Parliament Buildings  
Stormont  
Belfast BT4 3XX

Email: una.downey@doeni.gov.uk  
Your reference:  
Our reference:  
CQ/153/08  
Date: 5 November 2008

Dear Alex,

I refer to your request for further information on the secondary legislation making powers contained in the Goods Vehicles (Licensing of Operators) Bill.

## **Background:**

Following the receipt of guidance from the Examiner of Statutory Rules the Committee has been considering the secondary legislation making powers that are contained in the Bill. The Bill Team attended the Committee meeting on 16 October 2008 and the purpose of this letter is to provide further information on a number of certain issues raised during that meeting.

Legal advice sought by the Department on the issue of whether certain regulation-making powers in the Bill should be subject to negative or affirmative resolution was to the effect that there is often no right or wrong answer on the point and that it was a matter for agreement between the Department and the Committee. It was, however, pointed out the need to avoid different elements of a composite set of regulations being subject to different resolution procedures which could potentially prevent the regulations being made. Also, to avoid overloading the Assembly with a large number of technical regulations as it was not only the first set of regulations subject to affirmative resolution that would come before the Assembly but every other set of amending regulations no matter how insignificant the actual amendment.

## **Clause 1**

Given the intense interest in and the scale of comments [on the issue of exemptions] during the lead-in to the consideration of this Bill, the Department would intend to engage with the Committee at the earliest opportunity. The proposed list of vehicle classes would be drawn up in due course by officials and brought to the Committee for consideration. The Department would then intend to issue the proposals for a public consultation exercise and further engage with the Committee prior to the drafting of regulations. In the light of this, it is the Department's view that the regulations made under clause 1 are more appropriate to negative resolution.

## **Clause 12(12)**

Any regulation made under this subsection will, as presently drafted, be subject to negative resolution. However, the Department would be content if the Committee think it would be more appropriate to make the regulation subject to affirmative resolution.

## **Clause 20(1)(d)**

Conditions and undertakings will allow the Department to exercise considerable discretion when making determinations on new applications or applications to vary an existing licence or when carrying out a review of an operating centre. It may be able to attach a condition to a licence to overcome a problem raised by means of an objection or representation. By doing so, it may allow the Department to grant the application, rather than having to issue an outright refusal. Clause 20 identifies the 3 main purposes for which conditions may be applied to a licence -

- road safety in and around the operating centre;
- to inform the Department of any relevant convictions
- the use of an operating centre

The inclusion of the power to attach conditions for any other prescribed purpose is to enable the Department to meet any further problems in the determination of licence applications. It will strengthen the Department's ability to adopt a flexible, pragmatic approach to regulating the industry.

This would be regarded as a procedural regulation and would be part of a composite set of regulations and, therefore, more appropriate to negative resolution,

## **Clause 56**

The supplementary provisions contained in clause 56 are similar to provisions in other road traffic and transport legislation. DOE would not envisage using this power in the first instance as the subordinate legislation needed for the introduction of the new licensing system will be made using the regulation making powers spread throughout the Bill including those contained in clause 57. However, it is a useful power to retain as it may prevent the need for primary legislation if minor issues in the Bill need to be amended or modified.

## **Clause 57(8)**

A level 3 fine on the standard scale is currently £1,000.

Where a regulation, made under clause 57, states that contravention of a provision in the said regulation will be an offence – then that offence will attract a fine up to level 3 on the standard scale. So, while the description of the offence will appear in the regulation [and it must state in the regulation that it is an offence], the penalty for that offence will appear in the primary Act.

Clause 57 contains power to make regulations for any purpose relating to operator licensing. However, it contains a list [in subsection (2)] of the matters that will largely feature in those regulations. It is not unusual to include a general regulation making power in a Bill [over and above those matters] that will enable the Department to meet any administrative or procedural challenges that may await in the future.

As currently drafted, regulations that would create an offence would be subject to negative resolution. It should be noted that, provisions creating offences are likely to be embedded in a set of composite regulations rather than 'standalone' regulations and the legal advice at paragraph 3 above should be taken into account.

## **Clause 60(3)**

It is not always possible, or necessary, to bring every provision that is contained in an Act into effect as soon as it receives Royal Assent. Power to commence the different provisions of an Act is generally located in a self-contained "commencement" provision. The power in clause 60 will be used to bring different provisions into effect at different times. Orders made under this clause are limited in scope and must be "in connection with the coming into operation of any of the provisions of this Act" [clause 60(3)]. Commencement Orders are not normally subject to either negative or affirmative resolution. The reason for this is that they are generally used to bring in provisions from an Act that the Committee and Assembly have already scrutinised and endorsed.

The Committee asked for an explanation of the overlap between Clause 60(3) and Clause 56. As stated Clause 60(3) is limited to bringing into operation provisions from the Act while Clause 56 is wider to also include "giving full effect to this Act". When bringing in new provisions account needs to be taken of the existing law and this may require a transitional period to move from the new to the old or to preserve rights established under existing law. Clause 60(3)(a) allows for such transitional provisions and savings. While Clause 60(b) includes any provision amending the Act this is limited to commencement of the provisions and would not permit substantive amendment. A recent example of this arose when commencing the Road Traffic (Northern Ireland Order) 2007 when an incorrect number sequence was noticed in the new legislation and the Commencement Order was used to fix what was an obvious error.

By contrast Clause 56 is a wider provision to make such supplementary, consequential, transitory, transitional or savings provisions as necessary or expedient to give full effect to the Act. This allows any gaps in the new legislation or changes to existing legislation to be addressed without having to go through the full process of primary legislation. As it is likely to be more substantive than anything in Clause 60(3) such Orders are made subject to affirmative resolution by the Assembly.

Provisions similar to the above clauses are fairly common in Bills as they act as a 'safety net' for minor errors or to make the new legislation fit in but it should be noted that in practice they rarely need to be used. Accordingly, if the Committee considers that there is unnecessary overlap between these provisions the Department would not object to removing Clause 60(3) and relying on the provisions in Clause 56 which are subject to affirmative resolution.

## **Departmental Amendments**

The Department also proposes bringing forward some minor technical amendments to the Bill for discussion at the Committee meeting on 6 November. A brief description of these and their effect are set out in the attached Annex. We are awaiting the actual legislative amendments from Legislative Counsel but would hope that these will be available for the Committee on Thursday.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Úna Downey

DALO  
[By Email]

## **Annex**

### **Proposed Amendments to Goods Vehicles (Licensing of Operators) Bill**

Amendments	Effect
1. - Clause 1 and Schedule 1 [pages 1 and 42 respectively].	The current definition of "small goods vehicle" is a replication of the definition that is contained in the equivalent GB Act of 1995. It would appear that the definition is the cause of problems in GB in that it is loosely worded and a considerable number of vehicles
Remove Schedule 1 altogether and insert a basic definition of "small goods	



## Amendments

vehicle" into clause 1(2) (a) and take the power to define that term for vehicles that forms part of a vehicle combination.

2. - Clause 4 (5) and (6) [page 4, lines 4 and 5]

At the end of clause 4(5) after the words "a prescribed fee" add "if any". Similarly, in the first line of clause 4(6) after the words "a prescribed fee" add "if any".

3. Clauses 24 and 26 [pages 20 & 22]

To impose a duty on the Department to notify a licence holder of its intention to give a direction to revoke, suspend or curtail a licence and of his right to request a public inquiry before any direction can be given.

4. Clause 55 [page 36]

To replace references to "harbour commissioners" with harbour authorities".

5. Schedule 3 [page 46]

To amend Schedule 3 to the Bill by substituting paragraph 8 with a new paragraph 8 [power to make regulations for return of detained vehicle]:-

"Regulations may make provision authorising a vehicle detained by virtue of paragraph 2 to be returned to the owner, in prescribed circumstances, without the need for any application under paragraph 9."

6. To take power to pay grants to persons or bodies as the Department

## Effect

are deemed to be out-of-scope of operator licensing as a result. This amendment will allow the definition to be made clear and unambiguous.

The Local Transport Bill that is currently progressing through Westminster is to amend the Goods Vehicles (Licensing of Operators) Act 1995 in GB. The Department would like to amend the equivalent provisions in the Bill to ensure that it is up-to-date with the GB legislation. It is a minor amendment that relates to fees and is necessary to take account of situations where no such fee is prescribed.

This is to remove an anomaly whereby the Department "shall not" give a direction to revoke, suspend or curtail a licence without first holding a public inquiry if the licence holder requests the Department to do so. The problem is, how does the licence holder know to ask for an inquiry when there is no requirement to inform him that the Department is considering making the direction?

To make clause 26 work correctly, it will be necessary to amend the Bill to include a specific duty to inform the licence holder.

In clause 55, the provisions of the Bill have been applied to areas in the control of harbour commissioners. The intention was to ensure the requirements of operator licensing would apply within all harbour areas. However, the Department has learned that the Larne and Warrenpoint harbour areas are not under the control of commissioners, so these two harbours would be outside the scope of the Bill as currently drafted. The term "harbour authority" will ensure that all harbour areas are included within the scope of the Bill.

Another amendment taken from the Local Transport Bill - relating to the return or disposal of goods vehicles that have been impounded. Regulations made under paragraph 8 of Schedule 1A to the 1995 Act provides for a vehicle to be returned to its owner. Further regulations, made under paragraph 9, require the owner to apply to the traffic commissioner for the return of the vehicle. The amendment is to paragraph 8 and is designed to make it easier for the owner to have his vehicle returned. It will make it possible for the return of the vehicle without the need for the owner to apply to the traffic commissioner in certain prescribed circumstances. The Department would seek to replicate this amendment so that the two systems [GB and NI] remain consistent.

Concerns have been expressed about the impact that the Bill may have on small businesses. The addition of

#### Amendments

considers appropriate in connection with the provisions of the Bill. Subject to terms and conditions, with the approval of DFP.

#### Effect

a clause, that will provide the Department with power to pay grants to persons or bodies in connection with the provisions of the Bill, may allay the concerns. The clause would replicate a similar provision that was included in the recent Taxis Act (NI) 2008.

## **Letter from Tom Wilson, FTA, re Independent Regulator**

Alex McGarel  
Clerk for the Environment Committee  
Room 245,  
Parliament Buildings,  
Stormont,  
Belfast,  
BT4 3XX

7 November 2008

To: Mr Patsy McGlone, Chairman of the Environment Committee,

Dear Chairman

### **Goods Vehicle (Licensing of Operators) Transport Bill**

The FTA has had regular dialogue with DOE officials on behalf of its membership in Northern Ireland in connection with the proposed Transport Bill and it strongly supports the proposed legislative changes which will bring regulations broadly into line with the rest of the UK.

However, during the consultation process and in our submission to the Department we made it abundantly clear that our membership wanted the legislation to include the provision for an Independent Regulator.

We were assured by the Department throughout our discussions that there would be provision within the Transport Bill enabling the appointment of an Independent Regulator or Traffic Commissioner (GB model) but the Department have not included this within the proposed legislation. The present position is contrary to what we were led to believe and this Trade Association and its industry regards this as a serious oversight.

If this situation is not addressed within the Transport Bill (to make provision for the appointment of an Independent Regulator) then the Environment Committee will be putting the public of Northern Ireland at risk.

To ensure a fair and transparent judicial system it is essential that this role is wholly independent of enforcement agencies – it is not equitable in any sense that a Government department or agency responsible for detecting offences should also sit in judgement and take action against the authorisation to operate. The appointment of an Independent Regulator would also re-assure vehicle operators that no political influences were brought to bear in granting of licences to operate or in dealing with industry operational issues.

Industry support for these principles was aptly demonstrated when recent Department for Transport proposals to amend the GB structure, deemed by industry to threaten the Traffic Commissioners' independence, were unanimously and strongly rejected by the road transport industry.

FTA is greatly disappointed that DOE has failed to take this opportunity to make a vital change to the Regulatory process that would provide industry with a specialised dedicated independent Regulator. The Traffic Commissioner system applies specialist knowledge and expertise when measuring and considering the suitability of an operator, from their first application throughout the life span of their authorisation to operate goods and public service vehicles. Whilst operators who offend may still be penalised in Court, an independent Regulator could and should pre-empt this by calling 'at risk' operators to Public Inquiry to account for any failure to comply with the conditions of their licence. Experience in GB has demonstrated that operators respond well to this system that inevitably relieves pressures on Court time.

FTA is keen to ensure that the progress of the Transport Bill is not unduly delayed, however the evidence given to the Environment Committee by Beverley Bell, TC for the North West of England gave insight into the responsibilities of the role which covers those operators of both Goods Vehicles and Public Service Vehicles.

