



Department for
**Regional
Development**
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PROPOSAL FOR
THE PUBLIC PASSENGER TRANSPORT
(SERVICE AGREEMENTS AND SERVICE
PERMITS) REGULATIONS
(NORTHERN IRELAND) 2015

A CONSULTATION PAPER

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Contents

- The background to the proposals;
- The purpose of the proposed Public Passenger Transport (Service Agreements and Service Permits) Regulations (Northern Ireland) 2015;
- The draft Public Passenger Transport (Service Agreements and Service Permits) Regulations (Northern Ireland) 2015;
- Copy extracts of the Transport Act (Northern Ireland) 2011 - Sections 1(9), 2(1), 2(3), 4(2), 4(3), 5(1), 8(2), 13(1) and (6), 14, 15, 45(1), (2) and (7);
- The list of Consultees.

Background Note

Proposal for the Introduction of the Public Passenger Transport (Service Agreements and Service Permits) Regulations (Northern Ireland) 2015

The Department had previously consulted on the above proposed regulations in early 2014 and in recognition of amendments and additions made to the draft regulations since that initial consultation are now consulting on the final draft.

The amendments to the draft regulations are not considered substantive. These include an additional review process for the award of competitively tendered contracts. The provision for these review processes are set out in Schedule 2 for the direct award contracts and in Schedule 3 for the competitively tendered contracts. A minor amendment has also been made to Regulation 5 to allow a longer time for payment of the fees and an additional minor amendment to Regulation 8 in relation to the notification to the Department where a service can no longer be provided by the permit holder.

On the basis of the amendments outlined above, the Department has decided that it should consult again before moving to make the proposed regulations.

The Transport Act (NI) 2011("the Act")* provides the legislative framework upon which the Department for Regional Development ("the Department") must secure the provision of public passenger transport services in Northern Ireland.

*<http://www.legislation.gov.uk/nia/2011/11/contents>

The Act ensures that agreements entered into for the provision of a network of public passenger transport services are compliant with European Commission Regulation (EC) No. 1370/2007* and provides for a Service Permit system which will allow operators who are not providing services under an agreement to apply to run public passenger transport services which are complementary to the network.

*<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:315:0001:0013:EN:PDF>

The Act also provides for the introduction of subordinate legislation which will underpin the primary provisions and provide regulations which would set out the detailed arrangements of how the Service Agreements and Service Permit system would be operated.

The proposed Public Passenger Transport (Service Agreements and Service Permits) Regulations (Northern Ireland) 2015, which are the subject of this consultation, are being made under Sections 1(9), 2(1), 2(3), 4(2), 4(3), 5(1), 8(2), 13(1) and (6), 14(2), 14(3), 14(4), 15, 45(1), (2) and (7) of the Act. The Regulations are attached at Annex 1. Copy extracts of the relevant provisions of the Act referred to above are attached at Annex 2.

Service Agreements

In March 2013, the Department published its intention to award a Service Agreement to the Northern Ireland Transport Holding Company (NITHCo) for the provision of a network of bus and rail services in Northern Ireland. It is proposed that this award will be made following the making of these Regulations. The Service Agreement sets out performance obligations and monitoring arrangements for the provision of public passenger transport services.

The Department also has the power to enter into other agreements for the provision of public passenger transport services with other providers and can enter into agreements for services which are ancillary to the delivery of those services.

Part 1 and Schedules 1, 2 and 3 of the proposed Regulations make provision for what should be contained in those service agreements and sets out the arrangements for a review process, should someone be aggrieved by any such award.

Service Permits

The Service Permit system will allow for operators to provide public passenger transport services which are complementary to the network of services provided by NITHCo under the Service Agreement.

Part 2 and Schedule 4 of the proposed Regulations makes provision for how the new Service Permit system will operate, including what information will be required in the application process, the fees to be

charged and matters which relate to any modifications or variations to a Service Permit which has been awarded to an operator.

Exempt Services

Part 3 of the proposed Regulations, sets out the types of services which are to be treated as exempt from the regulatory arrangements.

The transitional provisions for the introduction of the various processes will be taken account of in Commencement Orders.

Responding to the Consultation

The Department would welcome any comments you may wish to make on the proposed legislation before it is finalised and made.

The Department also invites your views on the potential impact, if any, you consider that the proposed legislation might have on equality of opportunity, human rights issues and rural impact.

