



Northern Ireland
Assembly

Committee for Regional Development

OFFICIAL REPORT (Hansard)

Bus Operator Licensing: DOE Briefing

27 February 2013

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)
Mr Seán Lynch (Deputy Chairperson)
Mr John Dallat
Mr Stewart Dickson
Mr Alex Easton
Mrs Dolores Kelly
Mr Declan McAleer
Mr Ian McCrea
Mr David McNarry
Mr Cathal Ó hOisín

Witnesses:

Ms Sharon Clements	Department of the Environment
Mr Iain Greenway	Department of the Environment

The Chairperson: I welcome Sharon Clements, who is from the vehicle policy branch of the Department of the Environment (DOE), and Iain Greenway, who is the director of road safety. You are both very welcome to the Committee. Thank you very much for coming along. As you know, we have been conducting an inquiry into transport issues. One of the issues that has come up consistently is the new licensing regime that is about to be brought in. There are also issues in relation to that licensing, particularly in the rural transport field. You can begin with a presentation, and that will be followed by members' questions.

Mr Iain Greenway (Department of the Environment): Thank you for the opportunity to attend this morning. As you said, I am the director of road safety and vehicle regulation in DOE, and Sharon works in the vehicle policy branch in that division. It might be useful if I highlight some of the key points from the material we sent, because I am conscious that vehicle licensing is something that, perhaps, this Committee has not traditionally heard about.

Bus operator licensing in Northern Ireland is governed by the Transport Act (Northern Ireland) 1967, and DOE began a review of bus operator licensing in March 2010. That is almost three years ago. It was started because it was generally agreed that the 1967 Act was no longer fit for purpose, and, indeed, the parallel freight provisions in that Act were replaced by the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010, which commenced on 1 July last year. In a sense, we have done the freight part, and the bus part remains ongoing.

A public consultation on bus operator licensing started in June 2010 and proposed a three-tier licensing regime, which, perhaps, in short, might be described as a full licence at the top, an own-

account licence at the bottom, and a middle tier that attempted to recognise the needs of organisations such as the rural community transport partnerships, but not only them.

No clear consensus was emerging from that consultation, so the Department provided an update to the Environment Committee. In line with its request, the Department kept the consultation process open and ongoing. Our engagement with stakeholders continues and has, in recent weeks, been fairly intensive as we attempt to define a licensing regime that meets the needs of the sector. That engagement is through the bus forum, which brings together all key stakeholders in the industry, and bilaterally with particular stakeholders.

The key issues remaining are largely around the larger "community transport providers". The commercial tier at the top is fairly clear and, indeed, is largely set out in European legislation and was largely agreed last summer. The arrangements for small community groups have also reached general agreement, although there are some smaller matters to be finalised. Many of the remaining issues in that middle ground are around what I would describe as effective management of significant bus fleets. We are talking about operators with up to 30 vehicles in that middle tier. The areas of remaining difference hinge on what activities can legislatively be defined as commercial and non-commercial. That is a complex area, and there are current court cases in Britain on exactly that. We are also engaging with key stakeholders to explore financial standing provisions further.

I wish to put on the record a few key statements. DOE is committed to regulating for a safe, fair and fit-for-purpose sector. It is also committed to ensuring a vibrant and innovative community transport sector. We recognise that that is vital, and we are determined to allow it to continue to flourish, while updating the regime, which, we all agree, is necessary. Thirdly, the Department is committed to ensuring a level regulatory playing field and that the rights and duties for various groups within the sector are kept in appropriate balance. In a sense, those are our three touchstones to which we keep returning as we try to bring forward a regime. We have not yet brought policy proposals to the Minister. Ideally, we wish to bring proposals that will be unanimously agreed by the bus forum, but we also recognise that the consultation period must end to bring certainty of approach for users and operators.

Finally, it is fair to say that this has proven to be a complex piece of work, but all key stakeholders appear committed to getting to a conclusion in the not-too-distant future, and that is important. Thank you.

The Chairperson: Thank you for that, Iain. I will start the questions. You have conducted extensive consultation in Northern Ireland on bus permits. Have you benchmarked against anywhere else, for example Scotland, England or Wales? Secondly, the Committee is aware of schemes in other deregulated jurisdictions, where community transport providers are contracted to perform timetabled journeys for a fee. Why can that not be rolled out to Northern Ireland?

