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Des McKibbin

The Transport Bill (2010)

NIAR 362-10

This paper provides background to the key issues in public transport reform which have led to the drafting of the Transport Bill. This Bill issues powers in relation to the awarding of service contracts for public transport services, grant making for infrastructure and vehicles and powers to ensure the security and safety of passengers. The powers conferred in this Bill are designed to allow the Department to create an efficient, effective and sustainable public transport service in support of the Executives transportation, environmental, social inclusion and equality objectives, while supporting the development of the wider economy.

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Key Points

The transport Bill provides the statutory arrangements for bringing forward the reform of public transport which has been in development since 2002.

The aim of public transport reform is to create an efficient, effective and sustainable public transport service that contributes to the Executive's transportation, environmental, social inclusion and equality objectives, while supporting the development of the wider economy.

The Bill introduces a duty on the Department of regional Development to secure the provision of public transport services.

As part of public transport reform the formation of an Executive Agency within the Department of Regional Development has been recommended to deliver public transport, combining the roles of the Northern Ireland Transport holding Company (NITHC), Translink, the Department of Regional Development (DRD) and the Department of the Environment (DoE).

The new departmental agency will initiate the process of developing local transport plans in line with community development policy.

This policy comes from the Review of Public Administration and draws on Experiences from England, Wales and Scotland where community planning has been a statutory requirement of local authority's since 2000 and 2003 respectively.

In compliance with regulation (EC) 1370/2007 the Bill enables the continued regulation of public transport in Northern Ireland while opening the market to controlled competition with new contracting and permit issuing powers.

These new contracting powers will allow the DRD to take forward the Executive's objective of introducing a rapid transit service in Belfast, which will be competitively tendered.

The Bill amends powers to award grants for vehicles and infrastructure to accommodate new competition arrangements i.e. it allows grants to be awarded to operators other than Translink in recognition that Translink may not be the only provider.

The Bill extends the legislation allowing additional funding for services designed for disabled people to include other vulnerable people such as the elderly and those living in rural areas.

The Bill gives the Department statutory powers to fund community transport.

The Bill gives the Department powers to make regulations in respect of conduct in bus stations while it introduces the power to allow other specified providers to use bus stop/centre facilities, once reserved for Translink vehicles only.

Executive Summary

Background to the Bill

Since 2002 there has been an acknowledgement that the public transport system in Northern Ireland required reform in order to bring it up-to-date and make it a more attractive proposition for prospective passengers.

On November 6th 2009 the Minister for Regional Development (the Minister) launched a public consultation on proposals for Public Transport Reform (PTR) which emphasised the need to increase public transport use, in line with the '*Executive's transportation, environmental, social inclusion and equality objectives*'.¹

A key proposal within PTR is to restructure the way in which public transport is delivered incorporating the roles of the Northern Ireland Transport Holding Company, Translink, the Department for Regional Development and the Department of the Environment into one Departmental Agency (Executive Agency).

Although Executive Agency's are sometimes mistakenly categorised as Arm's Length Bodies similar to Non Departmental Government Bodies (NDPB),² they are distinct in that they operate within Government; this Agency will be part of the Department for Regional Development and as such will be the responsibility of the Minister.

The Department has emphasised the need for an independent body, such as this Executive Agency, so the reformed public transport system will operate as a cohesive unit which will be necessary if the proposal to develop local transport plans goes ahead.

The executive agency will have the responsibility of engaging all transport stakeholders into the overall system of Community planning, this is defined as:

"...the process through which public sector organisations work together and with local communities, the business and voluntary sectors, to identify and solve local problems, improve services and share resources".³

There has been a statutory requirement to use the community planning process to develop local plans and strategies in England and Wales since 2000 and in Scotland since 2003.

1 NI Assembly Official Report 29th June 2010 - The Minister for Regional Development moved the Second Stage of the Transport Bill (NIA 29/09).

2 The Government used a different definition of Arm's Length Bodies, incorporating Executive Agencies, non-Ministerial Departments and executive and advisory NDPBs, in the December 2009 Smarter Government White Paper" reference taken from: Gay, O (2010) "Quangos: There is tension between reducing the influence of unaccountable 'Quangos' and de-politicising controversial decisions". In: Key Issues for the New Government: House of Commons Library/Research [online] available from: www.parliament.uk/documents/commons/.../key%20issues/Full%20doc.pdf

3 Audit Scotland (2006) "Community Planning: An initial Review" [online] available from: http://www.audit-scotland.gov.uk/docs/central/2006/nr_060616_community_planning.pdf

The relative success of this process is unclear i.e. if by success we mean has the process worked and successfully engaged with people? Then yes, it has worked. However, if success is based on hard outcomes, such as efficiency savings, then no, it hasn't worked.

The Bill

According to the Department for Regional Development (the Department) the main purpose of the Transport Bill is to “create an effective, efficient and sustainable public transport system that contributes to the Executives transportation, environmental, social inclusion and equality objectives”, effectively modernising the public transport system in Northern Ireland so that it is both fit for purpose and available to all those who wish to use it.

There are 50 clauses in the Transport Bill and 2 schedules. The Bill is divided into six parts.

A key driver of the Bill is the need to comply with European Regulation (EC) 1370/2007. This regulation introduces standard Europe-wide rules on the procurement and funding of contracts for passenger transport services and is designed to increase the provision, safety and quality of public transport through stimulating competition;

In compliance with the new European Regulation, the Bill is designed to accommodate the continued regulation of public transports services in Northern Ireland allowing for the awarding of service contracts to both Translink and any other provider. This bill also gives the Department the power to issue permits for additional bus services introducing the opportunity for innovation, entrepreneurship and innovation in public transport however it does give the Department the power to regulate fares which could potentially stifle this.