The list of consultees is provided at Annex 3. If you consider that this consultation should be copied to additional interested parties, please contact the Department as soon as possible and their inclusion will be arranged.

An electronic copy of the Consultation Paper is available on the Department's Internet site at www.drdni.gov.uk and copies can also be made available in alternative formats or languages, on request.

Comments on the proposed Regulations should be made in writing and may be forwarded electronically via e-mail to george.kearns@drdni.gov.uk, janette.galloway@drdni.gov.uk or, alternatively, via post to George Kearns/Janette Galloway, Department for Regional Development, Transport Policy, Strategy and Legislation Division, 3rd Floor, Clarence Court, 10–18 Adelaide Street, Belfast BT2 8GB.

The closing date for receipt of all responses is 4:00pm on 27th May 2015.

The Department tries to make its consultation procedure as thorough and open as possible. Following the end of the consultation we shall publish details of the responses received.

Information you provide in your response, including **personal information**, could be published or disclosed under the Freedom of Information Act 2000 (FOIA). Under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with obligations of confidence.

If you want the information that you provide to be treated as confidential, it would be helpful if you could explain why. Although we will take full account of your explanation, we cannot give an assurance that confidentiality can be maintained in all circumstances. Any automatic confidentiality disclaimer generated by your IT system will not be regarded as binding on the Department.

For further information about the confidentiality of responses, please contact the Information Commissioner's Office (or see the ICO website at www.ico.gov.uk).

2015 No.

PUBLIC PASSENGER TRANSPORT

Public Passenger Transport (Service Agreements and Service Permits)
Regulations (Northern Ireland) 2015

Made - - - - - ***201*
Coming into operation - - - - - *** 201*

The Department for Regional Development (1), in exercise of the powers conferred by sections 1(9), 2(1), 2(3), 4(2), 4(3), 5(1), 8(2), 13(1) and (6), 14(2), 14(3), 14(4), 15 and 45(1), (2), and (7) of the Transport Act (Northern Ireland) 2011 (2), makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Public Passenger Transport (Service Agreements and Service Permits) Regulations (Northern Ireland) 201* and shall come into operation on *** 201*.

Interpretation

2. In these Regulations—

“the Act” means the Transport Act (Northern Ireland) 2011;

“operator” has the same meaning as in section 1 of the Act; and

“operator’s licence” has the same meaning as in section 1 of the Act.

(1) SI 1999/283
(2) 2011 c.11

PART 1

SERVICE AGREEMENTS

Content of service agreements

3.- (1) In addition to the mandatory requirements of Article 4 of Regulation (EC) No. 1370/2007 **(3)**, a service agreement may deal with the matters set out in Schedule 1.

(2) A service agreement made with a company, or other body corporate, may apply also to the provision of services by any of its subsidiaries, provided that the subsidiary is an operator.

Review of decisions required by Article 5(7) of Regulation (EC) No. 1370/2007

4.(1) The review procedure set out in Schedule 2 applies to decisions taken in accordance with paragraphs 2, 4, 5 and 6 of Article 5 of Regulation (EC) No 1370/2007.

(2) The procedure set out in Schedule 3 applies to decisions taken in accordance with paragraph 3 of Article 5 of Regulation (EC) No. 1370/2007.

PART 2

SERVICE PERMITS

Applications

5.-(1) An application for a service permit must be made in writing to the Department and may be made by any form of electronic communication.

(2) The application fee set out in regulation 9 is payable at the time the application is submitted to the Department and may be paid by electronic transfer.

(3) An applicant for a service permit must provide such information as set out in Schedule 4.

(4) Where the Department decides to issue a service permit it will notify the applicant in writing of that decision.

(5) Where a decision has issued under paragraph (4) –

(a) the applicant must submit the permit fee set out in regulation 9 to the Department with 42 calendar days of the date on the written notification, and may do so by electronic transfer; and

(b) on compliance by the applicant with sub-paragraph (a) the Department will issue the permit.

(6) Where the Department decides to refuse an application for a service permit it shall inform the applicant in writing of its reasons.

(7) For the purposes of this regulation, “electronic communication” has the same meaning as section 4(1) of the Electronic Communications Act (Northern Ireland) 2001 **(4)**.