The 'Department' is the licensing authority throughout the proposed Transport Bill and it has given itself total authority for everything and this is not the case in GB where an independent Traffic Commissioner – appointed by the Secretary of State has been established for 75 years.

Yours sincerely

Tom Wilson

Head of Policy – N. Ireland.

## **Letter from Consumer Council re Goods Vehicles Bill**

Mr P McGlone  
Chairman  
The Environment Committee  
Room 245/247  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

7 November 2008

Dear Chairman,

### **Goods Vehicle (Licensing of Operators) Transport Bill**

The Consumer Council works with government and transport providers to ensure the public can avail of safe public transport in Northern Ireland. As part of this it is essential that other road users, including goods vehicles operating on our roads, are roadworthy, legal and safe.

The Consumer Council supports the proposed legislative changes. As with public transport (including school transport and taxis), it is essential that goods vehicles are subject to licensing and enforcement to ensure they meet required standards. The annual commercial vehicles enforcement check by DOE (NI) Roads Safety and Policy Standards Branch in 2007 showed that 40% of vehicles were deemed to be in an unroadworthy condition. These figures suggest that many vehicle owners and drivers do not pay enough attention to the condition of their vehicles. If all operators in Northern Ireland were required to give undertakings as part of their licence to carry out safety inspections at specified intervals and ensure drivers carry out daily pre-use checks, the detection levels of non-compliance would be significantly less and our roads would be much safer. This system has been in place in Great Britain for over 40 years, resulting in one of the best records for vehicle roadworthiness in Europe. This is in stark contrast to the current situation in Northern Ireland.

The Consumer Council believes it is essential that this legislation includes the provision for an Independent Regulator. The appointment of an Independent Regulator, completely independent of enforcement agencies, will provide transparency, accountability and reassurance that goods vehicles on our roads meet the required standards to ensure they are safe.

The Traffic Commissioner system in Great Britain has helped to identify operators who may be at risk of operating illegally at an earlier stage than waiting until they are found to have committed an offence. This not only relieves pressure on the legal system but also provides extra protection for other road users. Operators have responded well to the system in Great Britain and the Consumer Council supports calls from the industry in Northern Ireland for a similar system of independent regulation to ensure that all roads users can be confident that goods vehicles are roadworthy and safe.

Yours sincerely

Aodhan O'Donnell

Head of Transport

## **Letter from Departments re Statutory Notice**

Central Management Branch  
10-18 Clarence Court  
BELFAST  
BT2 8GB

Mrs Alex McGarel  
Clerk to the Environment Committee  
Northern Ireland Assembly  
Parliament Buildings  
Stormont  
Belfast BT4 3XX

Telephone: 028 90 5 40855  
Facsimile: 028 90 5 41169  
Email: [una.downey@doeni.gov.uk](mailto:una.downey@doeni.gov.uk)

Your reference:  
Our reference:

Date: 12 November 2008

Dear Alex,

I refer to the Environment Committee's request, at its meeting of 11th November 2008, for an example of a statutory notice.

An example of a statutory notice, which would be published in the local press at the time of application and include details of operating centres, is attached.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Úna Downey

DALO  
[By Email]

**Example of a  
Statutory Advertisement to  
Accompany New Applications (2)**

*Example of a statutory advertisement to accompany new application (to be specified in Regulations under Section 10 (2) of the Goods Vehicles (Licensing of Operators) Act 2008)*

**John Smith and Fred Jones** (Name)  
**Trading as J and F Removals** (Trading Name)  
**Of Unit 5, Riverside Trading Estate,** (Address for correspondence)  
**Newtownards**  
**Co Down**  
**B22 5BE**

**are applying for a licence to use**  
**Unit 5,** Address of Operating Centre  
**Riverside Trading Estate,**  
**Newtownards,**  
**Co Down BT22 5BE**

**as an operating centre for 10 goods** (Centres where vehicles are normally kept  
**vehicles and 2 trailers** when not in use and where business  
operations / maintenance activities may be  
based or vehicles may be parked)

**and to use** Please indicate clearly whether operating  
centres are used for business activity or  
solely for parking

**The Removal Depot,** More than one operating centre may be  
**5 Church Street,** named but the total parking capacity of the  
**Newtownards** operating centres listed must be equal to the  
**Co Down BT22 7PQ** total number of vehicles authorised to be  
used under the operator's licence.  
**as a parking centre for two goods vehicles**

Owners or occupiers of land (including buildings) near the operating centre(s) who believe that their use or enjoyment of that land would be affected, should make written representations to:

**The Department of the Environment**  
**Road Transport Licensing Division**  
**148 – 158 Corporation Street**  
**BELFAST**  
**BT1 3DH**

stating their reasons within 21 days of this notice.

Representors must at the same time send a copy of their representations to the applicant at the address given at the top of this notice.

A guide to making representations is available from the Department on request or on its website at [www.doeni.gov.uk](http://www.doeni.gov.uk)

## Departmental Clarification re Planning Read-Across

Mrs Alex McGarel  
Clerk to the Environment Committee  
Northern Ireland Assembly  
Parliament Buildings  
Stormont  
Belfast BT4 3XX

Central Management Branch  
10-18 Clarence Court  
BELFAST  
BT2 8GB

Telephone: 028 90 5 40855  
Facsimile: 028 90 5 41169  
Email: [una.downey@doeni.gov.uk](mailto:una.downey@doeni.gov.uk)

Your reference:  
Our reference:

Date: 12 November 2008

Dear Alex,

I refer to the concerns raised by the Environment Committee members at the recent scrutiny sessions on the Goods Vehicles (Licensing of Operators) Bill about read-across to Planning Service of the designation of a property as an Operating Centre.

We have sought further clarification from the Office of Legislative Counsel and their advice is clear in that the Bill does not have any read-across. It effects no change whatsoever which could impact on the planning system.

Calling something an "operating centre" does not affect how the planning rules apply to it. That would only happen if there were a simultaneous change to planning laws which referred to licensed operating centres. The planning system is an entirely separate one which will continue to operate as set out in the submissions by the Planning Service to the Committee.

In addition, advice is that adding clarification on the face of the Bill cannot bind Planning Service as it is outside the competence of this Bill to legislate on planning issues.

In order to give the Committee the reassurance it needs some members suggested the Minister might make a statement in the consideration debate in the Assembly following the current Committee stage. Planning Service and the Bill Team have agreed a statement that they are happy to submit to the Minister if the Committee agree it would be sufficient to satisfy them on the issue.

The statement would read as follows:

"Following a designation by the Department of a place as an "Operating Centre" under the GV(LOO) Bill, the issue of read-across into interest or action by Planning Service may be of concern to some.

I want to give you an assurance that the designation of a property as an Operating Centre will not in itself have any read-across to Planning action; nor will it be used by, or influence any action by Planning Service as to the use of the property.

Irrespective of this assurance, it is the responsibility of all land owners to ensure that the use of their property satisfies the requirements of planning law."

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Una Downey

DALO  
[By Email]

**Departmental Response  
re CPC Providers**

Central Management Branch  
10-18 Clarence Court  
BELFAST  
BT2 8GB

Mrs Alex McGarel

Clerk to the Environment Committee  
Northern Ireland Assembly  
Parliament Buildings  
Stormont  
Belfast BT4 3XX

Telephone: 028 90 5 40855  
Facsimile: 028 90 5 41169  
Email: una.downey@doeni.gov.uk

Your reference:  
Our reference:

Date: 12 November 2008

Dear Alex,

I refer to your request, following the Environment Committee's meeting of 6th November 2008, for further details on the names of bodies who provide training for the Certificate of Professional Competence (CPC) for hire or reward sector transport operators in Northern Ireland.

A list of training centres for freight/road haulage operations Certificate of Professional Competence is set out below:

Northern Regional College (Ballymena)  
Trostan Avenue  
Ballymena  
Co Antrim  
BT43 7BN (028 25636267)

Belfast Metropolitan College (Castlereagh)  
Castle Campus  
Montgomery Road  
Belfast  
BT6 9JD (028 90797144)

South Eastern Regional College (Lisburn)  
Lisburn Campus  
39 Castle Street  
Lisburn  
Co Down  
BT27 4SU (028 92677225)

Bush Training Centre (Coleraine)  
57 Ballylagan Road  
Cloyfin  
Coleraine  
Co Londonderry  
BT52 2PQ (028 70352653)

Transport Training Services Ltd (TTS)  
15 Dundrod Road  
Nutts Corner  
Crumlin



Co Antrim  
BT29 4SS (028 90825653)

PFI Training Ltd  
Unit 49 Dungannon Enterprise Centre  
2 Coalisland Road  
Dungannon  
Co Tyrone  
BT71 6JT (028 87752245)

Craigavon Training Services  
19 Tullygally East Road  
Craigavon  
Co Armagh  
BT65 5EP (028 38327887)

City Training Services  
14 Greenpark Crest  
Armagh  
Co Armagh  
BT60 4EU (028 37515137)

MJM Training Centre  
2 – 6 Bockets Road  
Ballygawley  
Co Tyrone  
BT70 2HL (028 85567183)

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Una Downey

DALO  
[By Email]

## **Departmental Response re Negative and Affirmative Resolution**

Mrs Alex McGarel  
Clerk to the Environment Committee  
Northern Ireland Assembly  
Parliament Buildings  
Stormont  
Belfast BT4 3XX

Central Management Branch  
10-18 Clarence Court  
BELFAST  
BT2 8GB

Telephone: 028 90 5 40855  
Facsimile: 028 90 5 41169  
Email: [una.downey@doeni.gov.uk](mailto:una.downey@doeni.gov.uk)

Your reference:

Our reference:

Date: 12 November 2008

Dear Alex,

I refer to your request for further information on the secondary legislation making powers in the Goods Vehicles (Licensing of Operators) Bill.

### **Background:**

I wrote to you on 5 November 2008 outlining the Department's position on the secondary legislation making powers contained in the Bill. The Committee considered the position at its meeting on 6 November and during the meeting officials agreed to provide some further advice on the affirmative and negative resolution procedures.

### **Current Position**

1. The Department recognises the Committee's ongoing concern about the form of control that regulations under the Bill should be subject to. It may be useful to set out some general pointers in this regard and also our experience of processing regulations under both affirmative and negative resolution since devolution.

2. The table below sets out the way that the two forms of control work.

Negative Resolution	Affirmative Resolution
a. Committee receives a SL1 setting out the policy proposals for Regulations.	a. Same as Negative
b. The Committee may question officials in relation to the proposals.	b. Same as Negative
c. The subsequent Regulations are laid before the Assembly and will become law unless there is a Motion to annul the Regulations within a statutory time-limit.	c. The subsequent Regulations will become law when a Motion affirming the Regulations is passed in the Assembly.
d. If following SL1 scrutiny the Committee has concerns about the proposals the Chairman may put forward a Motion to the Assembly to have the Regulation annulled.	

### **Experience since devolution**

3. Since devolution on 8 May 2007 our Division has made more than 20 sets of Regulations - only two of which were subject to affirmative resolution. These were the Road Transport Licensing (Fees) Amendment Regulations (NI) 2007 and the Motor Vehicles (Wearing of Seat Belts) (Amendment) Regulations (NI) 2008. On both occasions after the Minister introduced the Motion to affirm, no one opened the debate and no raised questions and the Regulations were so affirmed.

4. The reason for this may be that our regulations generally do not have wide public interest and often require some specialist knowledge of the subject which usually only Committee members

have acquired through briefings with officials. Accordingly, if Committee members are satisfied following SL1 scrutiny of the proposed regulations then invariably they will be affirmed.

5. In practice, we have found the negative resolution procedure to be no less rigorous than what the Committee applies at SL1 stage for affirmative resolution. As SL1 stage is applicable to both affirmative and negative resolution procedures and the latter can also result in a Motion to the Assembly to annul there is really not much to choose between both forms of control.

## **The Bill**

6. For the convenience of everyone concerned in operator licensing legislation – individual operators, freight transport associations, the legal profession, Tribunal staff and those within the Department who will have to administer the new system – we had planned to develop a consolidated set of Regulations that would include as much of the detailed provisions as possible.

7. We wanted to avoid a situation where the new licensing system would operate under a number of different but related regulations.

## **Legal Position**

8. We have again sought legal advice on the point and it is to the effect that a mixture of affirmative and negative resolution requirements throughout the Bill is likely to inhibit the Department's ability to produce an omnibus or consolidated set of general regulations. Any provision which derived from a power which is subject to affirmative resolution would need to be in a separate instrument to those which derived from provisions subject to negative resolution.