The Bill amends the statutory powers of the Consumer Council and requires it to publish a forward work programme in respect of its public transport duties

The Bill will allow grants to be paid to any eligible person for the purchase of vehicles and for the improvement/development of facilities for the provision of public passenger transport services. The previous legislation only allowed grants to be paid to the NITHC however as this Bill aims to increase competition it is necessary for this power to be expanded to include all potential providers who will either hold service agreements or permits.

In terms of the Rapid Transit tender, the Bill provides the department with the power to proceed with the purchase of vehicles and construction of necessary infrastructure prior to awarding the contract for the management of the service.

The Bill gives the Department powers to make grants to community transport providers rather than having to allocate funding from annual budgets. This reduces uncertainties around funding which have restricted the sector for some time.

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1 Context and Background to the Bill

1.1 Public Transport Reform

Northern Ireland is characterised by a disproportionate reliance on the private motor car which accounts for over 80 per cent of all journeys made, compared to public transports share of only 7 per cent.⁴ On November 6th 2009 the Minister for Regional Development (the Minister) launched a public consultation on proposals for Public Transport Reform (PTR) which emphasised the need to increase public transport use, in line with the '*Executive's transportation, environmental, social inclusion and equality objectives*'⁵, changing it from the 'last resort' to a 'first choice'⁶ for people in Northern Ireland.

The overall aims of the Public Transport Reform proposals are to deliver a public transport system that:

- supports the implementation of the Regional Transportation Strategy;
- provides safe, efficient and high quality public transport services;
- complies with EU regulations;⁷
- encourages the greater use of public transport; and
- maximises efficiency and value for money.⁸

A key proposal within PTR is to restructure the way in which public transport is delivered. Currently the Northern Ireland Transport Holding Company (NITHC), which is a publicly owned corporation,⁹ oversees all rail services and the majority of all bus services in Northern Ireland. These are operated by three subsidiary companies; Metro, Ulsterbus and NI Railways under the collective brand name of Translink (see figure 1).

This proposal to reform the institutional arrangements for the delivery of public transport is the culmination of a process which has been ongoing since 2002^{10 11} when

4 (DRD) Department for Regional Development (2009) 'Travel survey for Northern Ireland 2007-2009: headline Report'. DRD: Belfast [online] available from: http://www.drndi.gov.uk/travel_survey_for_northern_ireland_headline_report_2007-2012.pdf

5 NI Assembly Official Report 29th June 2010 - The Minister for Regional Development moved the Second Stage of the Transport Bill (NIA 29/09).

6 (DRD) Department for Regional Development (2009) Public Transport Reform Consultation Launched (Press Release - November 6th 2009) available from: <http://www.northernireland.gov.uk/news/news-drd/news-drd-november-2009/news-drd-061109-public-transport-reform.htm>

7 EU Regulation (1370/2007) on public transport by rail and road came into force in 2009. There is a 10 year transitional period during which progress towards full implementation will have to be demonstrated. The overall aim of this regulation is to ensure as much regulated competition as possible within public transport delivery. This has implications for the current system in Northern Ireland. It requires public authorities who award exclusive rights or provide funding to an operator to do so within the framework of a public service contract that must be strictly controlled and adhere to a performance-based contractual regime (NIAR 373/09) see

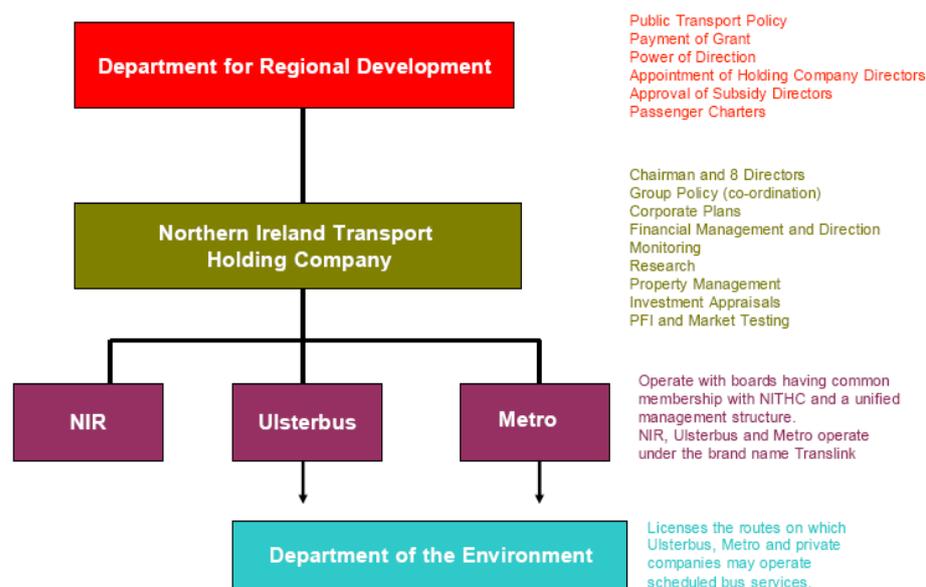
8 (DRD) Department for Regional Development (2010) 'Public transport Reform: Final Report on Public Consultation May 2010' DRD: Belfast [online] available from: http://www.drndi.gov.uk/public_transport_reform_-_pdf_version_of_the_final_consultation_report_-_may_2010.pdf

9 Established under the Transport Act (NI) 1967

10 Pelan, K. (2009) "Critical overview and evaluation of the outline business case for public transport reform, the detailed policy proposals and accompanying impact assessments". NI Assembly Research and Library Service 373/2009