Variation of service permits

6. An application by the permit holder for the variation of a permit must be in writing and must include information as to—

(a) the detail of such variation;

(b) the reasons for the variation; and

(c) the date on which the service permit holder wishes the variation to take effect.

(3) OJ L 315, 3.12.2007, p1

(4) 2001c.9 (N.I.), the definition of “electronic communication” in section 4(1) was amended by paragraph 170 of schedule 17 to the Communications Act 2003 (c.21)

Continuation of service permits on death, bankruptcy, etc.

7.-(1) In this regulation, "actual holder" in relation to a service permit means the person to whom the service permit was issued.

(2) This regulation applies in the event -

- (a) of the death of the actual holder of the service permit;
- (b) of the actual holder of the service permit becoming a patient (within the meaning of Article 2(2) of the Mental Health (Northern Ireland) Order 1986) ⁽⁵⁾ on the grounds that the holder is incapable, by reason of mental disorder, of adequately managing his property and affairs;
- (c) that the actual holder has sold the business (or part of the business) as a going concern;
- (d) that the actual holder is adjudged bankrupt or is the subject of a bankruptcy restrictions order;
- (e) that the actual holder has become insolvent;
- (f) that the actual holder has received a winding up order;
- (g) that the actual holder has gone into receivership or liquidation; or
- (h) that the actual holder has entered into administration.

(3) Subject to paragraph (6), after the happening of any event mentioned in paragraph (2) (a) or (b), the Department may direct that the service permit be treated -

- (a) as not having terminated at the time when the service permit holder died or became a patient, but as having been suspended (that is, having remained in force but subject to the limitation that no services were authorised to be provided under it) from that time until the time when the direction comes into force; and
- (b) as having effect from the time when the direction comes into force for a specified period and as being held during the period (for such purposes and to such extent as may be specified) not by the person to whom it was issued, but by such other person carrying on that person's business, or part of that person's business.

(4) Subject to paragraph (6), after the happening of any of the events mentioned in paragraphs 1(c) to (h), the Department may direct that any service permit is to be treated (for such purposes, for such period and to such extent as may be specified) as held not by the person to whom it was issued, but by such other person carrying on that person's business, or part of that person's business.

(5) The Department may direct, for the purposes of giving effect to or supplementing a direction given under paragraphs (3) or (4), that the Act is to apply with such modifications in relation to the person who is to be treated under the direction as the holder of the service permit.

(6) The powers exercisable under paragraphs (3) and (4) shall be exercisable in relation to a service permit only where the person who is to carry on the business of the person to whom the service permit was issued, holds an operator's licence appropriate for that business.

(7) In this regulation, "specified" means "specified in the direction".

Suspension or withdrawal of service

8.-(1) A service permit holder who ceases to provide a service on a route provided for in that permit, must notify the Department in writing of that cessation, giving the reasons for it.

(2) The notification required under paragraph (1) must be given within 24 hours of the cessation or in the event of the service ceasing on a weekend, bank holiday or public holiday, on the next working day.

Fees

9.-(1) Subject to paragraph (2), the fee payable in respect of an application for a service permit is £45, the issue of a service permit is £195 and the issue of a copy service permit, where the original has been lost or defaced, is £10.

(2) In respect of an application for a service permit for a service which is time-bound for a specific event, the fee payable for the application is £45, nil for issue of a service permit and for the issue of a copy where the original has been lost or defaced, the fee is £10.

Issue of copy permit

10.-(1) Where a service permit has been lost or defaced, the service permit holder shall forthwith notify the Department in writing.

(3) If –

- (a) the Department is satisfied that the service permit has been lost or defaced; and
- (b) in the case of a service permit which has been defaced, it is surrendered to the Department,

the Department shall issue a copy (so marked) on payment of the fee, which shall have effect as the original service permit.

(3) Where a service permit has been lost, and after a copy has been issued, the lost service permit is found by or comes into possession of the service permit holder, the original service permit shall be returned to the Department.

Refunding fees

11.-(1) Except where a service permit is revoked by the Department under section 10 of the Act, the fee for issue of a service permit, or a proportionate part as calculated in accordance with paragraph (2), shall be refunded upon receipt of a written request from the service permit holder to terminate the service or, in the case where the service permit holder has died, from the personal representative of that person.

(4) The amount refundable under paragraph 1 shall be £65 for each full year remaining on the service permit. The number of full years will be calculated from the date the Department receives the request.