9. For example, if the Committee were minded to insist that any offence provisions of the kind mentioned in clause 57(8) were to be subject to affirmative resolution this would render the resultant regulations very difficult to follow as the offences would need to be separated out from the regulations which dealt with the relevant subject matter. So a provision which said "a licence holder must do "x" would be in the negative resolution regulations. And the provision which said "if a licence holder fails to do x he commits an offence" would need to be in separate affirmative regulations. This would not be a very easily understood arrangement and would make development of the regulations and application of the law quite difficult.

## **Conclusion**

10. In view of the above the Department does not have particular concerns about the form of control per se, but with how it could affect the future development of regulations.

11. It would be the Department's view that affirmative resolution would be appropriate for regulations that seek to implement a change in policy, while negative resolution would be appropriate for regulations that seek to implement administrative or procedural material.

12. The Department is, of course, willing to work with the Committee on any issues where affirmative resolution seems appropriate and advise on whether these can easily be separated from a general set of regulations to avoid piece-meal legislation and procedural/technical regulations taking up Assembly time.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Una Downey

DALO  
[By Email]

## **RHA View on Independent Regulator**

From: Philip Flanders [mailto:p.flanders@rha.net]  
Sent: 12 November 2008 22:08  
To: McGarel, Alex  
Subject: RHA View on Independent Regulator

Alex,

Re our discussion at Stormont today.

Throughout this current progress of the Goods Vehicle (Licensing of Operators) Transport Bill, we were under the impression that once approved, enabling legislation would follow very soon thereafter to introduce an "independent regulator" similar to the role of Traffic Commissioner in GB.

We do not have an issue if this role is within the civil service in Northern Ireland as long as it is truly independent from the Driver and Vehicle Agency who will be administering and enforcing the regulations.

Our view has changed since our response in 2003. They say a week is a long time in politics. Five years is a very long time in the freight industry.

Until recently, I don't think anyone knew just how many vehicles or operators there were based in Northern Ireland and also, how high a level of non-compliance there was. Taking all this into consideration, a regulator with powers similar to the GB model would certainly have a major impact in improving the standards to a satisfactory level.

We would have serious concerns if there is a continuation of the current system.

Phil Flanders

Phil Flanders, Director, Scotland & Northern Ireland  
Road Haulage Association, Roadway House, The Rural Centre, Ingliston, Newbridge, EH28 8NZ  
Tel : 0131 472 4180 Fax : 0131 472 4179 Mobile : 07801 500713

## **Departmental Response re Further Information on the Possible Appointment of a Traffic Commissioner**

Mrs Alex McGarel  
Clerk to the Environment Committee 10-18 Clarence Court

Central Management Branch

Northern Ireland Assembly  
Parliament Buildings  
Stormont  
Belfast BT4 3XX

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Telephone: 028 90 5 40855  
Facsimile: 028 90 5 41169  
Email: [una.downey@doeni.gov.uk](mailto:una.downey@doeni.gov.uk)

Your reference:  
Our reference:

Date: 12th November 2008

Dear Alex,

I refer to your request for further information on the possible appointment of a Traffic Commissioner for Northern Ireland.

### **Background:**

At a number of meetings with officials on the scrutiny of the Goods Vehicles (Licensing of Operators) Bill, Committee members asked questions about the possible appointment of a Traffic Commissioner in Northern Ireland and were concerned that the powers contained in the Bill did not include provision for the appointment of a Commissioner and, indeed, that progression of the Bill may hinder such an appointment in the future.

You also passed 3 letters to the Bill Team following their meeting with the Committee on 11 November 2008. The response to the content of these letters is contained below.

### **Review of the Management of Regulation of Operator Licensing**

1. The Department is in the process of conducting a Review of the Management of Regulation of Operator Licensing in Northern Ireland. It will be looking at not only goods vehicle operators, but also taxi and passenger transport (bus) operators. The Review is at an early stage at present.

2. A number of options will be explored as part of the Review including:-

- The appointment of a dedicated Traffic Commissioner for Northern Ireland
- Attaching responsibility for Northern Ireland to one of the existing Traffic Commissioners in Great Britain – e.g. Scotland, Wales or North-West England
- Retaining the function within the Department, but detached from DVA.

3. As part of the process, the Department will engage with the Committee at the earliest opportunity before issuing a public consultation document on the findings of the Review. It will also need to seek Ministerial approval to the policy recommendations.

### **Legal Advice on the Bill Provisions**

4. Officials have received further legal advice on the legislative implications for the possible appointment of a Traffic Commissioner.

5. Members had asked if it would be possible to provide for the appointment of a Traffic Commissioner in this licensing Bill. The Department's view had been that although Traffic Commissioners' functionality is covered in GB's 1995 Act, they are actually constituted under the Public Passenger Vehicles Act 1981 and the Transport Act 1985. This legislation deals with the appointment of Commissioners, terms of office, appointment of staff, remuneration and pensions. If it was decided at some time in the future to constitute a Traffic Commissioner for NI then it would seem more appropriate to replicate the 1981 and 1985 GB Acts in separate primary legislation for Northern Ireland and amend the functionality of the Bill from "Department" to "Traffic Commissioner". The Department was also of the view that the provisions of the Bill would not compromise any future decision in relation to the appointment of a Traffic Commissioner – all powers that will be exercised by the Department will be exercisable by a Traffic Commissioner on appointment.

6. Legal opinion was to the effect that if a Traffic Commissioner were to be set up in Northern Ireland to exercise a broad range of powers it would be necessary to have specific legislation for that purpose. That legislation would constitute the Commissioner and then transfer to the Commissioner the various functions in relation to taxis, buses and other vehicles (including those relating to goods vehicles under this Bill).

7. Members also suggested that we should future proof the Bill by inserting "Department or Traffic Commissioner.." or perhaps "Department or such other body as may be prescribed...". The Department's view had been that it would not be possible to refer to Traffic Commissioner when there is no such legal entity in Northern Ireland.

8. Legal opinion was to the effect that it would be pointless and indeed dangerous to attempt to pre-empt such legislation by attempting to write some sort of alternative licensing authority into this Bill. The present Minister/ Assembly/ Committee cannot in law bind what a future Minister/ Assembly/ Committee might wish to do in connection with licensing. All that the Minister can do at the moment is to undertake to look at the possibility of introducing some sort of equivalent body at some point in the future.

## **Letters to Committee**

9. We note and welcome the support for the Bill contained in each of the letters. We also note their comments on the expectation that the Bill would have provided for the appointment of a Traffic Commissioner or Independent Regulator. The proposal to appoint a Traffic Commissioner was one proposal contained in the Department's Review of Road Freight Operator Licensing in Northern Ireland consultation exercise carried out in 2003. Following that exercise, the then Minister of the Environment took the decision not to proceed with this particular option as the issue of a Traffic Commissioner needed to be considered in the wider context of operator licensing of taxis, buses as well as goods vehicles.

10. The Department regrets any misunderstanding reached by the Freight Transport Association, the Consumer Council or the Federation of Passenger Transport during discussions with officials. It may have been that statements [to the effect that the powers vested in the Department in the Bill may be exercised by a Traffic Commissioner at some future time] may have been misconstrued as a commitment to appoint a Commissioner.

11. The correspondents should be assured that the Bill also contains provision for reviews and appeals that are equivalent to the system in Great Britain and have been found to be Human Rights compliant.

## **Conclusions**

12. The legal advice is unequivocal. It is not possible to amend the Bill to provide for a Traffic Commissioner as it would be unlawful to bind what a future Minister/Assembly/Committee may wish to do.

13. The Department will continue to review the management of the regulation of operator licensing in Northern Ireland.

14. While it is not in a position at this time to make a determination on the appointment of a Traffic Commissioner, it is certainly not averse to the proposal.

15. The Department would be content for the Committee to include any recommendation of that nature as part of the Committee Report on the Goods Vehicles (Licensing of Operators) Bill.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Una Downey

DALO  
[By Email]

## **Departmental Response re Examples of What Clause 4 (4)(b) in GV Bill will Prevent**

Central Management Branch  
10-18 Clarence Court  
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BT2 8GB

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Telephone: 028 90 5 40855  
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Email: una.downey@doeni.gov.uk

Your reference:  
Our reference:

Date: 13th November 2008

Dear Alex,

I refer to your request for further information on Clause 4 (4)(b) providing some examples of the problems that this provision will prevent.

### **Background:**

Clause 4 subsection (4)(b) states that a licence will not authorise the use of a vehicle unless (i) its operating centre is in Northern Ireland and (ii) it is registered under the Vehicle Excise and

Registration Act 1994 (VERA). The Committee discussed the second element relating to VERA and asked officials to provide a case for this provision including examples of the problems that it will prevent.

## **Current Position**

There are a number of reasons for the inclusion of this element of clause 4 (4).

## **Licensing and Enforcement**

1. If all vehicles are registered under VERA the enforcement of the operator licensing requirements will be more effective.
2. When a vehicle is registered within another jurisdiction in the EU the vehicle is deemed by law to be a foreign vehicle. The enforcement action that the Department can take against foreign registered vehicles and their drivers, when detected being non-compliant, is different and to a significant degree less effective than the action that can be taken against domestic registered vehicles and their drivers.
3. It is proposed within the Bill to introduce more stringent requirements on operators in respect of maintenance and maintenance records and the provision of suitable premises for the vehicles to be parked. It is also a requirement under EU Regulation 561/2006 and EC Directive 2006/22 for drivers' hours and rest period records to be maintained at operators' premises. By requiring all vehicles on an operator's licence to be registered under VERA, there will be less opportunity for abuse of the maintenance, premises and drivers' hours requirements.

For example:

- If a Northern Ireland based operator has vehicles on the licence registered in another jurisdiction to avail of cheaper fuel duty or company tax it would mean that the Department will not be able to verify vehicle details against records or inspect the vehicle at company premises for maintenance or drivers hours' records.
- If a Northern Ireland based operator has vehicles registered in another EU jurisdiction and one of the vehicles has serious issues of non-compliance whilst stopped in a country other than NI it will be extremely difficult to force declaration of those offences or prove them.
- Experience has shown some operators will use vehicles registered in another EU jurisdiction and if detected committing an offence within Northern Ireland will claim after the event that the vehicle was being used by the company within the country where the vehicle is registered. In the circumstances, no further action can be taken against that operator.
- By not including this provision it may enable NI based operators to get around the new licensing system whereby they can claim the vehicles in question are all foreign vehicles and are only parked at the premises for temporary convenience. Without protracted and continuous surveillance it would be extremely difficult to prove otherwise.
- A number of years ago vehicle "flagging out" was a significant issue for both the UK and Ireland governments and needed intervention by both Governments to resolve the issue. If we fail to avail of the legislative opportunity to regulate this anomaly it has the potential to happen again.



4. The Department would be unlikely to take enforcement action against an operator who uses a vehicle, which is registered in another jurisdiction, on a temporary basis, for example an operator may need to hire in a vehicle as a consequence of a break down.

Parity with Great Britain

5. The operator licensing system in Great Britain already requires all vehicles specified on a licence to be registered under VERA. While provision for this does not appear on the face of their 1995 Act, it is clearly established in case law.

6. For example, the Transport Tribunal in its judgement on appeal 63/2000 involving Reids Transport Ltd has stated that when an operator obtains an operator's licence in Great Britain, there is an on-going obligation to comply in every respect with the domestic law of Great Britain, including vehicle excise duty legislation.

7. Also Section 1 of VERA states that:- "A duty of excise ("vehicle excise duty") shall be charged in respect of every mechanically propelled vehicle which is used, or kept, on a public road in the United Kingdom and shall be paid on a licence to be taken out by the person keeping the vehicle."

8. As one of the basic underlying principles of operator licensing legislation is fair-trading, it is recommended that all operators licensed in Great Britain should be treated equally and that the same standards and requirements should be met by them all. By taxing vehicles abroad, a company will not have not paid British Vehicle Excise Duty and could achieve a competitive advantage

9. In addition to the requirement for vehicles to be within VERA, vehicles used under a GB road freight operator's licence must have an operating centre in Great Britain. The operating centre is the place that the vehicle normally returns to when not in use or is its "home". Vehicles registered in Ireland could not under licensing law be regarded as normally kept in the UK without becoming UK registered. They could only be regarded as visiting and as such their use would be prohibited by EU cabotage rules from doing anything more than ad hoc work.

10. Accordingly, Clause 4(4)(b) of the Bill only provides in law what GB have in practice and what is required by EU law.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Una Downey

DALO  
[By Email]

## **Departmental Response re Exemptions**

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Your reference:  
Our reference:

Date: 17th November 2008

Dear Alex,

I refer to the concerns raised by the Environment Committee members at the recent scrutiny sessions on the Goods Vehicles (Licensing of Operators) Bill about exemptions and their request that the Department provide a paper on the issue.