11 NI Assembly Research and Library Service Briefing Note: 102/08 provides an overview of the Public Transport Reform process up to August 2008 [online] available from: <http://www.niassembly.gov.uk/io/research/2008/10208.pdf>

Figure 1: Current structure of institutional arrangements for the provision of public transport in Northern Ireland



Source: Ports and Public Transport Division 2007¹⁰

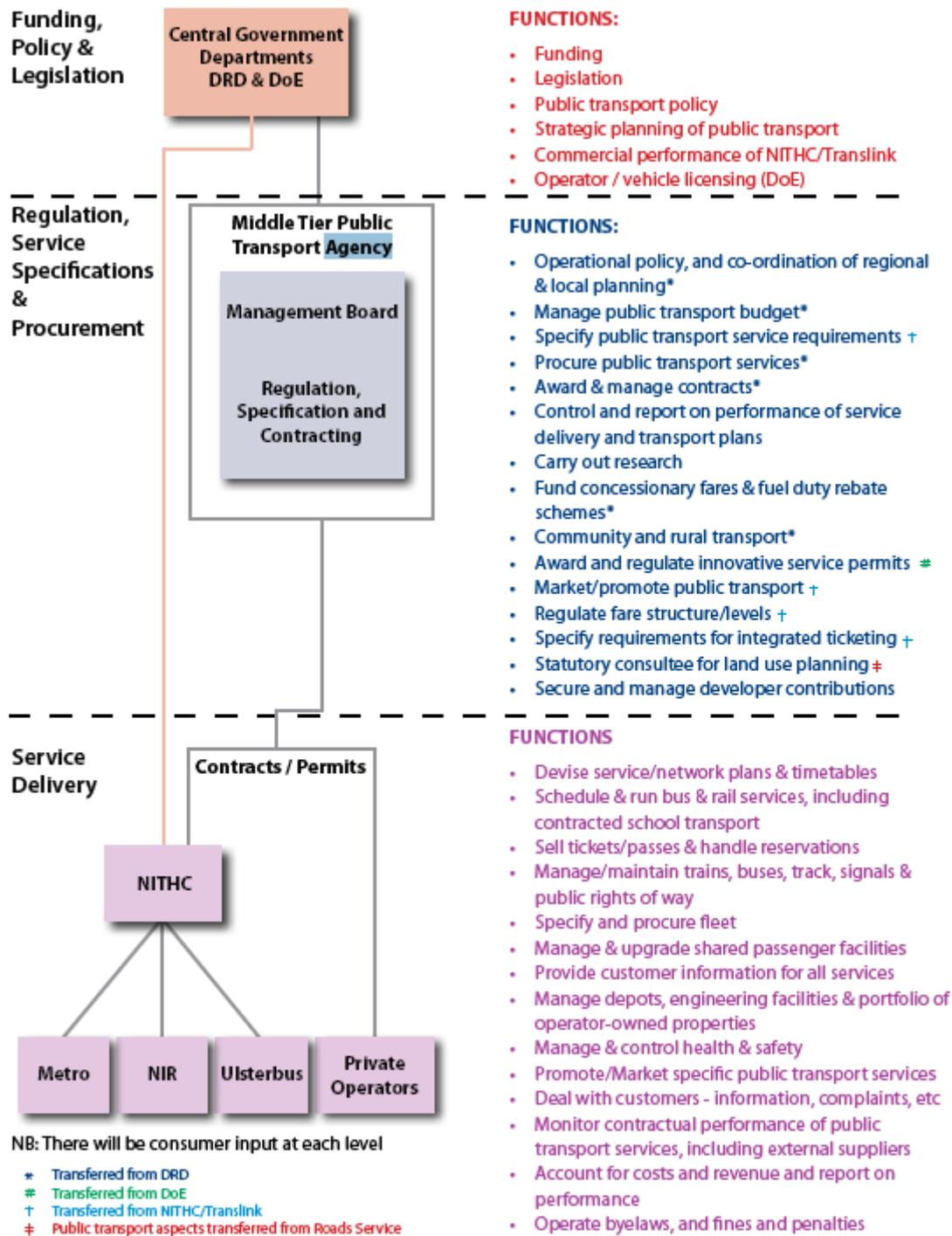
DRD launched a consultation [‘A New Start for Public Transport in Northern Ireland’](#). This document, advocated the benefits of a more liberalised public transport market¹² with increased participation of the private sector.

Following consideration of an interim report in October 2004, further work with key stakeholders (Translink/NITHC, the Confederation of Passenger Transport (CPT) and the Consumer Council) led to the conclusion that future public transport needs in Northern Ireland would best be met by a three-tier structure with consumer representation at each level.¹³ The three tiers envisaged were a Government tier responsible for policy, legislation and regulation; a middle tier for specifying service requirements and securing their provision; and a third tier of transport operators responsible for service delivery (see figure 2).

¹² At the time of publication (in 2002) draft EU regulations were being considered on public service requirements and the award of public transport service contracts which would require that the rights to operate public transport be subject to regular open competition (A new start for public transport in Northern Ireland page 9). This has since come into effect as regulation 1370/2007 (see footnote 4)

¹³ Ports and Public Transport Division (2007) “Future of Public Transport Services in Northern Ireland: Change Programme.” DRD: Belfast [online] available from: http://www.drdni.gov.uk/ptr_changeprog4.pdf

Figure 2: Proposed Three Tier Model for Public Transport



Source: DRD (2009)¹⁴

14 14 (DRD) Department for Regional Development (2009) 'Public Transport Reform Consultation: Detailed policy proposals' DRD: Belfast [online] available from: http://www.drdni.gov.uk/final_detailed_policy_proposals_nov_09.pdf (Page 37)

1.2 Public Transport Agency

Fundamental to the proposed restructuring of public transport is the establishment of a Public Transport Agency.¹⁵ This Executive Agency will operate within the Department for Regional Development taking control of the functions currently undertaken by the NITHC and its subsidiaries while also incorporating the various regulatory powers for public transport currently held by DRD and the Department of the Environment (DOE)¹⁶.