PART 3

PUBLIC PASSENGER TRANSPORT SERVICES

Exempt services

12.-(1) A Tour provided by an operator is a service which is to be treated as an exempt service for the purposes of section 1(8) of the Act.

(2) A Tour means an occasional or scheduled advertised service for the purposes of tourism to advertised destinations within the United Kingdom where passengers may not be dropped off en route to each advertised destination, nor picked up on the return journey, and where the stopping time for each advertised destination shall not be less than twenty minutes.

Sealed with the Official Seal of the Department for Regional Development on *** 201*

Tom Reid
A senior officer of the Department

SCHEDULE 1

Regulation 3(1)

Matters that may be dealt with in a service agreement

1. The public passenger transport services to be provided, including details of routes and frequency of services.
2. Performance obligations.
3. Performance monitoring arrangements.
4. Variation provisions.
5. The general level and structure of fares.
6. Ticketing requirements.
7. Requirements for the subcontracting of services.
8. Audit provisions.
9. Asset ownership.
10. Reporting arrangements.
11. Duration.
12. Dispute resolution mechanisms.
13. The arrangements and mechanisms for the provision of information to passengers in respect of the disruption or amendment of services.
14. Technological requirements.
15. Consideration.
16. Type of ancillary service.
17. Incentives and penalties.

SCHEDULE 2

Regulation 4(1)

Review of decisions taken in accordance with paragraphs 2, 4, 5 and 6 of Article 5 of Regulation (EC) No. 1370/2007

1. Proceedings under this Schedule may be brought in the High Court by any person having or having had an interest in obtaining a particular public service contract and who has been or risks being harmed by an alleged infringement on the grounds that the decision has infringed European Union law.
2. (1) Subject to sub-paragraph (2), such proceedings must be started within 30 days beginning with the date when the person first knew or ought to have known that grounds for starting the proceedings had arisen.

(2) Where the decision is published, sub-paragraph (1) does not require proceedings to be started before the end of a period of 10 days beginning with the day on which the decision is published.

(3) Subject to sub-paragraph (4), the Court may extend the time limit imposed by sub-paragraph (1) where it considers there is good reason for doing so.

(4) The Court must not exercise its power under sub-paragraph (3) so as to permit proceedings to be started more than 3 months after the date when the person first knew or ought to have known that grounds for starting the proceedings had arisen.

(5) For the purposes of this Schedule, proceedings are to be regarded as started when the originating process is issued.
3. Subject to paragraph 4, but otherwise without prejudice to any other powers of the Court in proceedings brought under this Schedule, the Court may-
 - (1) by interim order suspend the implementation of any decision;
 - (2) if satisfied that the decision infringed European Union law –
 - (a) order the setting aside of the decision or order the Department to amend any document;
 - (b) award damages to the person who has suffered loss or damage as a consequence of that infringement; or
 - (c) do both of those things.
4. In proceedings under this Schedule, the Court does not have the power to order any remedy other than an award of damages in respect of an infringement of European Union law if the public service contract in relation to which the infringement occurred has been entered into.
5. For the purposes of this Schedule, and notwithstanding section 39(2) of the Interpretation (Northern Ireland) Act 1954, where a period of time is expressed to begin on, or to be reckoned from, a particular day, that day shall be included in the period.
6. In this Schedule, “person” includes a body of persons corporate or unincorporated.

SCHEDULE 3

Regulation 4(2)

Decisions taken in accordance with paragraph 3 of Article 5 of (EC) No. 1370/2007

Part 1

Information about contract award procedures

Award decision notice

1. Subject to paragraph 8 the Department shall, as soon as possible after the decision under Article 5(3) of Regulation (EC) No 1370/2007 has been made, inform the tenderers and the candidates of its decision to award the contract, and shall do so by notice in writing by the most rapid means of communication practicable.
2. Where it is to be sent to a tenderer, the notice referred to in paragraph 1 shall include –
 - (1) the criteria for the award of the contract;
 - (2) the reasons for the decision, including the characteristics and relative advantages of the successful tender, the score (if any) obtained by -
 - (a) the person who is to receive the notice; and
 - (b) the person to be awarded the contract,and anything required by paragraph 6.
 - (3) the name of the person to be awarded the contract; and
 - (4) a precise statement of either-
 - (a) when, in accordance with paragraphs 12 to 17 the standstill period is expected to end and, if relevant, how the timing of its ending might be affected by any and if so what contingencies; or
 - (b) the date before which the Department will not, in conformity with paragraphs 12 to 17, enter into the contract.
3. Where it is to be sent to a candidate, the notice referred to in paragraph 1 shall include-
 - (1) the reasons why the candidate was unsuccessful; and
 - (2) the information mentioned in paragraph 2, but as if the words “and relative advantages” were omitted from sub-paragraph (2).
4. Where the only tenderer is the one who is to be awarded the contract, and there are no candidates, the Department need not comply with paragraph 1.