Clause 1 of The Goods Vehicles (Licensing of Operators) Bill sets out the requirement for operator licensing in NI and at the same time provides for Regulations to exempt certain vehicles from the requirement. Although these exemptions are to be detailed in Regulations, the Department has already commenced its consideration of what those might be. It is worth noting that Clause 1(4) states that the carrying on by a statutory body of its functions constitutes the carrying on of a business and Clause 54 applies the provisions of the Act to the Crown.

This paper sets out the current position within the UK and the next steps the Department is taking in establishing its proposals for what should be in regulation. These will be presented to the Committee and subject to public consultation.

### **Current Exemptions in NI**

1. Operator licensing requirements in Northern Ireland apply only to those using goods vehicles over 3.5 tonnes for the carriage of goods for hire or reward. A list of exemptions is attached at Appendix A.

### **Current Exemptions in GB**

2. The list of exemptions for GB covers both the Hire or Reward and Own Account sectors and this is attached at Appendix B.

### **View of GB Traffic Commissioners on Exemptions**

3. On 30 June 2008 officials met with representatives of the Traffic Commissioner's group in Great Britain to discuss the appropriateness of the GB exemptions and to take their view on how they could be improved. It was agreed that the GB exemptions were outdated, complex and open to abuse and that they needed to be simplified. Indeed they indicated that in their view some 60% of the GB exemptions should be removed.

### **EU Proposals on Exemptions**

4. Earlier this year the Department was consulted as part of a UK wide consultation on a proposal for a Regulation of the European Parliament and of the Council establishing common

rules concerning the conditions to be complied with to pursue the occupation of road transport operator. This proposal will come directly into law and proposes changes to operator licensing which include the removal of all exemptions for the hire or reward sector.

5. The UK Government believes that Member States should continue to be able to grant exemptions for certain national operations and accepts that some sectors in the UK - particularly agriculture - would be badly affected if this facility were abolished. That is why the UK Government is lobbying, as part of the EU negotiations, for the existing facility to allow individual Member States to grant domestic exemptions to be retained.

6. Negotiations on this proposal are still ongoing, however, even if the exemptions were to be removed in total, it would only affect the hire or reward sector. This EU regulation is unlikely to become law until the end of 2009 at the earliest.

### **Requests for Exemptions**

7. The Department has received a number of requests for exemption from individuals, sectors of the industry representative groups for exemptions. These are set out in Appendix C.

#### **Next Steps**

8. As will be seen from the various appendices, there needs to be a lot of work done to bring a degree of simplification and clarity to exemptions.

- The Department will continue to engage with stakeholders and those who have requested exemptions to establish the justification for them.
- One possible way forward is to make particular function that vehicles are engaged in as the criteria for exemption as opposed to particular vehicles themselves. This will need to be explored in detail with stakeholders to assess the possible impact.
- In addition the Department will consider the European dimension and the views of counterparts in GB to the EU proposals as informing the way forward.
- The Department recognises the importance of the issue of exemptions and would like to have proposals for consideration by the Minister and the Committee as early as possible in the subordinate legislation programme, say within 6 months of the completion of the Bill in the Assembly.
- Those proposals can then be subjected to wider public consultation before final decisions are made for subordinate legislation.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Úna Downey

DALO  
[By Email]

**Appendix A**

## **Exemption from Requirement for Road Freight Operators Licence in Northern Ireland**

1. The use of a motor vehicle to carry the luggage of passengers carried for reward.
2. The use of a motor vehicle by a funeral furnisher in the course of his business as such furnisher.
3. The carriage of goods in a motor vehicle which is -
  - (i) constructed for the carriage of more than six passengers, exclusive of the driver, and their luggage; and
  - (ii) used under the authority of a road service licence, or any statutory exemption from such authority, to carry passengers for reward.
4. The carriage of goods by means of a motor vehicle constructed solely for the carriage of not more than eight persons, including the driver, and their luggage.
5. The use by any person of a motor vehicle for the collection or delivery of goods which -
  - (i) have been sold, used or let on hire or hire-purchase in the course of a trade or business carried on by that person; or
  - (ii) have been, or are to be, subjected to a process or treatment in the course of a trade or business carried on by that person
6. The carriage of goods in a motor vehicle while the vehicle is being used under, and in accordance with the regulations applicable to a trade licence taken out by a manufacturer, repairer or dealer under section 10 of the Vehicles (Excise) Act (Northern Ireland) 1954 (d).
7. The use of a motor vehicle for -
  - (i) the carrying out of a contract with a local authority for road cleansing, road watering, or the collection or disposal of refuse, night-soil or the contents of cesspools; or
  - (ii) police, fire service or ambulance purposes; or
  - (iii) the lifting towing and transporting of a disabled motor vehicle; or
  - (iv) the removing of goods from a disabled vehicle to a place of safety.
8. The carriage of goods by means of a tractor kept by a farmer primarily for the purpose of the agricultural operations in which he is engaged.
9. The use of a motor vehicle -
  - (1) by a holding company to carry for reward the goods of any subsidiary company of that holding company, if and so long as the carriage of such goods is not the main activity of that holding company; by a subsidiary company to carry for reward the goods of (i) the holding company of that subsidiary company; or (ii) any other subsidiary company of that holding

company; if and so long as the carriage of such goods is not the main activity of that subsidiary company

## Appendix B

# Vehicles outside Operator Licence Requirements in Great Britain

## Exemption legislation

Most of the exemptions are outlined below in a simplified summary format. For definitive information you should consult Schedule 3 to the Goods Vehicles (Licensing of Operators) Regulations 1995 (S/I number 1995/2869).

## Exemptions under current regulations

The exemptions under current Regulations are as follows: -

- Vehicles first used before 1977 which have an unladen weight not exceeding 1525kg and for which the maximum gross plated weight is between 3500kgs and 3556.21kgs (3.5 tons);
- Motor vehicles & their trailers using public roads for less than 9.654kms (6 miles) a week, whilst moving between private premises;
- Vehicles being used under a trade licence - NB: This is a vehicle being used on trade plates. Please note: vehicles on trade plates should only be kept in the vehicle dealer's "temporary" possession when used in this way. In England, Scotland and Wales, we go by the DVLA's guidance for this - which is a period of three months. In our view, if the vehicle is kept in possession for longer than this it should be both registered and used on an operator's licence.
- Vehicles constructed, or adapted, primarily for carrying passengers & their effects while being used for that purpose, and any trailer drawn;
- Vehicles used by, or under the control of, Her Majesty's United Kingdom forces and visiting forces vehicles;
- Vehicles being used by local authorities for Civil Defence purposes, or to carry out their functions in respect of certain enactments;
- Vehicles being used for police, fire or ambulance purposes;
- Fire-fighting & rescue vehicles used in mines;
- RNLI & Coastguard vehicles when used for transporting lifeboats, appliances or crew;
- Vehicles being held ready for use in emergencies by water, electricity, gas & telephone undertakings;
- Tractors, including agricultural tractors, used in certain circumstances - NB: This exemption applies to any tractor as defined in paragraph 4(3) of Part IV of Schedule 1 Vehicle Excise and Registration Act 1994 while being used for one or more of the purposes in Part II of Schedule 3 to the 1995 Regulations (see link above). Part II of the Schedule goes on to outline these uses (see below); In our view, all uses other than those outlined below, would require an operator's licence.

"1. Hauling;

(a) threshing appliances,

(b) farming implements.

2. Hauling articles for a farm required by the keeper, being either the occupier of the farm or a contractor employed to do agricultural work on the farm by the occupier of the farm.

3. Hauling articles for a forestry estate required by the keeper where the keeper is the occupier of that estate or employed to do forestry work on the estate by the occupier or a contractor employed to do forestry work on the estate by the occupier.

4. Hauling within 24.135 kilometres (15 miles), of a farm or forestry estate occupied by the keeper, agricultural or woodland produce of the farm or estate.

5. Hauling within 24.125 kilometres, (15 miles), of a farm or a forestry estate occupied by the keeper material to be spread on roads to deal with frost, ice or snow.

7. Hauling.

(a) soil for landscaping or similar works."

Vehicles being used to carry goods within aerodromes;

Vehicles being used for funerals;

Uncompleted vehicles on test or trial;

"A vehicle which is being used for snow clearing, or for the distribution of grit, salt or other materials on frosted, icebound or snow covered roads or for going to or from the place where it is to be used for the said purposes or for any other purpose directly connected with those purposes". This is how this type of vehicle is identified in the Regulations. If this is applicable to the intended use of the vehicle, (and it will be used for that and no other purpose), the exemption should apply.

Vehicles on their way to a Department of Transport examination being presented laden at the request of an examiner;

Electric and steam propelled vehicles; ("Electrically propelled vehicle" is described in the Vehicle Excise and Registration Act 1994 as "a vehicle is not an electrically propelled vehicle unless the electrical motive power is derived from:

a source external to the vehicle, or

an electrical storage battery which is not connected to any source of power when the vehicle is in motion".

Therefore, some "diesel - electric" vehicles are not likely to fit the exemption and may require an operator's licence).

Recovery vehicles. Paragraph 3 of the Good Vehicles (Licensing of Operators) Regulations 1995 states that a recovery vehicle has the same meaning as in Part V of Schedule 1 to the Vehicle Excise and Registration Act 1994 (i.e a vehicle which is constructed or permanently adapted for any one or more of the purposes of lifting, towing and transporting a disabled vehicle).

Therefore, if the vehicle is not going to be used exclusively for recovering disabled vehicles from the roadside, an operator's licence will be required. (Please note: as it is likely that vehicles will be transported for a third party, if a licence is required, you would be advised to hold at least a standard national licence).

"A vehicle fitted with a machine, appliance, apparatus or other contrivance which is a permanent or essentially permanent fixture, provided that the only goods carried on the vehicle are:

(a) required for use in connection with the machine, appliance, apparatus or contrivance or the running of the vehicle;"

(b) to be mixed by the machine, appliance, apparatus or contrivance with other goods not carried on the vehicle on a road in order to thrash, grade, clean or chemically treat grain;

(c) to be mixed by the machine, appliance, apparatus or contrivance with other goods not carried on the vehicle in order to make fodder for animals; or mud or other matter swept up from the surface of a road by the use of the machine, appliance, apparatus or other contrivance".

PLEASE NOTE: The "fixed equipment" exemption relates to vehicles that have equipment that is a permanent or essentially permanent fixture (e.g. a winch or generator) where any other goods carried must be strictly for use in connection with that fixed equipment (e.g. essential tools or equipment, without which that fixture would be unable to function).

IMPORTANT: Under current legislation mobile exhibition vehicles, catering vehicles, vehicles with an auger fitted for laying telegraph poles (where the poles are carried on the vehicle), mobile shops and mobile medical screening vehicles are NOT exempt from operator licensing (if they are over 3.5 tonnes gross plated weight), nor are vehicles that do have fixed equipment - but carry goods or burden that is not strictly for use in connection with that equipment, or tow a trailer that is carrying goods or burden. Examples of types of vehicles that may be exempt under the above are \*gully sucking vehicles, vehicles with water jetting / shot blasting equipment, cherry pickers (these may also be classed as "tower wagons" (see below)) and road sweepers.

Tower wagons\* & trailers which are carrying goods related to the work of the tower wagons;

Dual purpose vehicles (eg Land Rovers) & their trailers. Includes Range Rovers, Jeeps, certain Japanese vehicles and those designed to go over rough ground as well as on roads. NOTE: All dual purpose vehicles must not exceed 2040 kg in unladen weight.

Trailers whose primary purpose is not to carry goods but do so incidentally in connection with construction, maintenance or repair of roads;

### **Road rollers & trailers;**

Showman's goods vehicles & trailers. Showman's goods vehicles are exempt from operator's licensing, if they are classed as showman's goods vehicles for the purposes of paying vehicle excise duty. This is because the exemption from the operator's licensing system is linked by para 3(2) to part 1 to Goods Vehicles (Licensing of Operators) Regulations 1995, to the definition of showman's goods vehicle in Section 62 of the Vehicle Excise and Registration Act 1994. This is defined as a goods vehicle that is permanently fitted with a living van or some other special type of body or superstructure, forming part of the equipment of the show of the person whose name is registered under the 1994 Act. It must also be a vehicle registered under the 1994 Act, in the

name of the person following the business of a travelling showman and where he is the sole user of the vehicle, for the purposes of his business and for no other purpose.