Mr Greenway: We have been trying to work closely, as you said, with everyone. There are reasonably parallel provisions in Britain, but they are not completely parallel because the primary legislation is different. The one thing on which the industry in Northern Ireland agrees — and the bus forum includes the Inclusive Mobility and Transport Advisory Committee and the Consumer Council as well as bus providers — is that everybody that operates a bus, including a small bus or minibus, should be within the licensing regime. There should no longer be a permit system, which although a rather quaint term is effectively an exemption from all the provisions of the Act. All of us across the sectors have agreed that it is better to have everybody inside the licensing regime rather than outside, exempted from it. The particular benefit of that is that proportionate action can be taken against those who act in contravention of the licensing regime. Proportionate meaning that if they are genuinely trying to comply and are falling short, we can assist them to meet their requirements, but deliberate and persistent failure to comply can be dealt with by revocation of licence, rather than having people outside the regime.

Sharon and colleagues were in London yesterday talking to the Department for Transport about a number of matters, including this one. It is fair to say that that Department is reviewing the requirements of European law against their current permit regimes, as are we. We are working in parallel. I mentioned court cases. Court cases are going on in Jersey and Nottingham, which although predominantly around state aid, touch very much on the area of what contracted work can be done by community operators, often in direct competition with commercial bus operators, while — to return to my third point — we keep rights and duties in balance. This is a review of bus operator licensing, not just of community transport providers. It is not an immediately apparent level playing field to have two different operators, one a community operator on a permit and the other a

commercial operator on what is currently called a road service licence, directly competing for the same work but having completely different regulatory duties. So we are attempting to look at these rights and duties and keep them in balance.

Mr Lynch: Thanks for the presentation. As somebody from a rural area, I know that a lot of people depend on community transport, and many of them are concerned about these proposed new regulations. A lot of community transport operators survive by using volunteer drivers and people who have time on their hands, and they feel that this will impact negatively by not allowing such people to drive for them. That would have a huge financial impact on these community transport companies' services.

Mr Greenway: The volunteer drivers issue turns quite a lot on interpretation of applicable European law provisions on what is and is not a volunteer driver. The Department is looking at that area. A volunteer driver who is driving 30,000 miles a year at 45p a mile could be deemed as taking a salary, and we are aware of instances in Northern Ireland where volunteer drivers who are getting 45p a mile are directly competing with local taxi firms and are more expensive than those firms.

To go back to my rights and duties point, I want to re-emphasise the second of the three strands that I set out, which is that the DOE and the Department for Regional Development (DRD) are very aware of the needs that community transport providers are serving. DRD subsidises many of the providers by significant amounts and recognises accessibility, particularly in rural areas. Where they are doing the work that is set out in those agreements with DRD, there will be no conflict with the licensing regime that we bring forward. Where they are starting to look and feel like stage carriage services that do commercial work, it is right and proper that the licensing regime has to determine how we keep rights and duties in balance.

As ever, when looking at regulatory regimes, the challenge is in the middle ground. If a community transport partnership, for example, wishes to do community transport partnership work, a middle tier of a licensing regime will suit them perfectly well. If they also want to compete for commercial work, they need to consider taking on the duties as well as the rights of a commercial operator. Indeed, a number of the partnerships have roads service licences already and are working in that space.

Mr Lynch: No doubt some of my rural colleagues will follow up on that.

Mr McAleer: I want to reiterate the comments that the Deputy Chair made. I come from a rural constituency, and I understand the importance of rural transport for very isolated areas. I declare an interest as a 10B permit holder. I note from the briefing paper that, from discussions on the operator licence, the Community Transport Association and the Rural Community Transport Partnerships did not feel that the two-tier system would create a suitable framework from which to deliver services. Would the middle tier that you referred to involve the phasing out of the 10B permit? That would have a hugely detrimental impact on the ability of such organisations to execute their duties.

Mr Greenway: It would be helpful if I explained that. I did not do that in my introductory remarks, and I apologise for that. We went to consultation on the three-tier model. There was no clear consensus from the consultation, so we continued to engage last year and earlier this year with a range of stakeholders, particularly around what we might describe as the larger community providers, because that is the area where there was a lack of consensus. We then produced a document last summer, which I called the straw man, to try to have a document against which we could work. To summarise it, in that document, we had two tiers, a commercial tier and an own-account tier.

The community transport partnerships in particular were concerned that their needs were not sufficiently recognised, so, in the latest version of the straw man, we have put a middle tier back in. Apart from the retrofitting of it — and that has left some untidiness on the edges to resolve — we are concerned that, however many tiers we have for operators, users and enforcement officers, we need to be very clear about what the distinctions between each tier are of the rights and the duties so that, by the side of the road, a proper view can be taken of whether this is within the terms of the transport category that you are licensed against. So, the more tiers that we have, the more break points we have to have.