Reasons to be given on request

5. Except to the extent that the Department has already informed the person (whether by notice under paragraph 1 or otherwise), and subject to paragraph 8 the Department shall within 15 days of the date on which it receives a request in writing from any person who was unsuccessful-

- (1) inform that person of the reasons why he was unsuccessful; and
- (2) if the person submitted an admissible tender, the Department shall inform that person of the characteristics and relative advantages of the successful tender and the name of the person to be awarded the contract.

6. The reasons referred to in paragraph 2(2) and 5(1) shall include any reason for the Department's decision that the person did not meet the technical specifications required for the contract.

Abandonment or recommencement of procedure

7. Subject to paragraph 9 the Department shall, as soon as possible after the decision has been made, inform any candidates and tenderers of its decision to abandon or to recommence a contract award procedure in relation to the award of a contract.

8. Where the Department informs a person of its decision in accordance with paragraph 7 it shall

- (1) include the reasons for its decision; and
- (2) provide the decision and reasons in writing if requested by the person

Grounds for withholding information

9. The Department may withhold any information to be provided in accordance with paragraph 1, 2, 5, 6, 7 or 8 where the disclosure of such information –

- (a) would impede law enforcement;
- (b) would otherwise be contrary to the public interest;
- (c) would prejudice legitimate commercial interests ; or
- (d) might prejudice fair competition

Definitions

10. For the purposes of this Part –

(1) “candidate” means a person (other than a tenderer) who applied to be included amongst those to be selected to tender or to negotiate the contract, but does not include any person who has been informed of the rejection of his application, and the reasons for it; and

(2) “tenderer” means a person who submitted an offer and has not been definitively excluded.

11. For the purposes of paragraph 10(2)-

- (a) a tenderer has been excluded if its offer has been excluded from consideration; and
- (b) an exclusion is definitive if, and only if, the tenderer has been notified of the exclusion and either –

- (i) the exclusion has been held to be lawful in proceedings under this Schedule; or
- (ii) the time limit for starting such proceedings has expired even on the assumption that the Court would have granted the maximum extension permitted by paragraphs 19(4) and (5).

Part 2

Standstill period

12. The Department must not enter into the contract before the end of the standstill period.
13. Subject to paragraph 17, where the Department sends a paragraph 1 notice to all the relevant persons by facsimile or electronic means, the standstill period ends at midnight at the end of the 10th day after the relevant sending date.
14. Subject to paragraph 17, where the Department sends a paragraph 1 notice to all the relevant persons only by other means, the standstill period ends at whichever of the following occurs first-
 - (1) midnight at the end of the 15th day after the relevant sending date;
 - (2) midnight at the end of the 10th day after the date on which the last of the persons to receive such a notice receives it.
15. In paragraphs 13 and 14, "the relevant sending date" means the date on which the paragraph 1 notices are sent to the relevant persons, and if the notices are sent to different relevant persons on different dates, the relevant sending date is the date on which the last of the notices is sent.
16. Subject to paragraph 17, where the Department sends a paragraph 1 notice to one or more of the relevant persons by facsimile or electronic means and to the others by other means, the standstill period ends at whichever of the following two times occurs latest-
 - (1) midnight at the end of the 10th day after the date on which the last notice is sent by facsimile or electronic means;
 - (2) the time when whichever of the following occurs first-
 - (a) midnight at the end of the 15th day after the date on which the last notice is sent by facsimile or electronic means;
 - (b) midnight at the end of the 10th day after the date on which the last of the persons to receive a notice sent by any such other means receives it.
17. Where the last day of the standstill period reckoned in accordance with paragraphs 13 to 16 is not a working day, the standstill period is extended to midnight at the end of the next working day.