According to the Cabinet Office Agencies and Public Bodies team, an Executive Agency can be considered in a variety of circumstances but commonly its creation will be most suitable when:¹⁷

- It is appropriate for Ministers to have direct strategic and policy control but is neither realistic nor appropriate for them to take responsibility for day-to-day decisions;
- A clearly designated unit exists within a department, of a sufficient size to justify major structural change;
- The unit can be held independently accountable i.e. it must be capable of having agency-specific targets, which are reported to Parliament. It must also produce Agency annual reports and accounts; and
- By the time of launch the unit must be financially viable i.e. adequately resourced to attain challenging targets as contained in their Business or Corporate Plan.

Although Executive Agency's are sometimes mistakenly categorised as Arm's Length Bodies similar to Non Departmental Government Bodies (NDPB),¹⁸ they are distinct in that they operate within Government; this Agency will be part of the Department for Regional Development and as such will be the responsibility of the Minister.

According to the Outline Business Case for Public Transport Reform¹⁹ the proposed formation of an Executive Agency to oversee and manage public transport in Northern Ireland will bring benefits such as efficiency and improved service, a point that is echoed in the DRD's detailed policy proposals, which states:

“A single client body with expertise in the specification of integrated transport services and facilities, and in procurement and contract

¹⁵ This was one of five options considered in the DRD strategic business case, an analysis of which was provided by NI Assembly Research and Library Service [online] available from: <http://www.niassembly.gov.uk/io/research/2008/10008.pdf>

¹⁶ The Department of the Environment (DoE) is currently the licensing authority for Road Service Licences, which are administered on its behalf by the Driver and Vehicle Agency.

¹⁷ Annex 1 contains a table comparing the key characteristics on an Executive Agency and an Non Departmental Public Body (NDPB)

¹⁸ The Government used a different definition of Arm's Length Bodies, incorporating Executive Agencies, non-Ministerial Departments and executive and advisory NDPBs, in the December 2009 Smarter Government White Paper" reference taken from: Gay, O (2010) "Quangos: There is tension between reducing the influence of unaccountable 'Quangos' and de-politicising controversial decisions". In: Key Issues for the New Government: House of Commons Library/Research [online] available from: www.parliament.uk/documents/commons/.../key%20issues/Full%20doc.pdf

¹⁹ McClure Waters (2009) "Outline Business Case for Public Transport Reform". DRD: Belfast [online] available from: http://www.drdni.gov.uk/index/public_transport/pt-publictransportreform/pt-publictransportreformobc-2.htm

*management is necessary in order to achieve and sustain the best possible value for money over the long term”.*²⁰

According to the consultation report, the majority of respondents were supportive of the creation of a ‘Departmental Public Transport Agency’, although six²¹ of the responses were not, citing reasons such as increased bureaucracy or, the perceived lack of input from local elected representatives.²² In response to this the DRD stated the Agency Model was chosen based on consideration of a number of options and it was *“...concluded that the agency option provided greater independence and offered the prospect of a more efficient system overall.”*²³

The Department emphasised the need for an independent body as an important factor in bringing together all the various stakeholders involved with public transport into a cohesive unit, in order to provide the best possible service; this would not be achievable through the existing NITHC model.

1.3 Local Transport Plans and Community Planning

The importance of working together comes from the proposed introduction of Local Transport Plans which will be developed using the community planning process:

*“As the organisation with lead responsibility for planning public transport, the departmental agency will be required to work with other organisations, such as Road Service, operators, local councils, education authorities and local consumer and community representatives to devise and agree local transport plans. In preparing such local plans, account will need to be taken of local councils’ proposed new role in relation to community planning under the Review of Public Administration”.*²⁴

Community Planning was a central theme in the options put forward in the Review of Public Administration (RPA). Community Planning aims to produce citizen-centred outcomes through joined up thinking and engagement between individual citizens, groups, local government and statutory service providers. Community planning is defined as:

*“...the process through which public sector organisations work together and with local communities, the business and voluntary sectors, to identify and solve local problems, improve services and share resources”.*²⁵

20 (DRD) Department for Regional Development (2009) ‘Public Transport Reform Consultation: Detailed policy proposals’ DRD: Belfast [online] available from: http://www.drdni.gov.uk/final_detailed_policy_proposals_nov_09.pdf

21 In total there were 109 written responses to the consultation; 56 responded on the agency issue, six of which were opposed.

22 (DRD) Department for Regional Development (2010) ‘Public transport Reform: Final Report on Public Consultation May 2010’ DRD: Belfast [online] available from: http://www.drdni.gov.uk/public_transport_reform_-_pdf_version_of_the_final_consultation_report_-_may_2010.pdf

23 Ibid (page 23)

24 (DRD) Department for Regional Development (2009) ‘Public Transport Reform Consultation: Detailed policy proposals’ DRD: Belfast [online] available from: http://www.drdni.gov.uk/final_detailed_policy_proposals_nov_09.pdf (page 56)

25 Audit Scotland (2006) “Community Planning: An initial Review” [online] available from: http://www.audit-scotland.gov.uk/docs/central/2006/nr_060616_community_planning.pdf

Under the proposals of the RPA, there will be a duty on local councils and other public service providers to engage in the community planning process²⁶ in order to create a community plan; the local community would also have the right to be consulted on the plan.