There will not be a 10B permit scheme under the new regime; there will not be a permit scheme. As I said in my opening remarks, all operators will be licensed, but they will be proportionately licensed. That allows all operators to have appropriate support and action taken if they are falling short of the requirements of their duties. Proportionate being education where someone is genuinely trying to

comply and is falling short for various reasons or more robust sanctions where somebody is deliberately choosing not to fulfil the requirements. We see that, and the bus forum sees that, as positive because, at the moment, the only sanctions that can be taken against someone outside a regime are criminal proceedings, so we do not have a graduation of supportive or punitive actions that can be taken, if necessary.

The middle tier, as retrofitted, is designed for larger community transport providers, not solely the partnerships. One church in Northern Ireland has a fleet of 27 minibuses. That middle tier is designed to recognise that operating a significant fleet of vehicles for whatever purpose — commercial or community — is a significant undertaking in respect of roadworthiness maintenance, transport management and potential annoyance to neighbours of where those buses are housed. That is a very different issue from the local scout group or the local Gaelic football club or the local rugby club with one minibus.

We had been stretching the bottom tier up to try to include those larger organisations. The danger that we were creating was that we were starting to bring in middle-tier requirements and duties for the scout group, the Gaelic club and the rugby club, when they did not really apply to that small tier — the own-account operator. Indeed, within the own-account operator tier, anybody with five minibuses or fewer would have further reduction of requirements. So, in practice, we are looking at a four-tier scheme, although it is 1, 2, 3a and 3b. I do not believe that the local scout group or the local community group with one or two minibuses will see any change. It will be a small own-account operator licence disk on the windscreen instead of a 10B permit disk. They will not see any difference on the ground. I should say for completeness that the Community Transport Association is not entirely convinced of that at the moment, and we are working with it on a few points to reassure it.

The main areas of difference now set out in the paper are around the larger operators and where a driver is close to drawing a salary rather than being a volunteer. The question of when something is commercial and when it is not commercial is a difficult area. It appears to be very simple to divide it into black and white in a Manichaean way, but when you get to the middle area, what is commercial and what is non-commercial is actually pretty complex, and it is different from what is profit and what is not for profit. The two terms are used differently in European legislation, so they obviously have different intent.

To come back to my central point, the Department is working closely with DRD, and we are absolutely committed to the importance that rural transport brings to a community. We are absolutely committed to maintaining that within this level regulatory playing field.

Mr McNarry: I am sure that you recognise that there is great frustration in the community transport sector. You said that the consultation exercise has been ongoing for two years and there is still more work required, and you are continuing with the discussions. You indicated that, hopefully, that would be finalised in the not-too-distant future. Do you mean in 12 months' time or do you mean tomorrow? Can you give the Committee a potential date to have it wrapped up?

Mr Greenway: My intention, sitting here at the moment aware of the remaining issues, and bearing in mind that I am an optimist by nature, is that, before the summer recess, if you want to put a time frame on it, we will have policy proposals to the Minister. Once we are clear on those policy proposals, we will determine what that means legislatively. One thing that we are working with solicitors on at the moment is how much of it can be done under section 2(2) of the European Communities Act 1972, because some of it is enacting European regulations, and how much cannot. As members will know, if we can do that under section 2(2) of the European Communities Act, we can amend primary legislation through secondary legislative routes. We would happily commit to affirmative resolution of a swathe of that so that there could be genuine debate through the Assembly process. If we cannot, and primary legislation is needed, the Committee will be aware that we are running short of time to start that process in this mandate.

Before we came in, Sharon and I discussed the fact that the Department is working on a road traffic amendment Bill, which is close to introduction, around drink driving and the novice driver regime. It has also pencilled in a further road traffic amendment Bill, to be introduced around Easter next year, to tackle drug-driving and mutual recognition of penalty points on the island. Would it be possible, within the ambit of that Bill, to pick up the pieces that cannot be done under the European Communities Act? The solicitors are saying to us, "Well show us rather more of what this beast looks like before we can tell you how much can be done". Therefore, at the moment and without prejudice to the ongoing discussion, Sharon and colleagues are drawing up what the upper and bottom tiers would look like. They will say to the solicitors, "Here are the two ends; the rest will be somewhere in the middle. Now

tell us how much can be done under secondary legislation route", so that, when we bring policy proposals forward, we can give some confidence — subject, of course, to the overriding will of the Assembly — to a time frame within which legislation can be enacted.

Mr McNarry: I liked your optimism, but you left me when all the "buts", "ifs" and "maybes" came in. However, I appreciate your explanation.

On a side issue, do you see it as necessary to factor the oncoming Welfare Reform Bill into your considerations, particularly in respect of disabled transport users? I am zoning in on the reductions, which may occur as a consequence of some of the issues that you will address, that will knock back accessibility. I am concerned about the new status of disabled people that there may be and the loss of the benefits that go with their present status, which could be caught up in all this to the detriment of many such people.

The Chairperson: Accessibility will be discussed after this.