### **Crown vehicles;**

Vehicles being used for international haulage by operators established in other EU Member States;

Vehicles being used for international haulage by operators established in Northern Ireland; and,

Vehicles being used under the provisions of the Goods Vehicles (Operators Licences) (Temporary Use in Great Britain) Regulations 1980. These Regulations include provision for the use in Great Britain of Northern Ireland Vehicles, which have an operating centre in Northern Ireland, provided that certain conditions are met. Own account and hire and reward operations are covered.

\*It is also worth knowing that, when towing a trailer behind a vehicle that is around - or slightly below - 3.5 tonnes gross plated weight (e.g Ford Transit/Mercedes Sprinter sized vehicles), if the combined gross plated weights of drawing vehicle and trailer do not exceed 3.5 tonnes or (where there is no gross plated weight) the total unladen weights do not exceed 1,525 kgs, an operators licence will not be required. Please note that any trailer with an unladen weight of less than 1,020 KGs, need not be taken in to account in this calculation.

## **Appendix C**

### **Exemption Requests**

Department for Regional Development, Roads Service-requested exemption on the basis that they use specialist vehicles used to carry out a statutory function and that their vehicles are always in good condition

Department of Agriculture, Rivers Agency –exemption request based on the need to be available for emergency work

Fruit and Vegetable Growers Association- exemption requested for agricultural vehicles

Ulster Farmers Union- Exemption requested for agricultural vehicles

Horticultural Growers Forum- Exemption requested for all horticultural vehicles

Recovery vehicle users- recovery vehicles currently exempt in GB

Showmans Guild – Showman's vehicles exempt in GB

Local Authorities (some) – On the basis that crown vehicles should be exempt

Lough Neagh Rescue Service

## **Departmental Response re Secondary Legislation Making Powers**



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Your reference:  
Our reference:

Date: 17th November 2008

Dear Patricia,

I refer to your request for further comment on the secondary legislation making powers following the comments made by the Examiner of Statutory Rules in a memo dated 13 November 2008.

### **Background:**

The Committee has been considering the secondary legislation making powers contained in the Goods Vehicles (Licensing of Operators) Bill and as part of the process, passed a copy of the Examiner's memo dated 13 November 2008 to the Department for further consideration and comment.

### **Clause 1(2)(d)**

In our letter dated 5 November, the Department stated that its view was that this is more appropriate to negative resolution. On further consideration, it would now be content to have any regulations detailing the vehicles that will be out-of-scope of the Bill [exemptions] subject to affirmative resolution.

### **Clause 12(12)**

Just to confirm, the Department would be content to have this subsection subject to affirmative.

### **Clause 20(1)(d)**

Our position remains as set out in our letter of 5 November – that as the regulations under this clause will form part of our planned composite regulations, they should be subject to negative resolution.

### **Clause 57(8)**

In Great Britain, the goods vehicle operator licensing system is provided for in the Goods Vehicles (Licensing of Operators) Act 1995 and the Goods Vehicles (Licensing of Operators) Regulations 1995. The Bill seeks to largely replicate their Act, and we had planned to largely replicate their Regulations in due course.

The regulations made under clause 57 will be of an administrative nature. Their equivalent can be found in Part VII of the Goods Vehicles (Licensing of Operators) Regulations 1995. The following is a representation of the nature of provision and offences that will be made under clause 57(8).

They include provision for

- The style of disc to be fixed to a vehicle and where on the windscreen the disc should be placed
- Arrangements for the change of name and address
- The issue of replacement licences and discs where original has been lost destroyed or defaced
- Arrangements for the return of licenses and discs

The offences contained in the GB equivalent of clause 57(8) [11 in total] include:-

- Contravention of requirement to place a disc in a waterproof container and display it on nearside lower edge of front windscreen
- Writing on or making an alteration to a disc
- Failure to notify a change to name and address for correspondence
- Failure to produce licence for inspection
- Failure to notify in writing the loss or destruction of licence or disc
- Failure to return licence for variation when a vehicle is no longer used under the licence.

The Department's view is that it is important for the future administration of the operator licensing system that we keep the number of sets of regulations to a minimum. By doing so, it will make it easier for everyone involved in the system to access the legislation, to have all the administrative material in one, composite piece of legislation. Those involved will include individual operators and their legal representatives, their industry associations, the Upper Tribunal, and licensing staff in DOE.

The level of scrutiny that the Committee applies to the negative resolution procedure is robust. The Department would intend to engage with the Committee on the detailed regulations during their development, prior to public consultation and again at the SL1 stage.

Our most recent legal advice on this issue, made on foot of the Examiner's memo of 13 November is to the effect that our point about mixing affirmative and negative remains valid. If the Department wants a consolidated set of regulations subject to negative, then it would make no sense to agree to have the clause 57(8) provisions subject to affirmative. If the Department was to agree to go over completely to affirmative for all regulations or (as the Examiner suggests for regulations which have a combination of affirmative and negative) the big downside of that is that the Department would be committed for the future to producing affirmative regulations to amend the initial regulations even if the amendment is something trivial (like correcting a slip identified by the Examiner).

### **Clause 60(3)**

In my letter dated 5 November, the Department indicated that it would not object to the removal of clause 60(3) and rely on provision contained in clause 56 instead. This comment was made prior to receiving legal advice on the subject. Since then we have received that advice.

We have been strongly urged not to drop clause 60(3). The ability to do tidying up amendments or modifications in the commencement order is extremely useful because difficulties may only come to light when we actually sit down to decide what provisions to include in the commencement order and it would then be too late to prepare a full affirmative SR- not that we would really want to do that to correct a very minor slip.

Clause 60(3) is extremely well precedented and occurs in numerous Bills though not always in exactly the same form. It appears in the Taxis Bill as clause 56(2).

It is also worth considering that once all of the provisions in the Bill have been commenced, the power in clause 60, including that contained in subsection 3, will cease to have effect.

With this advice in mind, the Department would retract its previous statement and confirm that it would like clause 60(3) to remain part of the Bill.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Una Downey

DALO  
[By Email]

## **Departmental Response re All Remaining Issues on GV Bill**

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Your reference:  
Our reference:

Date: 18 November 2008

Dear Alex,

I refer to your requests for further information on the issues on the Goods Vehicles (Licensing of Operators) Bill.

### **Background:**

During the clause-by-clause scrutiny of the Bill a number of issues have been raised with officials in the Bill Team. The following is a list of those issues, along with comment on each of them.

## **Operating Centres – Planning Concerns**

1. The Department indicated that it would be happy to submit a statement to the Minister for inclusion at Consideration Stage. The Committee considered a first draft of the proposed statement and asked for the removal of the third paragraph along with a reference that the Minister would be speaking as Minister for both DVA and Planning Service. Following further discussion with Planning Service, the Department propose the following revised statement:

“Following a designation by the Department of a place as an “Operating Centre” under the Goods Vehicles (Licensing of Operators) Bill, the issue of read-across into interest or action by Planning Service may be of concern to some.

As Minister of the Department that includes the Driver Vehicle Agency, Road Safety Division and Planning Service, I want to give you an assurance that the designation of a property as an Operating Centre will not in itself have any read-across to Planning action; nor will it be used by, or influence any action by Planning Service as to the use of the property.”

### **Clause 4(4)(b)**

2. In the time available for response, officials have tried to determine vehicle registration and excise policies in other member states that share a land border. They have contacted numerous colleagues in Northern Ireland and Great Britain and have carried out extensive research via the internet, but have been unable to obtain the information requested. We will continue our contacts with GB colleagues and we hope to be able to bring some information to the next meeting with the Committee on 20 November 2008.

### **Clause 28(2)**

3. Members asked for clarification of the term “parking” that is used in clause 28(2). The Department is unaware of any definition of “parking” in Northern Ireland legislation. There are definitions of “parking place” and other parking-related terms in the road traffic regulations, but not “parking” itself.

4. Departmental Solicitors Office generally advise that in the absence of any specific definition in legislation then the commonly accepted general meaning in English should prevail. The Collins dictionary defines “park” as “to stop and leave (a vehicle) temporarily” so the term “parking” would by extension be “the stopping and leaving (of a vehicle) temporarily”.

### **Traffic Commissioner**

5. During the discussion on the issue of Traffic Commissioner, the Committee asked about the length of time that Great Britain has had the Commissioner in place. We can confirm that Traffic Commissioners were established under the Road Traffic Act 1930 and were introduced shortly after.

### **Clause 50 and Schedule 4**

6. The Committee asked for more information on the rationale for certain definitions in Schedule 4 including the weight threshold for Large Goods Vehicles. The Schedule is a replication of Schedule 5 to the Goods Vehicles (Licensing of Operators) Act 1995 in GB. The Department has discussed this issue with colleagues in VOSA and it appears that their Schedule 5 has never been commenced and brought into effect.

7. It would also appear that the provisions generally [and the references to the weight threshold in particular] are now out-of-date and that if and when it is to be commenced, it will have to be amended. In the circumstances, we feel it would be best to remove the provision from the Bill, but provide for its introduction at a later date by means of regulations.

8. Therefore, the Department would propose to remove clause 50 and Schedule 4 from the Bill. It would also propose to amend clause 57(2) by adding power for the Department to make regulations that will "require certain documents to be carried by the drivers of large goods vehicles and make other provision in connection with such vehicles".

9. This will enable the Department to provide for the carriage of Consignment Notes in large goods vehicles (as defined) in regulations. The regulations could be drafted in line with Great Britain.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Úna Downey

DALO  
[By Email]

## **Review of Road Freight Operator Licensing in Northern Ireland**

### **Summary of Responses to 2003 Consultation**

This report provides details of the proposals contained in the consultation document, "Review of Road Freight Operator Licensing in Northern Ireland," the responses received and the Department's comments in relation to the objections and expressions of concern raised in the responses.

#### **1.1 Overall Aim**

The overall aim of the proposals is to ensure safe and proper use of goods vehicles and fair competition in the industry and to protect the environment around operating centres. New measures would involve:

- extending the licensing requirements to the own account sector;
- applying environmental considerations in relation to operating centres;
- introducing continuous licensing in respect of operator licences;
- introducing requirements to give undertakings in respect of maintenance and compliance with road traffic and transport law;
- establishing new disciplinary action and appeal procedures;
- introducing an impounding scheme for illegally operating heavy goods vehicles.

There were three supportive comments, four objections and one expression of concern.

## **1.2 Reasons for Objections and Expression of Concern**

Road Haulage Association - Feels that what works in GB will not work in NI, asked to quantify how it will improve road safety. Believes compatible system with Republic of Ireland should be considered because of the high volume of cross border traffic. Feels new systems and procedures will only increase costs for legitimate operators and that there is enough current legislation if enforced.

Fermanagh District Council - Firmly opposed to the introduction of the regulations in that they will impose significant constraints on existing operators' ability to compete in what is a highly competitive market. Feels many of the measures are draconian and will undermine the stability of this business sector. Feels very strongly that the package of measures proposed will work against operators in Northern Ireland to the benefit of those in the Republic of Ireland.

Down District Council - Objects to any proposals to change the Road Freight Operators Licensing operation in Northern Ireland on the basis that there is a significant rising cost in Insurance Premiums which is having an adverse affect on business, particularly small businesses. It also identified that Road Freight Hauliers in Northern Ireland are paying higher than normal fuel costs and it would have an adverse affect on young start up businesses.

James Haffey - States basically the proposals in the document are unwarranted and an unneeded intrusion into the affairs of the private business sector. Carries all the hallmarks of direct rule from London by bureaucrats who have no true realisation of NI conditions. Asks is it stealth legislation introducing another form of taxation by the back door.

NI Oil Federation - In principle supportive of the changes, however, has concerns about the actual enforcement of the regime. States there is a certain 'underclass' of distributor who will not effect new legislation, despite the best actions of Government departments and this is only too obvious in the area of fuel smuggling and the minimal effect that HMCE have had in curbing the problem. Welcomes the introduction of the new licence but only if there is regimented and effective monitoring of the scheme and action taken against offenders.

## **1.3 Department's Comments on Objections and Expression of Concern**

The expected licensing costs are relatively insignificant and the revenue from this will be used to fund additional enforcement.

In developing its proposals, the Department considered the systems in place in both GB and the Republic of Ireland.

The proposed licensing regime will apply to all operators, thereby allowing fair competition within the industry and providing a greater level of enforcement for noncompliant operators.

Operators in the Republic of Ireland will be treated in the same way as any other foreign operators driving within the UK. A proposed distance-based lorry road-user charge is currently under consideration and this scheme would redress the balance of foreign operators not having to pay UK road freight licence or fuel duty charges.