Part 3

Applications to the Court

18. Proceedings under this Part may be brought in the High Court by any person having or having had an interest in obtaining a particular public service contract and who has been or risks being harmed by an alleged infringement on the grounds that the decision has infringed European Union law.

General time limits for starting proceedings

19. (1) This paragraph limits the time within which proceedings may be started.
- (2) Subject to subparagraphs (3) to (5) such proceedings must be started within 30 days beginning with the date when the person first knew or ought to have known that grounds for starting the proceedings had arisen.
- (3) Subparagraph (2) does not require proceedings to be started before the end of any of the following periods -
- (a) where the proceedings relate to a decision which is sent to the person by facsimile or electronic means, 10 days beginning with-
 - (i) the day after the date on which the decision is sent, if the decision is accompanied by a summary of the reasons for the decision;
 - (ii) if the decision is not so accompanied, the day after the date on which the person is informed of a summary of those reasons;
 - (b) where the proceedings relate to a decision which is sent to the person by other means, whichever of the following periods ends first -
 - (i) 15 days beginning with the day after the day on which the decision is sent, if the decision is accompanied by a summary of the reasons for the decision;
 - (ii) 10 days beginning with-
 - (aa) the day after the date on which the decision is received, if the decision is accompanied by a summary of the reasons for the decision; or
 - (bb) if the decision is not so accompanied, the day after the date on which the person is informed of a summary of those reasons;
 - (c) where heads (a) and (b) do not apply but the decision is published, 10 days beginning with the day on which the decision is published.
- (4) Subject to subparagraph (5) the Court may extend the time limit imposed by subparagraph (2) where the Court considers that there is a good reason for doing so.
- (5) The Court must not exercise its power under subparagraph (4) so as to permit proceedings to be started more than 3 months after the date when the person first knew or ought to have known that grounds for starting the proceedings had arisen.
- (6) For the purposes of this Part proceedings are to be regarded as started when the originating process is issued.

Starting Proceedings

20. (1) Where proceedings are started by a person he must serve the originating process on the Department within 7 days after the date of issue.

- (2) Sub-paragraph (3) applies where proceedings are started alleging a breach of a requirement or suspension imposed by or under paragraph 21 or paragraph 22 where the contract has not been fully performed.
- (3) In those circumstances the person must, as soon as practicable, send a copy of the originating process to any other person who is a party to the contract in question.
- (4) The Department must as soon as is practicable comply with any request from the person who has started the proceedings for any information that he may reasonably require for the purpose of complying with sub-paragraph (3).
- (5) In this paragraph “serve” means serve in accordance with rules of court and for the purposes of this paragraph an originating process is deemed to be served on the day on which it is deemed by rules of court to be served.

Contract-making suspended by challenge to award decision

21. (1) Where –

- (a) an originating process is issued in respect of the Department’s decision to award the contract;
- (b) the Department has become aware that the originating process has been issued and that it relates to that decision; and
- (c) the contract has not been entered into,

the Department is required to refrain from entering into the contract.

(2) The requirement continues until any of the following occurs –

- (a) the Court brings the requirement to an end by interim order under paragraph 22(1)(a)
- (b) the proceedings at first instance are determined, discontinued or otherwise disposed of and no order has been made continuing the requirement (for example in connection with an appeal or the possibility of an appeal).

Interim Orders

22. (1) In proceedings the court may, where relevant, make an interim order –

- (a) bringing to an end the requirement imposed by paragraph 21(1);
- (b) restoring or modifying that requirement;
- (c) suspending the procedure leading to the award of the contract;
- (d) suspending the implementation of any decision or action taken by the Department in the course of following such a procedure.

(2) When deciding whether to make an order under sub-paragraph (1)(a) –

- (a) the Court must consider whether, if paragraph 21(1) were not applicable, it would be appropriate to make an interim order requiring the Department to refrain from entering into the contract; and
- (b) only if the Court considers that it would not be appropriate to make such an interim order may it make an order under sub-paragraph (1)(a).

(3) If the Court considers that it would not be appropriate to make an interim order of the kind mentioned in sub-paragraph (2)(a) in the absence of undertakings or conditions, it may require or impose such undertakings or conditions in relation to the requirement in paragraph 21(1).

- (4) This paragraph does not prejudice any other powers of the Court.