Already in England and Wales under the Local Government Act 2000 and in Scotland under the Local Government Scotland Act (2003) there is duty for local authorities to produce a local community plan (Scotland) or strategy (England and Wales) which is based on the community planning process.

1.3.1 Community Planning in Scotland

The model for community planning recommended for Northern Ireland is based on the Scottish model.²⁷ This paper will now examine the components, application and effectiveness of this model.

Although community planning is essentially a process rather than a prescription for policy²⁸, it was one of three core elements within the Local Government in Scotland Act and as such it became a statutory duty for local government. Scottish local authorities are required to initiate and facilitate community planning. The NHS boards, the enterprise networks, the police, the fire and rescue services, and Regional Transport Partnerships (RTPs) are required to participate.²⁹

1.3.2 Community Planning Partnerships (CPP)

Community Planning Partnerships (CPP) are central to the community planning process; co-ordinating initiatives within their locality and acting as principal connection between national and local priorities and policies. CPP's are a statutory body within each of Scotland's 32 local authority areas and are a central feature of the reform of local governance introduced by the Local Government Act. CPP's are intended to ensure that local authorities, other local public agencies, the voluntary, community and private sectors develop a shared vision for their area and work in partnership to implement this.³⁰

1.3.3 CPP and transport

Community Planning Partnerships are involved in the process of developing local transport strategies, ensuring they are consistent with community plans.³¹ This is achieved through employing community planning mechanisms such as citizens' panels

26 Outlined in the RPA (2005)

27 Department of the Environment Community Planning Subgroup Recommendation one, to the Taskforce, June 2006 [online] available from: http://www.flga.org.uk/uploads/docs/lgrt_cp_recommendations_to_the_taskforce.pdf

28 Spicker, P. "Community planning in Scotland" Centre for Public Policy and Management, Robert Gordon University, Aberdeen [online] available from: www2.rgu.ac.uk/publicpolicy/cppm/complan.pdf

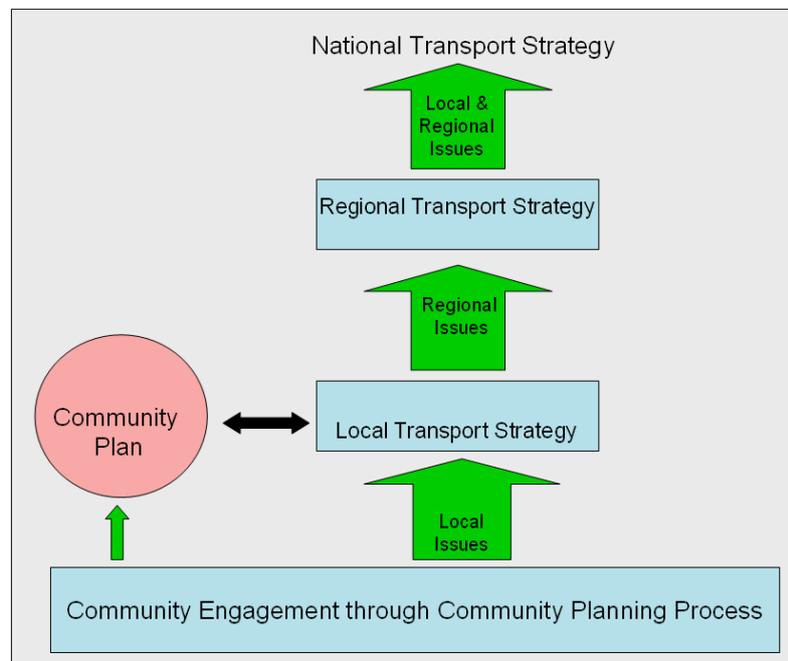
29 The Scottish Government (2005) Scotland's Transport Future: Guidance on Local Transport Strategies [online] available from: <http://www.scotland.gov.uk/Publications/2005/03/20775/53777>

30 Sinclair, S. (2008) "Dilemmas of Community Planning: Lessons From Scotland," Public Policy and Administration vol. 23(4) pp. 373-390

31 The Scottish Government (2005) Scotland's Transport Future: Guidance on Local Transport Strategies [online] available from: <http://www.scotland.gov.uk/Publications/2005/03/20775/53777>

or forums³² and is characteristic of the bottom up approach so endemic in Scotland following the reform of governance. Local issues then inform the regional strategy, which in turn feeds into the national strategy as shown in figure 3.

Figure 3: The Scottish Governments bottom-up approach to developing transport policy and the relationship to community planning



1.3.4 Local Transport Strategies

Local authorities throughout Scotland are required to prepare Local Transport Strategies (LTSs) under the provisions of the Transport (Scotland) Act 2001. The main purpose of an LTS is to set out a local authority's strategy and proposals for transport, over a three-year time period, but also with a longer term vision. Local Transport Strategies provide:

- A clear statement of transport policy in each council area;
- An opportunity to raise local issues and to state strategic transport priorities for the authority;
- A link between transport planning, development plans and other policies, including the Regional Transport Strategy (RTS);
- A detailed implementation plan for the policies and interventions identified in the Strategy;
- A basis for evidence at public inquiries.³³

Generally these LTS cover a series of key strategic objectives, for example East Ayrshire LTS has five objectives:

³² The Scottish Government (2005) Scotland's Transport Future: Guidance on Local Transport Strategies [online] available from: <http://www.scotland.gov.uk/Publications/2005/03/20775/53777>

³³ (SPT) Strathclyde partnership for Transport (2010) "SPT in your area" [online] available from: <http://www.spt.co.uk/rts/index.aspx>

1. Economic Growth;
2. Accessibility and Social Exclusion;
3. Environment;
4. Safety and Personal Security; and
5. Sustainability and Integration³⁴

1.3.5 Is it working?

There is not a great deal of literature assessing the relative success or failure of the Scottish model of Community Planning although Sinclair (2008) observes that the processes and experiences are broadly similar to those encountered in local governance reform and partnership development elsewhere in the UK.³⁵ Common problems include: People/relationships; skills/capacity; and processes/decision making. Sinclair further suggests that CPPs role in aligning local and national priorities is a difficult one which may in fact be impossible often resulting in inefficiencies and disappointment.