## **2.1 Extension of the Licensing Requirements to the Own Account Sector**

At present only operators who carry other people's goods for reward are required to hold a Road Freight Operator's Licence. In bringing the NI system into line with GB, operators who carry their own goods in the course of their business or trade (own account) will be required to hold an

Operator's Licence. This will be known as a Restricted Licence and will be needed to operate or use a vehicle with a gross plated weight of more than 3.5 tonnes. Applicants for a Restricted Licence will have to satisfy the Licensing Authority of certain requirements.

There were three supportive comments, five objections and one expression of concern.

## **2.2 Reasons for Objections**

James Haffey - Feels it is an affront to introduce restricted 'O' licences to operators in Northern Ireland and that it is bureaucracy through the back door.

SDLP - Strongly against the proposal to extend licensing requirements to the own account sector as this would have a detrimental impact on firms in the region. The proposals would place firms in Northern Ireland at a serious competitive disadvantage and could cause particular problems for businesses and communities in rural areas along the border.

Councillor P J Bradley - Totally objects to any attempt to extend the licensing requirements to the own account sector. Considers that to ask an individual or firm to take out an unnecessary licence will inevitably lead to job losses and small firm closures e.g. the quarry business.

Newry and Mourne District Council - Opposed to the proposal as they consider it will impose an additional burden on operators such as quarry owners who use their vehicles to haul their own goods. Concerned that it will have an adverse effect on many small businesses throughout the area.

Fermanagh District Council - Feels impositions such as 'own account licensing', with all its ramifications, including significant cost burden, will undoubtedly impact negatively on the sector's ability to survive.

Western Education Library Board - Expressed concern at what they believed would be the costs to the WELB if their vehicles had to be licensed as own account and requested that they be exempt from this legislation taking into account the scrutiny they already face.

## **2.3 Department's Comments on Objections and Expression of Concern**

As stated at 1.3, the expected licensing costs are relatively insignificant and the revenue from this will be used to fund additional enforcement.

At present, a minority of road hauliers (hire for reward sector) fund the licensing and enforcement regime. The Department is seeking to introduce a fairer method of regulation by spreading the licensing costs across the whole industry.

On the issue of exemptions, a substantial list of these exists in GB. The Department will be looking closely at this GB list and considering how it can be paralleled in NI.

## **3.1 Replacement of Road Freight Operator's Licence with Other Types of Licences**

The present Road Freight Operator's Licence will be replaced by a Standard National Licence which will allow an operator to carry his/her own goods and to carry goods for other people for hire or reward anywhere in the UK and by a Standard International Licence which will allow an operator to carry his/her own goods and to carry goods for other people for hire or reward both in the UK and on international journeys.

There were four supportive comments received.

#### **4.1 Introduction of Arrangements for Variation of Licences**

Under the new arrangements, it will be possible to remove vehicles from an existing licence and add others, provided the total vehicle authorisation is not exceeded. This type of change will not be required to be advertised.

However, the addition of extra vehicles in excess of the number authorised, or the change of, or addition of a new operating centre, will be regarded as a major variation to an Operator's Licence. Such changes will involve operators having to meet the requirements which apply in relation to a new licence application and payment of appropriate fees. These requirements will include advertising of the application for variation and consideration of objections and representations.

There were three supportive comments, one objection and one expression of concern.

#### **4.2 Reason for Objection and Expression of Concern**

PSNI - Against the proposal not to advertise if changing from one type of licence to another e.g. restricted to standard national. Of the opinion needs to be advertised as this appears to be the only time that either the statutory bodies or owners or occupiers of land or buildings in the vicinity of an operating centre can object to the grant of a licence.

PSNI - Expressed concern that the enforcement agencies, including the PSNI, have available to them, throughout the 24 hour period, access to the most up to date information. From a policing perspective there would need to be a system in operation that informs police officers of what is and is not authorised for each operator that is licensed. This information needs to be available before the new system of operator licensing is in place.

#### **4.3 Department's Comments on Objection and Expression of Concern**

Such changes in the licences do not materially affect the vehicles, loads or operating centres and it is not, therefore, considered necessary for operators to advertise on this issue alone. However, the Department will consider publishing applications for change from one type of licence to another, thereby making them open to objection by statutory objectors.

#### **5.1 Introduction of Requirement to Publish Notices of Application for a Licence**

Applications for a licence or variation of a licence will be required to be published in a prescribed manner. This will require applicants (or the Licensing Authority) to arrange publication in specified newspapers and for the Licensing Authority to also publish details of applications and decisions for the benefit of statutory objectors.

There were two supporting comments and one objection.

#### **5.2 Reason for Objection**

Road Haulage Association - Does not support proposal for publication of notices of application for a licence. Feels statutory objectors will be informed through applications and decisions.



### **5.3 Department's Comments on Objection**

While statutory objectors will be informed of applications and decisions, advertising gives an opportunity to others who may consider they have a legitimate reason to object. Such objections would be considered as part of the decision making process. Publication for statutory objectors, as in GB, is provided for in paragraph 5.1. However, consideration may be given to direct consultation with statutory objectors such as the Planning Service.

### **6.1 Provisions for Making Objections/Representations**

Advertising of the application will afford the opportunity for bodies such as prescribed trade unions and associations, the PSNI, District Councils and Government Departments to make an objection to the grant of a licence. They may object on the grounds of fitness, finance and the professional competence of an operator as well as environmental and/or general suitability of an operating centre.

Owners or occupiers of land or buildings in the vicinity of an operating centre, who believe that the use of a site as an operating centre could prejudice the use or enjoyment of their land, would have the right to make representations to the Licensing Authority. Representations may be made only on environmental grounds.

Anyone would be able to complain at any time about the suitability of an operating centre after it had been specified on an Operator's Licence. Under the continuous licensing system, the Licensing Authority when reviewing the operating centres on the fifth anniversary of the licence would have the opportunity of taking into account the nature of the complaint. This is the position in GB, however, the Department invited comments on modifying the procedure to allow the Licensing Authority to consider complaints at any time during the lifetime of the Operating Licence.

There were two supportive comments and two expressions of concern.

### **6.2 Reasons for Expressions of Concern**

Freight Transport Association - Believes only in exceptional circumstances should the licensing authority consider representations at other times throughout the life of the licence. Concerned to ensure that operators of a long standing operating centre will not find their future business jeopardised by representations on issues concerning an operating centre which were not pertinent at the time of opening of the centre. Protection must be afforded to the operator in such circumstances.

Road Haulage Association - Believes the Planning Service is sufficient to decide the suitability, either generally or environmentally, of operating centres. Regarding owners or occupiers of land or buildings in vicinity of an operating centre being able to make representations to Licensing Authority on environmental grounds, considers that this causes great concern for established businesses and must be protected by grandfather rights. Also concerned that "anyone" would be able to complain at any time about suitability of operating centre. Complaints on specific issues might be considered but not the location or operating procedures that are long established.

### **6.3 Department's Comment on Expressions of Concern**

Planning Service can determine the 'suitability' of premises for use as haulage centres through the determination of planning applications, either through their submission in the normal way or after enforcement proceedings, and these applications are determined on their planning merits,

taking into account the views of the public, the responses from consultees and the views of the District Council. Planning permissions for haulage uses are normally subject to conditions covering such issues as parking and landscaping and possibly limitations on the type of vehicles using the site and operating hours. Existing premises without planning permission, but which are established long enough to be no longer subject to enforcement action, are not subject to such control unless their intensity or conditions of operation change in some substantial way. The Planning Service would not normally attach significant weight to objections on the grounds of fitness, finance and the professional competence of an operator.

Regarding grandfather rights the Department is not proposing to grant them. New operators and applications for major variations from existing operators will have to meet all of the new requirements. A lead in period for other existing operators will be considered.

## **7.1 Statutory Obligations for Operating Centres**

The operating centre will be the place where vehicles are normally kept when not in use. The Licensing Authority will require to be satisfied that the operating centre is suitable. In deciding environmental suitability, the Licensing Authority will be statutorily required to take into account the following factors:

- the operating centre will need to meet the requirements of planning legislation in terms of either a current planning permission for the development or a written statement from the DOE Planning Service that an application for planning permission is not required;
- the nature and use of any land in the vicinity of the operating centre and the effect that granting the application would be likely to have on the environment of the land;
- how much harm would be done to the environment of the land in the vicinity, by granting an application which is materially to change the use of an existing (or previously used) operating centre;
- the number, type and size of the authorised vehicles which will use the operating centre;
- parking arrangements for the authorised vehicles which will use the operating centre;
- the nature and times of use of the equipment at the operating centre;
- and how many vehicles would be entering and leaving the operating centre and how often.

There was one supportive comment, two objections and two expressions of concern.

## **7.2. Reasons for Objections and Expressions of Concern**

Road Haulage Association - Believes once the Department is satisfied as to the suitability of the operating centre, thereafter the on-going business carried on from the premises is adequately policed by the Planning Service and the Building Control Departments of Local Councils. Also believes that it is beyond the remit of the Department to consider the number of vehicles entering and leaving the operating centre.

Fermanagh District Council - Believes the operating centres and storage depots are going to be subject to rigid regulations that will add further restrictions and costs.

Freight Transport Association - Broadly accepts the proposals regarding operating centres, however, an issue of concern is how many vehicles would be entering and leaving the operating centre and how often. Considers that this seeks to give the licensing authority far wider powers

than would be typical in GB since it would seem to seek to control visiting vehicles which may not be operated by the company operating the centre.

PSNI - Concerned about the expression `where vehicles are normally left when not in use'. Points out that the meaning of this must be clear if there is to be a successful prosecution.

### **7.3 Department's Comments on Objections and Expressions of Concern**

Planning Service will advise on the planning status of the premises i.e. whether the premises have planning permission or whether such permission has currently been applied for, whether the premises currently have, or have had, any enforcement proceedings against them for unauthorised use in planning terms, or whether the premises are established as 'lawful' for planning purposes by the grant of a 'Certificate of Lawful Use or Development'. Planning applications are advertised, neighbour notification is carried out and the District Council is consulted. Certificates of Lawful Use or Development are not advertised and Councils are not consulted on them. Conditions can be applied to planning permissions to cover concerns about environmental amenity, road safety, etc. Certificates of Lawful Use or Development merely advise that development is lawful for planning purposes i.e. that enforcement action cannot be taken against it and that planning permission is not needed for its continued operation at its current level. They are not subject to conditions.

The licence covers the number of vehicles entering and leaving which are under the control of the operator. Obviously there may be occasions where vehicles not under the control of the operator visit the premises. Where this reaches significant levels, and possibly contravenes the terms of any planning permission granted, action may be required by the Planning Service and/or the Roads Service.

### **8.1 Consideration of Environmental Conditions**

To prevent or minimise adverse effects on the environment, the Licensing Authority may attach conditions to a licence covering:

- the number, type and size of authorised vehicles (including trailers) at the operating centre for maintenance or parking;
- parking arrangements for the authorised vehicles (including trailers) at the operating centre or in its vicinity;
- the times when operating centres may be used for maintenance or movement of authorised vehicles;
- how authorised vehicles enter and leave the operating centre.

There were two supportive comments, one objection and one expression of concern.

### **8.2 Reasons for Objection and Expression of Concern**

Road Haulage Association - Strongly opposes the introduction of the environmental conditions envisaged in the proposals. Points out the Department currently has the power to ensure that an applicant has a suitable operating centre before issuing a licence and that there is a Planning Service with statutory powers. Considers there is no need to create more difficulties for what is essentially part of the small business sector in NI.

Freight Transport Association - Supports proposals outlined for environmental conditions, however, advocates a form of grandfather rights for existing centres and suggests environmental

controls are only applied to new applications for licences or new or additional centres on an existing licence.

### **8.3 Department's Comments on Objection and Expression of Concern**

Planning Service powers and functions are outlined at 7.3 above.

As stated in paragraph 6.3, the Department is not proposing to grant grandfather rights. New operators and applications for major variations from existing operators will have to meet all of the new requirements. A lead in period for other existing operators will be considered.

### **9.1 Introduction of Requirement to give Undertakings in Respect of Maintenance and Compliance with Road Traffic and Transport Law**

The Licensing Authority will require to be satisfied that the applicant/operator will maintain his/her vehicles in a fit and serviceable condition at all times and comply with traffic and transport related laws. The applicant at the time of application will be required to give such undertaking in the form of a declaration which will be part of the application form for an Operator's Licence and which the applicant will be required to sign. If the undertakings are not kept, disciplinary action may be taken against the operator.

There were two supportive comments.