Remedies where the contract has not been entered into

23. (1) This paragraph applies where the Court is satisfied that a decision taken by the Department infringed European Union law and the contract has not yet been entered into.
- (2) In those circumstances the Court may do one or more of the following-
- (a) order the setting aside of the decision concerned;
 - (b) order the Department to amend any document;
 - (c) award damages to a person who has suffered loss and damage as a result of the infringement.
- (3) This paragraph does not prejudice any other powers of the Court.

Remedies where the contract has been entered into

24. (1) Sub-paragraph (2) applies if the Court is satisfied that a decision taken by the Department infringed European law and the contract has already been entered into.
- (2) In those circumstances the Court –
- (a) may award damages to the person who has suffered loss or damage as a consequence of the infringement;
 - (b) must not order any other remedies.

Injunctions against the Department

25. In proceedings against the Department the Court has power to grant an injunction despite section 21 of the Crown Proceedings Act 1947.

Interpretation of Schedule

26. (1) In this Schedule –
- (a) “person” includes a body of persons corporate or unincorporated,
 - (b) “paragraph 1 notice” means a notice given in accordance with paragraph 1 of Part 1; and
 - (c) “relevant persons” means persons to whom paragraph 1 of Part 1 requires information to be given.
- (2) For the purposes of this Schedule and notwithstanding section 39(2) of the Interpretation (Northern Ireland) Act 1954 where a period of time is expressed to begin on, or to be reckoned from, a particular day, that day shall be included in the period.

SCHEDULE 4

Regulation 5(3)

Service Permit Applications

Information to be provided by an applicant

1. Particulars of the proposed route, timetable, frequency of service, target market, start date, fare structure and fare levels.
2. The applicant's operator licence number or, where the applicant has applied for an operator's licence and that application is still outstanding, the date upon which the application for an operator's licence was submitted to the Department of the Environment.
3. The applicant's full name, position within the company, trading name (if applicable), business address, business telephone number and business e-mail address (if available).
4. Particulars of seating capacity, accessibility features and proposed overnight location of each vehicle to be used to provide the service.
5. Customer care policies and procedures, including particulars of staff training provision and any customer feedback procedures.
6. Particulars of any sub-contracting arrangement with any other operator in respect of the services to be provided under the service permit application.
7. Documentary evidence of demand for the service.
8. Particulars as to how the service will be publicised and what customer information will be provided.
9. Contingency arrangements in the event of vehicle breakdown.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations lay down the rules for Part 1 of the Transport Act (Northern Ireland) 2011 (“the Act”) in relation to the provision of public passenger transport services and do so in accordance with the requirements of Commission Regulation (EC) No. 1370/2007 on public passenger transport services by rail and road.

The Regulations provide arrangements for the introduction of service agreements for the provision of public passenger transport services or services ancillary to public passenger transport services, ensuring compliance with Regulation (EC) No. 1370/2007.

The Regulations also provide arrangements for a service permit system which has been designed to complement public passenger transport services provided under service agreements.

Regulation 3 and Schedule 1 set out what may be dealt with in a service agreement.

Regulation 4(1) and Schedule 2 put in place the review provisions for service agreements which are directly awarded.

Regulation 4(2) and Schedule 3 put in place the review provisions for competitively tendered contracts.

Regulations 5 to 11 and Schedule 4 set out the necessary requirements for the implementation of the service permit system, put in place by the Act, which is designed to allow for public passenger transport services to be provided alongside those provided under a service agreement, as described in regulation 3.

Regulation 12 sets out the category of service which is to be treated as exempt from the service permit system.

Copy extracts of the Transport Act (Northern Ireland) 2011 Sections 1(9), 2(1), 2(3), 4(2), 4(3), 5(1), 8(2), 13(1) and (6), 14(2), 14(3), 14(4), 15, 45(1), (2) and (7).

Provision of public passenger transport services

1 (9) The Department may by regulations make provision as to services which are to be treated as exempt services for the purposes of subsection (8).

Service agreements

2—(1) The Department may by regulations make provision as to matters which may or must be dealt with in service agreements.

(2) The power conferred by section 1(2) to enter into service agreements includes power to award public service contracts in accordance with Regulation (EC) No. 1370/2007.

(3) The Department may by regulations make provision for the review of decisions required by Article 5(7) of that Regulation.

Applications

4—(1) An application for a permit shall be made to the Department.