An initial review of community published by Audit Scotland in June 2006 supported this view. The key issues coming out of that report were:

- Executive Departments are failing to work together, leading to a lack of clarity about policy priorities, creating significant bureaucracy and undermining the potential of community planning at local level;
- There are too many funding streams supporting community planning and monitoring and reporting arrangements are overly complex and burdensome; and
- Too much effort and resource can be tied up in managing and servicing partnership structures rather than in delivering real improvements.

An OFMDFM analysis on Community Planning in Operation within the UK and Ireland found, in general that experiences were, 'positive' however, in real times it is hard to demonstrate hard outcomes in terms of both added value and impact.³⁶ It describes positive outcomes "*...in terms of processes, such as closer partnership understanding and improving community engagement, rather than in harder outcomes such as efficiency savings through shared budgets.*"

In terms of the effectiveness of community planning in the development of Local and Regional Transport plans there is also a paucity of published data, however, in providing guidance the Scottish Government aims to make local transport strategy's as comprehensive as possible ensuring they consider the needs of all transport users including passengers, drivers, pedestrians, cyclists, motorcyclists, freight companies and customers. It also forces authorities to consider the impact of transport users on

³⁴ East Ayrshire Council (2011) "East Ayrshire Council's Second Local Transport Strategy" [online] available from: http://www.east-ayrshire.gov.uk/devser/roadstrans/traffic_its_draft.asp

³⁵ Sinclair, S. (2008) "Dilemmas of Community Planning: Lessons From Scotland," Public Policy and Administration vol. 23(4) pp. 373-390

³⁶ Blake Stevenson Ltd and Stratagem (2005) "Case Analyses for RPA on Community Planning in Operation within the UK and Ireland" OFMDFM: Belfast

other people as well as its impact on the environment. It does this through The Scottish Transport Appraisal Guidance (STAG) which provides “...a clear and robust framework to identify potential transport interventions”.³⁷

On that point of providing guidance and structure however, Communities Scotland cautions that:

“Community engagement needs to be fit for purpose. It needs to be conditioned by the local situation and local aims and objectives. No single measure – or series of measures – can be used in every case. Given this, it is important that the expectations of community engagement are clarified and agreed in each area – and that local measures reflect this local agreement.”³⁸

2.0 The Transport Bill

On 10th June 2010, the Northern Ireland Executive gave approval for a [Draft Transport Bill](#) to be introduced into the Assembly which provides the legislative basis for bringing forward the proposed reform of public transport. To summarise, the key policy proposals for Public Transport Reform are:³⁹

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

DRD Minister, Conor Murphy, introduced the Bill on 21st June 2010 and [the second stage debate](#) took place on 29th June 2010;⁴⁰ the Bill has now entered the Committee Stage. The remainder of this paper will focus on the major provisions of the Bill,

³⁷ Transport Scotland (2010) “Scottish Transport Appraisal Guidance” [online] available from: <http://www.transportscotland.gov.uk/about-us/corporate-reports/9760-02.htm>

³⁸ Communities Scotland (2006) Evaluation of the effective engagement of communities in regeneration: final baseline report (Report no 77) [online] available from: <http://www.scotland.gov.uk/Resource/Doc/1125/0086287.pdf>

³⁹ Detailed discussion of these issues can be found in: Pelan, K. (2009) “Critical overview and evaluation of the outline business case for public transport reform, the detailed policy proposals and accompanying impact assessments”. NI Assembly Research and Library Service 373/2009

⁴⁰ (DRD) Department for Regional Development (2010) ‘Public transport Reform Website’ [online] available from: http://www.drdni.gov.uk/index/public_transport/pt-publictransportreform.htm

drawing on issues raised by members in the second stage debate as well as the preceding consultation.

The Transport Bill proposes to modernise the way public transport is delivered in Northern Ireland, updating legislation (the Transport Act, 1967) which has remained largely unchanged in over 40 years.⁴¹ The Bill will significantly alter how public transport services are delivered in Northern Ireland and allow for an improved and more accessible public transport system. In addition to the need to update public transport legislation to take account of the today's very different operating environment, there is also a statutory requirement to comply with Regulation (EC) 1370/2007.

2.1 Regulation (EC) 1370/2007

The full title for Regulation (EC) 1370/2007 is: Regulation (EC) No. 1370/2007 OF THE EUROPEAN PARLIAMENT OF THE COUNCIL of the 23rd October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) No's 1191/69 and 1107/70. This regulation came into force in December 2009.