### **10.1 Introduction of Continuous Licensing in Respect of Operator Licences**

At present, NI Road Freight Operator Licences last for 5 years. In GB, since 1 January 1996, Goods Vehicle Operator Licences remain in force indefinitely, provided the operator remains within the terms on which his/her licence was granted and pays the renewal fees on time.

Under continuous licensing, licences are reviewed at regular 5 yearly intervals and operators are asked to confirm the details of the licence. The Licensing Authority has discretion to review the suitability of the Operating Centre at the same time.

The present licensing system in NI also requires Road Freight Vehicle Licences to be issued annually. The issue of vehicle licences is dependent upon the production of a valid Goods Vehicle Certificate (GVC) and Vehicle Excise Duty (VED) disc, which show that the vehicle has been tested and properly taxed. These checks are considered as providing a major contribution to the Department's functions in relation to road safety, ensuring fair competition and general enforcement. Although these procedures do not apply in GB where operators may opt to license their vehicles on a continuous basis, the Department proposes that the current practice of issuing annual Road Freight Vehicle Licences involving GVC and VED checks should continue until such times as records enable electronic checking of GVCs and VED payments.

There were two supportive comments and two objections.

### **10.2 Reasons for Objections**

Freight Transport Association - Opposes strongly the proposal to maintain the annual Road Freight Vehicle Licence (RFVL). Considers the Department should be able to put procedures in place to check the status of the Goods Vehicle Certificate (GVC) and Vehicle Excise Duty (VED) that are both issued by the Department. Also considers the current system is cumbersome,

creates an offence in NI that does not exist in GB and the resources saved could be redirected into the proposed new Road Freight Operator Licensing system.

Road Haulage Association - Does not support the proposals for continuous licensing and the right to issue annual Road Freight Vehicle Licences. Puts an unfair cost and administrative burden on NI operators and penalises and discriminates against NI operators.

### **10.3 Department's Comments on Objections**

As set out in the proposals, the Department will continue with the current practice of issuing annual Road Freight Vehicle Licences involving GVC and VED checks until such times as records enable electronic checking of GVCs and VED payments.

### **11.1 Introduction of Powers to Hold Public Enquiries**

The Licensing Authority will have powers to hold and control the conduct of a public enquiry into an application for an Operator's Licence or a major variation to an existing licence. The purpose of a public inquiry, which will be at the Licensing Authority's discretion, is to consider aspects of an application where there are doubts as to the applicant's ability to meet the necessary criteria and to hear objections before coming to a decision on the application.

There were two supportive comments and one objection.

### **11.2 Reason for Objection**

Road Haulage Association - Believes that a discretionary system could be unsuitable as it might not be uniformly implemented. Differing penalties would be incurred depending on location which in turn would cause grievances. A fairer system would be to introduce a system of penalty points where different offences would attract a different number of points. When a certain number of points are reached, a predetermined penalty is imposed. Everyone, no matter where they are based would receive the same treatment.

### **11.3 Department's Comments on Objection**

There is only one licensing authority in NI, therefore it will be uniformly implemented across NI. The Department will consider the system of penalty points proposed in advance of any scheme being introduced.

### **12.1 Establishment of new Disciplinary Action Procedures Where a licensed operator:**

- no longer fulfils the statutory requirements for holding a licence e.g. in relation to good repute/fitness, financial standing or professional competence;
- contravenes the conditions of the licence;
- fails to keep any undertakings;
- uses an unauthorised operating centre;
- incurs convictions, prohibitions etc in specified circumstances;

the Licensing Authority will have powers to revoke, suspend or curtail an Operator's Licence. If the Licensing Authority proposes to take disciplinary action, it must first hold a public inquiry if

this is requested by the licence holder or by the person against whom the disciplinary action is being taken.

There were two supportive comments and one objection.

## **12.2 Reason for Objection**

Road Haulage Association - see 11.2.

## **12.3 Department's Comments on Objection See comments at 11.3.**

## **13.1 Introduction of Appeal Procedures which Include Referral to a Transport Tribunal**

Provides for procedures which will allow an applicant or a licence holder to appeal the decision of the Licensing Authority in respect of:

- the refusal of an application;
- the imposition of conditions to a licence;
- disciplinary decisions;
- added or varied conditions following the review of an operating centre.

A statutory objector to a licence application or variation will also have a right of appeal. Representors do not have a right to initiate an appeal, but may become parties to an appeal if one is made by an objector or applicant.

The Department envisages the process will involve appeals being made to the Transport Tribunal in London. The Tribunal, which is administered by the Lord Chancellor's Department and sits in various parts of the country, comprises a President and two judicial members who are lawyers. There are, in addition, several lay members who have experience of the transport industry. The Department views recourse to the Transport Tribunal, which is a well established and experienced body conversant with the issues of road transport, as being an effective and equitable means for hearing appeals.

There were three supportive comments and one objection.

## **13.2 Reason for Objection**

James Haffey - Totally against the idea of appeals being referred to the Transport Tribunal in London. Asks are the courts in Northern Ireland, which deal with these matters now considered incapable of performing their duties.

## **13.3 Department's Comments on Objection**

The Transport Tribunal will have legal and transport expertise currently being exercised in the rest of the UK. Agreement, in principle, has been reached that the Transport Tribunal will sit in NI for NI cases.

## **14.1 Proposed Fees**

Adoption of the GB licensing system in Northern Ireland will have resource implications for both the Department and the industry. It is proposed that, in the interim, the GB level of fees should be used, though the position will be kept under review.

There were three supportive comments.

### **15.1 Introduction of an Impounding Scheme for Illegally Operated Heavy Goods Vehicles**

Proposed to introduce a scheme similar to that operating in GB for the detention or impounding of illegally operated heavy goods vehicles i.e. those without an Operator's Licence.

Under the proposed scheme, a Driver and Vehicle Testing Agency (DVTA) examiner, with appropriate police assistance, would, at a roadside check, identify a vehicle which he/she believed to be operating illegally, perhaps as a result of previous intelligence. Unlicensed vehicles would then be detained and removed to a pound.

The Department also proposes to introduce provisions to enable driving of a vehicle to be prohibited for non-compliance with drivers' hour's rules. The Department also proposes to strengthen on-road enforcement in respect of the maintenance of vehicles and failure to keep in a fit and serviceable condition; vehicle testing; drivers' licensing; international road haulage permits; forgery of, for example, licensing documents; loading/overloading; speed limits; contravention of parking restrictions and prohibitions; unlawful use of vehicle and insurance.

There were three supportive comments and two expressions of concern.

### **15.2 Reasons for Expressions of Concern**

PSNI - Foreign vehicles and their drivers can, at this time, be prohibited from movement for a number of offences, including a breach of drivers hours, yet the enforcement agencies, cannot deal with UK drivers and their vehicles in the same manner. This could be deemed an infringement of their Human Rights. Also concerned that police should have the same authority to impound vehicles as DVTA Enforcement Officers and query why it is a requirement for DVTA Enforcement Officers to have police assistance when stopping a vehicle, as they already have the power to stop moving vehicles.

DVTA - Concerned with the proposal that DVTA Enforcement Officers should be able to impound unlicensed vehicles only with assistance of the Police. This is only a requirement in GB as VOSA do not have the powers to stop a suspect vehicle. Also, DVTA Enforcement Officers have the authority to stop and detain indefinitely a foreign vehicle detected without the appropriate licences. An Enforcement Officer can also prohibit the driver of a foreign vehicle from continuing on a journey if they are in breach of their drivers' hours requirements. There are no similar powers for national vehicles and drivers. These could be construed as a breach of a foreign driver's human rights, as they are treated differently from UK nationals.

### **15.3 Department's Comments on Expressions of Concern**

The Department will consider in consultation with PSNI the regularisation of enforcement powers.

### **16.1 Appointment of a Traffic Commissioner for Northern Ireland**

The Department seeks views on the issue of appointment of a Traffic Commissioner for NI to have statutory responsibility for, among other things, Goods Vehicle Operator Licensing. The Traffic Commissioner would be independent from the Department. Duties would include:

- the licensing of operators, their vehicles and trailers;
- the holding of public inquiries arising from objections or representations in relation to the suitability of applicants and operating centres;
- taking disciplinary action against operators who fail to meet or maintain the formal requirements and which could result in the suspension, revocation or curtailment of licences; and
- acting for the Secretary of State for NI in disciplinary matters relating to the conduct of an applicant for a Large Good Vehicle (LGV) licence and having the power to refuse or suspend a driver's entitlement to drive such vehicles.

There were three supportive comments and three objections. Two of the comments received in support of a Traffic Commissioner also suggested a widening of powers to include the bus and taxi industry.

## 16.2 Reasons for Objections

Road Haulage Association - Believes it is unnecessary if discretionary powers are deemed to be unfair and a penalty points system used.

James Haffey - No need for his/her appointment in an area with no more vehicles than Merseyside or Manchester.

Antrim Borough Council - Considered an unnecessary expense. The option of allocating this function to an existing role should be explored.

## 16.3 Department's Comments on Objections

The scale of operations in NI questions the need for a Traffic Commissioner for road haulage matters only. However, with the Department's on-going review of the regulation of the taxi industry and the Department for Regional Development's review of the regulation of the bus industry, the role of the Traffic Commissioner may well have merit. This will be explored further.



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Your reference:

Our reference:

Date: 1 December 2008

Dear Alex

I refer to your request for examples of how other EU member states with land borders address issues relating to where operating centres are based compared to which jurisdiction they operate in

### **Background:**

1. In paragraph 2 of my letter to you dated 18 November 2008 I stated that officials had been unable to obtain the information on vehicle registration and excise policies in other member states that share a land border – and that officials would bring some information to the next meeting with the Committee on 20 November.

2. The issue was not raised at the meeting on 20 November. However, I am now able to provide this information for consideration at the meeting on 2 December 2008.

### **Current Position**

3. It has proven difficult to ascertain the position in other member states in mainland Europe, despite extensive research and contact with numerous individuals and organisations.

4. We understand that there are problems in mainland Europe in relation to operator licensing where member states apply different national rules and where international co-operation is ineffective on recording and imposing penalties on operators that commit offences outside their established state. Many rules appear to be interpreted, applied and enforced differently by member states.

5. This may lead to unfair competition in that there may be an incentive for operators with a poor compliance record to locate to another member state that has a less stringent licensing regime in place and establish a "letter-box" company [a company with an operator licence but with no effective operating centre in the state of establishment].

6. The European Commission has identified the need to modernise, simplify and streamline the existing rules and has proposed new legislation in the form of the Operator Regulation.

7. One issue that the Regulation will seek to change is that of "establishment". Operators will need to be 'effectively and stably' established in a member state, demonstrated by having an office and operating centre with sufficient parking. Vehicles will have to be registered in the member state.

8. Department for Transport carried out a public consultation exercise on the proposed Operator Regulation – closing date was 29 February 2008. The Government's response on this particular issue, following the consultation, was as follows:-

"The Government believes that there should be an obligation for operators to meet a requirement to be properly established in the Member State where they obtained their operator's licence to prevent the establishment of 'letterbox companies' (i.e. those without an office or

operating centre). UK domestic legislation for HGV operators already impose most of the requirements in the draft Regulation. However, we believe that in the UK, the Traffic Commissioners should continue to exercise discretion about whether those requirements are met in individual cases”.

9. The Department’s view on the issue is as follows:-

- It will be a requirement under the Bill for operators to have an operating centre and that the centre must be in Northern Ireland
- The vehicles specified under the licence will have to be kept in the operating centre which is defined as the place “at which the vehicle is normally kept”.
- Section 1(1) of the Vehicle Excise and Registration Act 1994 states that a duty of excise shall be charged in respect of every mechanically propelled vehicle which is used, or kept, on a public road in the United Kingdom.
- While the GB Goods Vehicles (Licensing of Operators) Act 1995 does not spell it out, there is an existing requirement for vehicles to be registered under VERA. We would propose to spell it out on the face of the Bill, but even if it does not appear there will still be a requirement.

10. I attach a link to the Department for Transport Consultation Document and the Summary of Responses on the European Commissions Road Transport Proposals.