(2) The application for a permit must be made in such form, and include such declarations and information, as may be prescribed.

Notification of subsequent events

5—(1) A person who has made an application for a permit shall notify the Department if, in the interval between the making of the application and the date on which it is disposed of, there occurs any prescribed event affecting any information given to the Department under section 4.

Variation

8 (1) On the application of the holder of a permit or otherwise, the Department may vary the permit.

(2) An application for the variation of a permit under this section must be made in such form and include such declarations and information as may be prescribed.

(3) The Department may require an applicant to furnish such other information as it considers necessary for dealing with the application.

(4) Section 5 shall apply for the purposes of this section as it applies for the purposes of section 4.

Fees

13—(1) Such fees, payable at such times, as may be prescribed shall be charged by the Department in respect of—

- (a) applications for permits; and
- (b) the issue of permits.

(6) Regulations under this section may provide for fees to be remitted or refunded (in whole or part) in prescribed cases.

Permits not to be transferable

14—(1) Subject to any regulations under section 15, a permit is neither transferable nor assignable.

(2) Regulations may make provision enabling the Department, where the holder of a permit has died or become a patient within the meaning of Article 2(2) of the Mental Health (Northern Ireland) Order 1986 (NI 4), to direct that the permit be treated—

(a) as not having terminated at the time when the permit-holder died or became a patient but as having been suspended (that is, as having remained in force but subject to the limitation that no services were authorised to be provided under it) from that time until the time when the direction comes into force; and

(b) as having effect from the time when the direction comes into force for a specified period and as being held during that period (for such purposes and to such extent as may be specified) not by the person to whom it was issued but by such other person carrying on that person's business, or part of that person's business, as may be specified.

(3) Regulations may make provision enabling the Department in prescribed circumstances to direct that any permit is to be treated (for such purposes, for such period and to such extent as may be specified) as held not by the person to whom it was issued but by such other person carrying on that person's business, or part of that person's business, as may be specified.

Holding companies and subsidiaries

15 Regulations may make provision for a service agreement made with, or a service permit held by, any company or other body corporate to apply also to the provision of services by any of its subsidiaries.

Regulations - general

45—(1) The Department may make regulations for any purpose for which regulations may be made under this Act, and for prescribing anything which may be prescribed under this Act, and generally for carrying this Act into effect.

(2) In particular, but without prejudice to the generality of subsection (1), the Department may make regulations with respect to the following matters—

- (a) the procedure on applications for, and the determination of questions in connection with, the issuing and variation of service permits;
- (b) the issue of service permits and the issue on payment of the prescribed fee of copies of service permits in the case of permits lost or defaced;
- (c) the notification to the Department of routes on which a service under a service permit has ceased to be provided;
- (d) the means by which vehicles may be identified, whether by plates, marks or otherwise, as providing a service under a service agreement or a service permit;
- (e) the custody, production, return and cancellation of service permits and of documents, plates and any other means of identification prescribed under paragraph (d);
- (f) ticketing machines and systems.

(3) No regulations to which this subsection applies shall be made unless a draft of the regulations has been laid before, and approved by resolution of, the Assembly.

(4) Subsection (3) applies to regulations under this Act if they include—

- (a) regulations under section 42(3) or 43(2); or
- (b) regulations under this section which make the declaration mentioned in subsection (6).

(5) Any other regulations under this Act shall be subject to negative resolution.

(6) Any person who contravenes a provision of regulations under this section, a contravention of which is declared by the regulations to be an offence, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) Regulations under this Act may contain such incidental, supplementary, consequential, transitory or saving provisions as the Department considers necessary or expedient.

LIST OF CONSULTEES

- Northern Ireland Transport Holding Company
- Translink
- Road Service Licence Holders
- NI District Councils
- NI Government Departments
- NI Tourist Board
- The Consumer Council
- NI Chamber of Commerce
- Education and Library Boards
- Rural Community Transport Partnerships
- The Federation of Passenger Transport Northern Ireland
- Unite the Union
- NICTU
- NIPSA
- Police Service of Northern Ireland
- Northern Ireland Political Parties & Westminster representatives
- All bodies listed in Appendix 3 of the Department's Equality Scheme
- The Community Transport Association
- The National Transport Authority (ROI)
- Respondents to the Public Transport Reform Consultation conducted in 2009/10