2.1.1 Key points

- This regulation introduces standard Europe-wide rules on the procurement and funding of contracts for passenger transport services;
- It is designed to increase the provision, safety and quality of public transport through stimulating competition;
- The regulation introduces more competition into public transport particularly effecting Member States which regulate their public transport system, like Northern Ireland;
- The regulation states that a relevant authority can 'entrust' the provision of passenger transport services to an internal operator without competitive tendering. 'Internal operator is defined as a 'legally distinct entity' run by (in the case of NI) the Department. This would suggest both the current Public Corporation arrangement and the proposed Agency Model are in compliance with this regulation;
- This regulation has limited effects on deregulated markets like that in Great Britain;
- The regulation lays down rules on:
 - contracts between authorities and operators;
 - compensating operators or fulfilling public service requirements;
 - exclusive rights;
 - managing competition; and
 - transparency

⁴¹ Ibid

2.2 Purpose of the Bill

According to the Department for Regional Development (the Department) the main purpose of the Transport Bill is to “create an effective, efficient and sustainable public transport system that contributes to the Executives transportation, environmental, social inclusion and equality objectives”, effectively modernising the public transport system in Northern Ireland so that it is both fit for purpose and available to all those who wish to use it.

2.3 Structure of the Bill

There are 50 clauses in the Transport Bill and 2 schedules. The Bill is divided into six parts, which are:

- Public passenger transport services;
- Buses, taxis and trains;
- Consumer Council;
- Enforcement;
- Grants; and
- Miscellaneous and Supplementary

2.4 Public Passenger Transport Services

Clause 1 places a duty on the Department for Regional Development to provide an economical, efficient and safe public transport service. In order to comply with regulation (EC) 1370/2007 the Bill gives the Department the power to enter into service agreements with transport providers. It has already been decided that public transport will continue to be regulated with the Minister ruling out privatisation ‘*now or in the future*’⁴² therefore *most* public transport will continue to be provided by Translink. The Department will have to monitor the performance of Translink, over the duration of the contract ensuring that it is run efficiently and not being overcompensated for the services it provides including fulfilling its public service obligations.

In the discussion of Regulation (EC) 1370/2007 the power to award contracts to an ‘internal operator’ was highlighted however, it does also allow for public service contracts to be competitively tendered.

*“This power will allow the Department to take forward the executive’s objective of introducing Belfast rapid transit and of awarding that contract on a competitively tendered basis”.*⁴³

This competition will be open to all licensed transport companies, including Translink.

The Bill contains provision for the department to issue permits to operate services which are supplementary to the contracted network, it is believed this will allow for

⁴² Introduction to the House of the Transport Bill by Regional Development Minister, Conor Murphy, Tuesday 29th July 2010

⁴³ Ibid

innovation and encourage the growth of the public transport market.⁴⁴ In response to the consultation, the Federation of Passenger Transport sought assurance that the process for awarding route permits would be handled properly and transparently, with the focus on passenger need. It also queried whether there would be an appeals procedure in the event that the application is refused. These issues are dealt with in the Bill.

In direct response to the issue of appealing, the Department stated that there would be no 'formal appeals mechanism' however, the decision to award or not to award a permit will be based on passenger need and fairness to other providers with decisions to be taken following consultation with all relevant parties including the consumer council and local councils.

Clauses 3 to 17 deal with service permits. These clauses provide for the information that an applicant will have to furnish in the application, the matters to be taken into account by the Department when considering an application, the attachment of conditions to a permit, disqualification of operators from being able to hold a permit, and the revocation, suspension and curtailment of permits. There is also a provision which states that the Department will not revoke a permit without giving the holder the chance to appeal the decision, although it is emphasised that permits are limited to three years and holders should *'not assume that they hold service permits permanently.'*⁴⁵

Having an agreement/permit will be a legal requirement for anyone wishing to provide public transport and the structure and level of fares will be determined in the contract (by the Department).

2.4.1 Regulated fares

In terms of the consultation, 45 respondents commented on the proposals for fare regulation. A large majority of these responses agreed that fares should be regulated although four responses disagreed with the proposal, most of these indicating that fares should be set by supply and demand in the market. The Department responded by saying that it believes "*...the regulation of fares will help ensure that increases in fares on the public transport system will be kept to a minimum*"⁴⁶ this could be interpreted as a protectionist measure which ensures Translink prices are not undercut by private operators. The question is, whether or not this is a good or bad thing? Increased competition may lead to lower prices and/or improved service, however, as has been the case in Great Britain, competition can negatively affect consumers, not least through reduced service levels.⁴⁷

44 Ibid

45 (DRD) Department for Regional Development (2010) 'Public transport Reform: Final Report on Public Consultation May 2010' DRD: Belfast (page 17)

46 (DRD) Department for Regional Development (2010) 'Public transport Reform: Final Report on Public Consultation May 2010' DRD: Belfast (page 19)

47 McClure Waters (2009) "Outline Business Case for Public Transport Reform". DRD: Belfast [online] available from: http://www.drdni.gov.uk/index/public_transport/pt-publictransportreform/pt-publictransportreformobc-2.htm (page 140)

2.5 Buses, Taxis and trains

Clauses 18 to 21 deal with the separation of bus operator and bus service licensing. Clauses 18, 19 and 20 amend the function and name of the “Road Service Licence” in the Transport Act (Northern Ireland) 1967. Clause 21 deals with amendments to the Taxis Act (Northern Ireland) 2008 as a result of the changes to the current “Road Service Licence”.

Clause 22 amends the duty of Northern Ireland Railways under section 55 of the Transport Act (Northern Ireland) 1967 to reflect that this duty will be exercised in accordance with any agreement entered into under this Act.⁴⁸

2.6 Consumer Council

The Bill amends the statutory role of the Consumer Council (CC)⁴⁹ which is to protect and promote the interests of all passengers of public transport within Northern Ireland.⁵⁰ Clause 23 requires the CC to publish a forward work programme in respect of its functions containing projects, objectives, costs, and timescales. Clause 24 contains provision detailing co-operation between The Department and the CC.