Mr McNarry: OK. That is what Translink, with all due respect, and —

The Chairperson: Translink is here.

Mr McNarry: I do not have an awful lot of faith in it.

Mr Greenway: You make an interesting point, Mr McNarry. It is not a connection that we had explicitly made in our minds, but we will make sure that we keep that connection on leaving this hearing. My instinctive reply would be along the same lines as the Chairman's, which is that DOE is responsible for the regulatory regime to set the floor standards against which operators must work. It is for either the market and/or stimulated by DRD, if required in the accessibility piece, or for the Department for Social Development and other Departments to work within that regime. That would be my starting point.

Mr McNarry: I would be grateful to you for thinking about what I said, because —

Mr Greenway: Yes; it is an important connection and we will take it away.

Mr McNarry: — it is about where it starts and who nibbles at it, and I would like to see it considered up there, where you are, for very deserving people.

Mr Greenway: I think that that is an important connection that perhaps needs to be brought out more strongly. Thank you.

The Chairperson: Finally, John Dallat.

Mr Dallat: I am the finally, Chair. You have spent two years on this, and you have not quite finished, and you do not know if it will be finished before the end of the mandate. Am I right in assuming that all of this is to instil public confidence in public transport? I ask that because I am sure that anyone who watched television last night saw one school bus on its side and another bus on fire in Moneymore. Are you using your energies correctly?

Mr Greenway: I am conscious of the two incidents yesterday, and I am also aware that there were no serious injuries or fatalities.

Mr Dallat: Please God.

Mr Greenway: I am very relieved, I guess, because, again, we are setting a regulatory framework within which it is for those to operate. All car drivers know that they take decisions every day that almost always lead to their safe return home. However, one small decision by a motorist or another road user, or a combination of two of those decisions can lead to a different place altogether. Our roads-fatality level is at its lowest ever, but, as Minister Attwood has said, 48 deaths is 48 too many, and we must continue to work to lower that.

Yes, we are about creating a safe, fair and fit-for-purpose sector — the bus sector, in this case. We are not there yet. There are still some figures from the Driver and Vehicle Agency (DVA), because it is responsible for enforcement within the Department. It is out there every day, as are the police, dealing with the aftermath of collisions or by the side of the road, stopping vehicles in a random or in a targeted way.

The 2012 bus survey showed that nearly one quarter of buses, 22.6%, had one or more serious defects. That is far too high a figure. If one compares that with the freight industry, where we have brought in a new regulatory regime that came into effect on 1 July 2012, one will see that its statistics for serious defects was over 50% a number of years ago, but is now at a similar level to that of buses, around one quarter, as, incidentally, it is for taxis. One thing that the freight industry is saying to us is that the implementation of the Goods Vehicles Act has been a major factor in a number of operators — unfortunately not all, but DVA will continue to work with those on which it has not had an effect — either upping their game or getting out of the market and using others to transport their freight. The freight industry is telling us that the Transport Act (Northern Ireland) 1967 was, no doubt, a new, improved regulatory regime at the time that the Northern Ireland Parliament passed it, but it is not anymore. It has been a key factor in operators properly reflecting on their responsibilities. So, I do not think it is an "either/or", Mr Dallat, it is an "and". Yes, we need to be out there every day enforcing, but we also need to be updating the regime. They are two key components of getting the sector in the right place.

Mr Dallat: Finally, to pick up on what David said, surely, at the end of the day, we have to recognise that community transport is going to have an increasing role in people's lives, because we are going to get to the stage where people cannot afford to run a car. Can you assure me that this is all about road safety and not merely three layers of bureaucracy, making life extremely difficult for the people who have the least resources to pay for it?

Mr Greenway: This is about the bus industry, and I use that term in the broadest sense. It is about the providers of buses being able to show that they are fulfilling the duties that we expect of them. We get on to a bus, and we expect that bus to be safe; to be driven by a properly instructed and qualified, where necessary, driver; to be properly maintained; and to have had the daily walk-around checks. We put our trust in the provider, be that Translink, a local coach company or a community provider. I think that we, as citizens, expect the state to make sure that there are proper, but absolutely proportionate, regimes in place, so that an operator with one minibus for the local church scout group, for instance, ensures that he has the right safeguards. I keep going back to the example of scout groups, because my sons are in the cubs and scouts, and I have a personal, parental interest. The proper safeguards must be there so that when my son's scout group leader is driving, I can have confidence, to the human ability with which we all work, right up to Translink at the other end of the spectrum, with 1,500 buses. I would expect it to be proportionate and graduated, but I think that we have a right, as citizens and users, to expect a proper regime to be enforced across all of them.

The Chairperson: Thank you, Iain and Sharon, for the presentation, and for coming along to the Committee.