<http://www.dft.gov.uk/consultations/closed/euroadtransportproposals/responses>

<http://www.dft.gov.uk/consultations/closed/euroadtransportproposals/euroadconsulpaper>

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Úna Downey

DALO

#### GOODS VEHICLES (LICENSING OF OPERATORS) BILL

#### AMENDMENTS TO BE MOVED AT CONSIDERATION STAGE

Clause 1, page 1, line 10, leave out ‘within the meaning given in Schedule 1’

Clause 1, page 1, line 16, at end insert—

‘(2A) For the purposes of subsection (2)(a) a goods vehicle is a small goods vehicle if—

(a) it does not form part of a vehicle combination and—

(i) it has a relevant plated weight not exceeding 3.5 tonnes, or

(ii) in the case of a vehicle which does not have a relevant plated weight, it has an unladen weight not exceeding 1525 kilograms;

(b) it forms part of a vehicle combination and complies with such conditions as may be prescribed;

and "relevant plated weight" in paragraph (a) means a plated weight of the description specified in relation to that paragraph by regulations;'

Clause 4, page 4, line 4, at end insert '(if any)'

Clause 4, page 4, line 5, after 'fee' insert '(if any)'

Clause 24, page 20, line 36, leave out subsection (3)

Clause 24, page 20, line 39, leave out 'subsection (3)' and insert 'section 26(1)'

Clause 26, page 22, line 17, after 'first' insert 'giving the holder of the licence or (as the case may be) the person concerned notice that it is considering doing so and'

After clause 51 insert—

### **'Payment of grants**

51A.—(1) The Department may, with the approval of the Department of Finance and Personnel, pay such grants to such persons or bodies as it considers appropriate in connection with any provision of, or the purposes of, this Act.

(2) Grants under this section shall be subject to such terms and conditions as the Department may, with the approval of the Department of Finance and Personnel, determine.'

Clause 55, page 36, line 19, omit 'commissioners' and insert 'authority'

Clause 57, page 38, line 17, leave out '27(3)' and insert '1(2)(d), 12(12) or 27(3) or Schedule 4'

Schedule 3, page 47, line 29, leave out from 'for' to end of line 30 and insert 'authorising a vehicle detained by virtue of paragraph 1 to be returned to the owner, in prescribed circumstances, without the need for any application under paragraph 8.'

Schedule 4, page 50, line 33, leave out from 'any' to end of line 25 on page 51 and insert 'a prescribed description'



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Your reference:

Our reference:

Date: 1 December 2008

Dear Alex

I refer to your request for further information on the Goods Vehicles (Licensing of Operators) Bill following the meeting on 20 November 2008.

### **Background:**

1. At the meeting on 20 November, the Committee carried out a clause-by-clause scrutiny of the Bill and during the course of the meeting officials agreed that the regulation-making powers in clauses 1(2)(d) and 12(12) should be subject to draft affirmative resolution. They also proposed the removal of clause 50 and Schedule 4 that relates to large goods vehicles, and the inclusion of a power in clause 57(2) that would enable the Department to provide for large goods vehicles by regulations at some time in the future. It was agreed that these regulations would also be subject to draft affirmative resolution.

### **Clause 50 and Schedule 4**

2. The Department has received legal advice on the most appropriate way of dealing with this issue that is slightly different to the approach the Department suggested at the meeting on 20 November.

3. There are a number of difficulties with the proposed solution.

- We could not have a power to make regulations about large goods vehicles when (if Schedule 4 is removed) there is no definition of large goods vehicles in the Bill.
- A new power to make regulations about consignment notes does not belong in clause 57(2). Subsection (2) is a list of examples of things which fall within subsection (1) i.e. they are "generally for carrying this Act into effect". If clause 50 and Schedule 4 are removed from the Bill, there is nothing in the Bill about consignment notes for any regulations under clause 57(2) to "generally carry into effect". In other words, clause 57(2) can only list matters if they are dealt with elsewhere in the Bill.
- A general broad regulation making power would not enable the Department to create offences and provide for other enforcement actions set out in Schedule 4.

4. Given that the Committee's concern about Schedule 4 was the definition of "large goods vehicle" and the threshold [of 16,260kgs] contained in Paragraph 1 of Schedule 4, Legislative Counsel has suggested that the solution is to replace paragraph 1 of Schedule 4 with a general power to prescribe the vehicles to which paragraphs 2 to 4 of that Schedule will apply. By doing so, the Department will be able to prescribe the threshold for "large goods vehicles" in line with any new threshold that may come into place in Great Britain.

5. In effect, this would mean that clause 50 [as drafted] and Schedule 4 [as amended] should remain in the Bill. Clause 57(2) should not be amended.

### **Clause 57(9)**

6. The Committee agreed that the Bill should be amended to enable regulations made under clause 1(2)(d) and clause 12(12) to be subject to draft affirmative resolution. Furthermore, in light of the proposed action relating to large goods vehicles, it also agreed that any regulations relating to this issue should be subject to affirmative resolution.

7. In light of the legal advice received about large goods vehicles, the Department would propose that clause 57(9) be amended to include not only references to clause 1(2)(d) and clause 12(12) but also Schedule 4. Such an amendment will ensure that any regulations made under these clauses will be approved by affirmative resolution of the Assembly.

## Summary

8. In summary, the Department would propose that the Committee:-

- overturns its decision to agree the removal of clause 50 and Schedule 4
- agree the amendment to Schedule 4, paragraph 1; and
- agree the amendment to clause 57 (9) relating to affirmative resolution

9. A list of the amendments is attached with this letter.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Una Downey

DALO

### GOODS VEHICLES (LICENSING OF OPERATORS) BILL

#### AMENDMENTS TO BE MOVED AT CONSIDERATION STAGE

Clause 1, page 1, line 10, leave out 'within the meaning given in Schedule 1'

Clause 1, page 1, line 16, at end insert—

'(2A) For the purposes of subsection (2)(a) a goods vehicle is a small goods vehicle if—

(a) it does not form part of a vehicle combination and—

(i) it has a relevant plated weight not exceeding 3.5 tonnes, or

(ii) in the case of a vehicle which does not have a relevant plated weight, it has an unladen weight not exceeding 1525 kilograms;

(b) it forms part of a vehicle combination and complies with such conditions as may be prescribed;

and "relevant plated weight" in paragraph (a) means a plated weight of the description specified in relation to that paragraph by regulations;'

Clause 4, page 4, line 4, at end insert '(if any)'

Clause 4, page 4, line 5, after 'fee' insert '(if any)'

Clause 24, page 20, line 36, leave out subsection (3)

Clause 24, page 20, line 39, leave out 'subsection (3)' and insert 'section 26(1)'

Clause 26, page 22, line 17, after 'first' insert 'giving the holder of the licence or (as the case may be) the person concerned notice that it is considering doing so and'

Clause 38, page 29, line 11, leave out paragraph (c)

Clause 39, page 30, line 10, leave out 'or paragraph 4(1) of Schedule 4'

Clause 39, page 30, line 16, leave out 'or paragraph 4(1) of Schedule 4'

The Minister of the Environment gives notice of his intention to oppose the question that clause 50 stand part of the Bill.

After clause 51 insert—

### **'Payment of grants**

51A.—(1) The Department may, with the approval of the Department of Finance and Personnel, pay such grants to such persons or bodies as it considers appropriate in connection with any provision of, or the purposes of, this Act.

(2) Grants under this section shall be subject to such terms and conditions as the Department may, with the approval of the Department of Finance and Personnel, determine.'

Clause 55, page 36, line 19, omit 'commissioners' and insert 'authority'

Clause 57, page 38, line 17, after 'section' insert '1(2)(d), 12(12) or'

Schedule 3, page 47, line 29, leave out from 'for' to end of line 30 and insert 'authorising a vehicle detained by virtue of paragraph 1 to be returned to the owner, in prescribed circumstances, without the need for any application under paragraph 8.'

The Minister of the Environment gives notice of his intention to oppose the question that Schedule 1 stand part of the Bill.

The Minister of the Environment gives notice of his intention to oppose the question that Schedule 4 stand part of the Bill.

## **Proposed Amendments to Goods Vehicles (Licensing of Operators) Bill**

## Amendments

1.- Clause 1 and Schedule 1 [pages 1 and 42 respectively].

Remove Schedule 1 altogether and insert a basic definition of "small goods vehicle" into clause 1(2) (a) and take the power to define that term for vehicles that forms part of a vehicle combination.

2.- Clause 4 (5) and (6) [page 4, lines 4 and 5]

At the end of clause 4(5) after the words "a prescribed fee" add "if any". Similarly, in the first line of clause 4(6) after the words "a prescribed fee" add "if any".

3. Clauses 24 and 26

To impose a duty on the Department to notify a licence holder of its intention to give a direction to revoke, suspend or curtail a licence and of his right to request a public inquiry before any direction can be given.

4. Clauses 38 and 39

Remove the references to Schedule 4 in clause 38(3)(c) and clause 39(1) and (39(2)(b)).

5. Clause 50

Remove altogether from the Bill

6. Clause 51A

To take power to pay grants to persons or bodies as the Department considers appropriate in connection with the provisions of the Bill. Subject to terms

## Effect

The current definition of "small goods vehicle" is a replication of the definition that is contained in the equivalent GB Act of 1995. It would appear that the definition is the cause of problems in GB in that it is loosely worded and a considerable number of vehicles are deemed to be out-of-scope of operator licensing as a result. This amendment will allow the definition to be made clear and unambiguous. The new clause 1(2A)(a) replaces paragraph 2 of Schedule 1 while 2A(b) replaces paragraphs 3 and 4, and incorporates paragraph 5 of Schedule 1.

The Local Transport Bill that is currently progressing through Westminster is to amend the Goods Vehicles (Licensing of Operators) Act 1995 in GB. The Department would like to amend the equivalent provisions in the Bill to ensure that it is up-to-date with the GB legislation. It is a minor amendment that relates to fees and is necessary to take account of situations where no such fee is prescribed.

This is to remove an anomaly whereby [in clause 26(1)] the Department "shall not" give a direction to revoke, suspend or curtail a licence without first holding a public inquiry if the licence holder requests the Department to do so. The problem is, how does the licence holder know to ask for an inquiry when there is no requirement for the Department to inform him that it is considering making the direction?

In clause 24(3), the Department must inform a standard licence holder that it is considering making a direction [to revoke suspend or curtail. We want consistency across all forms of licence, not just standard licence holders – so to make clause 26 work correctly, it is necessary to amend clauses 24 and 26 to include a specific duty to inform the licence holder, regardless of licence type.

The Committee agreed that clause 50 and Schedule 4 [relating to Large Goods Vehicles] should be removed from the Bill. Clauses 38 and 39 have to be amended to remove references to Schedule 4 in each.

Committee agreed that provision for Large Goods Vehicles in Schedule 4 should be removed from the Bill. This clause gives effect to Schedule 4 and must also be removed.

The Environment Committee have expressed concern about the impact that the Bill may have on small businesses. The addition of a clause, that will provide the Department with power to pay grants to persons or bodies in connection with the provisions of the Bill, may allay the concerns. The clause would replicate a

Amendments	Effect
and conditions, with the approval of DFP.	similar provision that was included in the recent Taxis Act (NI) 2008.
7. Clause 55	In clause 55, the provisions of the Bill have been applied to areas in the control of harbour commissioners. The intention was to ensure the requirements of operator licensing would apply within all harbour areas. However, the Department has learned that the Larne and Warrenpoint harbour areas are not under the control of commissioners, so these two harbours would be outside the scope of the Bill as currently drafted. The term "harbour authority" will ensure that all harbour areas are included within the scope of the Bill.
To replace references to "harbour commissioners" with harbour authorities".	
8. Clause 57(9)	During scrutiny, the Committee asked that certain regulations [that were subject to negative resolution in the Bill] be made subject to affirmative. This amendment adds clauses 1(2)(d) and 12(12) to clause 27(3) that was already included.
The regulation making powers that will be subject to affirmative resolution	
9. Schedule 3 [page 46]	Another amendment taken from the Local Transport Bill - relating to the return or disposal of goods vehicles that have been impounded. Regulations made under paragraph 8 of Schedule 1A to the 1995 Act provides for a vehicle to be returned to its owner. Further regulations, made under paragraph 9, require the owner to apply to the traffic commissioner for the return of the vehicle. The amendment is to paragraph 8 and is designed to make it easier for the owner to have his vehicle returned. It will make it possible for the return of the vehicle without the need for the owner to apply to the traffic commissioner in certain prescribed circumstances. The Department would seek to replicate this amendment so that the two systems [GB and NI] remain consistent.
To amend Schedule 3 to the Bill by substituting paragraph 8 with a new paragraph 8 [power to make regulations for return of detained vehicle]:-	
"Regulations may make provision authorising a vehicle detained by virtue of paragraph 2 to be returned to the owner, in prescribed circumstances, without the need for any application under paragraph 9."	
10. Schedules 1 and 4	Not an amendment as such, but a notice that the Minister will oppose the question that Schedules 1 and 4 stand part of the Bill.
Agreed to be removed	