2.7 Enforcement

Clauses 25 to 31 set out the provisions on the enforcement of the provision of public transport services i.e. they provide powers to enforce the powers of the rest of the Bill such as the requirement to hold a permit. The Department will have the power to enter into and inspect certain premises that are being used in connection with the carriage of passengers and their luggage by road and to seize certain documents and to obtain certain information. It will be an offence to obstruct an authorised officer in the exercise of functions under the Act. Clause 31 provides for prosecutions for offences under this Act.⁵¹

2.8 Grants

2.8.1 Capital expenditure

This section of the Bill amends and updates grant making powers previously held under article 6 of the Transport Order 1997. The Bill will allow grants to be paid for capital expenditure to any eligible person for the purchase of vehicles for the improvement/development of facilities for the provision of public passenger transport services.” The previous legislation only allowed grants to be paid to the NITHC however as this Bill aims to increase competition it is necessary for this power to be

⁴⁸ Taken from the Transport Bill Financial and Explanatory Memorandum

⁴⁹ Under the Transport Act (1967)

⁵⁰ The Consumer Council (2009) “Response to the Department for Regional Development (DRD) on the Public Transport Reform Consultation” [online] available from: www.consumerCouncil.org.uk/publications/?id=470

⁵¹ Taken from the Transport Bill Financial and Explanatory Memorandum

expanded to include all potential providers who will either hold service agreements or permits. In terms of the Rapid Transit tender this clause provides the department with the power to proceed with the purchase of vehicles and construction of necessary infrastructure prior to awarding the contract for the management of the service.

2.8.2 Provision for Community Transport

This Bill allows the Department to make grants towards expenditure incurred in delivering transport services to the elderly, the disabled, and those living in rural areas. This includes making provision for the supply, maintenance or improvement of vehicles or facilities required for the purpose of serving these members of the public. This would allow, for example, grants to be awarded for adapted vehicles required by wheelchair users.

The grants made are for services provided by 10 B Licence holders. 10B Licences refer to exemptions which are granted by DoE from the need to hold a Road Service Licence where the bus is being used for education, religion, social welfare, recreation or activities which are of benefit to the community, commonly referred to as Community Transport.

Previously community transport had been funded from the annual budget. The Transport Programme for People with Disabilities and the Rural Transport Fund were established in the 1990s to make transport more accessible for people, who by reason of age, disability or rural location, found it difficult or impossible to use mainstream public transport. Any uncertainties around future funding have now been removed.

2.9 Miscellaneous and Supplementary

There are thirteen miscellaneous and supplementary provisions in the Bill including powers to acquire and dispose of land and to make regulations regarding the conduct of people in bus stations, in line with regulations currently applied by train stations. Clause 46 gives the Department the power to make regulations for a number of other processes enabled by this bill including: permit applications, service routes, cancellation of permits; and ticketing machines and systems.

Also in this section of the Bill is clause (43) enabling shared access at bus stations. This access would be carefully controlled and, in the main, would be made available to operators delivering licensed stage carriage services which are complementary to or included in the contracted network.⁵²

⁵² (DRD) Department for Regional Development (2010) 'Public transport Reform: Final Report on Public Consultation May 2010' DRD: Belfast (page 37)

Annex 1: Table detailing and comparing the key characteristics of a Non Departmental Public Body (NDPB) and an Executive Agency

	NDPB	Executive Agency
Purpose	<ul style="list-style-type: none"> To permit a service or function to be carried out at arm's length from the Government. NDPBs are listed as a Public Body⁵³ 	<ul style="list-style-type: none"> To carry out a service or function within Government by a well-defined business unit that has clear focus on delivering specific outputs and is accountable to Ministers. Executive agency's are not listed as public body's as they are not run at arms length
Key characteristics	<ul style="list-style-type: none"> There are three types of NDPB in operation in Northern Ireland: Executive, Advisory and Tribunal They are established by statute; <i>Executive NDPBs</i> carry out administrative, regulatory and commercial functions;⁵⁴ They employ their own staff and are allocated their own budgets; The staff are not civil servants There are 41 Executive NDPBs in Northern Ireland The chief executive is accountable to a board whose members are appointed by Ministers NDPBs have a national remit Ministers are answerable to the Assembly for the body and have the power to wind it up Most NDPBs are funded by grant in aid but some are funded by levies on particular sectors and receive no central funding 	<ul style="list-style-type: none"> Directly accountable to Ministers but Ministers do not concern themselves with the day-to-day running of the agency; The Chief Executive is a civil servant employed by the NI Executive and is normally recruited through open competition; The Chief Executive is answerable on delegated operational issues to the relevant Minister; All Staff (except secondees) are civil servants Accounts are consolidated into those of the parent department
Best Suited When	<ul style="list-style-type: none"> Suited in areas where it is desirable to involve many people, including the public and representative groups, in decisions about delivery of service It is desirable to underwrite the body's independence, powers and obligations through legislation 	<ul style="list-style-type: none"> It is appropriate for ministers to have direct strategic and policy control but is neither realistic nor appropriate for ministers to take day-to-day decisions The function is predominantly concerned with the delivery of services to the public or arms of government. The number of staff involved is large enough to justify a separate structure The function can be independently accountable within the department i.e. it is possible to have specific targets and separate annual reports and accounts

⁵³ A public body is not part of a government department, but carries out its function to a greater or lesser extent at arm's length from central government see: (DFP) Department for Finance and Personnel (2009) 'Northern Ireland Public Bodies 2009.' DFP: Belfast [online] available from: <http://www.dfpni.gov.uk/publications-foi/publications-browse/publication-scheme-who-we-are-what-we-do/northern-ireland-public-bodies-2009.htm>

⁵⁴ The other types of NDPBs are Advisory and Tribunal, who provide expert or legal advice respectively but do not have their own staff or budgets

