

Clerk to the Committee for Infrastructure
Committee Office
Parliament Buildings
BELFAST
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Your reference:
Our reference:

3rd June 2021

Dear

DEPARTMENTAL BRIEFING ON COMMERCIAL BUS SERVICE PERMITS AND TRANSPORT INTEGRATION

The Department welcomes the opportunity to provide a briefing on the Commercial Bus Service Permit (CBSP) system.

This briefing note provides a background to the CBSP system including its legislative framework and the various changes implemented in recent years. It will also look to address the concerns raised by recent correspondence received by the Committee from Bus and Coach NI and Hannon Coach.

Background

The CBSP system was introduced following the Transport Act (Northern Ireland) 2011 which enables the Department to issue Bus Permits to licensed operators who wish to run public passenger transport services within Northern Ireland. Section 6 of the Transport Act 2011 sets out the key considerations, listed below, which the Department must take into account in considering permit applications:

- a) Suitability of the route on which the service may be provided under the permit;
- b) Any applications for permits which the Department considers relevant;
- c) The extent, if any, to which the needs of persons likely to use the service to be provided are already adequately and economically served;
- d) The general effect which the granting of the permit would be expected to have on other holders of permits, or persons with whom the Department has a Service Agreement;
- e) The need for ensuring fair competition among persons providing public passenger transport services; and,
- f) Such other matters as may be prescribed.

The Transport Act (NI) 2011 also sets out that, in making a decision in relation to permit applications, the Department shall take into account:

- a) Any recommendations made by the Consumer Council;
- b) Any representations by–
 - i. Persons already providing services on any road along or near the routes which are the subject of the application;
 - ii. the Chief Constable;
 - iii. a district council;
- c) A Northern Ireland Department; or
- d) The Northern Ireland Tourist Board.

The Minister and the Department recognises the valuable role the private bus and coach sector play in delivering public transport, private hire and tourism services across NI.

Judicial Review Application

In July 2017, Hannon Coach was refused a CBSP to operate an Express Service from Derry/Londonderry to Belfast. One of the key considerations was the potential impact on existing Translink services on the same route. A full explanation of that decision was provided to Hannon Coach on 6th October 2017 following which they lodged an application for Judicial Review (JR). The JR application was subsequently set aside, with the court awarding legal costs to the Applicant, after the Department offered to re-determine its decision on the Derry/Londonderry to Belfast application and to progress applications on five additional services between Belfast and Armagh, Coleraine, Cookstown, Enniskillen and Newcastle.

The JR application highlighted a number of issues with the CBSP application process. These included the consultation process, use of expert advice and the level of scrutiny and review applied to evidence provided by applicants and consultees. The JR application also criticised the role of Translink Sponsor Unit making determinations on CBSP and the absence of an appeal mechanism.

Process Changes

Following the JR application, a number of changes have been made to the CBSP application process including the determination stage. In developing the changes to the process the Department engaged with key stakeholders¹ including Bus and Coach NI (who represent a large part of the private bus and coach industry in NI and several Bus Permit operators). These changes and current process were approved by the Department in May 2019. In February 2020 the Minister approved the referral of applications to her when the application is assessed by the panel to have a significant impact on the strategic public transport network or present potential policy implications.

¹ Other stakeholders were Translink, Inclusive Mobility Transport Advisory Committee (IMTAC), National Transport Authority (NTA), Tourism NI, PSNI, Driver and Vehicle Agency (DVA) and Consumer Council NI

The most significant process changes relate to the creation of a new branch within Public Transport Division tasked with administering the CBSP system and the introduction of a Determination Panel to consider new applications. The purpose of the panel is to provide a more transparent process and ensure a robust evidence based approach to decision making is applied. The 3 person panel is chaired by the Director of Public Transport Division in addition to 2 DfI staff at Grades 5 or 6 level. The panel consider the evidence provided and make a determination to approve, refuse, or where an application is assessed to have a significant impact on the strategic public transport network or present potential policy implications, refer the final determination to the Minister.

To ensure a robust, evidence-based approach, the panel are provided with all evidence submitted by the applicant, consultees, any available specialist advice and analysis prepared by the branch. In addition, a background brief is also prepared for panel members to advise them on the relevant legislative considerations and other issues to consider in making a determination. Panel members are also required to sign Conflict of Interest declarations.

In the case of renewal and amendment applications the Head of Public Transport Regulation Branch is responsible for determining the outcome of applications.

Other changes to the process include the use of specialist advice where necessary (e.g. economist, statistician, Departmental Solicitors Office (DSO)) and an increased cooperation between the Department and the applicant throughout the process. The applicant now has the ability to see and agree what will be issued to consultees.

All of the changes made are designed to improve the process and ensure a fair and robust decision making process is followed within the boundaries of the legislation as detailed above. This has resulted in an increase in the estimated time to process applications.

The first new CBSP application to be processed through the new process and determination panel was approved in December 2019. A further 11 applications have been processed through a determination panel with 5 being approved and 6 being referred to the Minister.

Draft Guidelines

As a result of the changes brought about by the JR application and the need to ensure transparency, a draft guidelines document was issued to operators, industry groups and the Consumer Council NI (CCNI) in March 2021. Following written feedback and a meeting in April 2021, officials agreed to do further work on the guidelines and undertake a wider, more detailed consultation exercise.

Bus and Coach NI

Bus and Coach NI stated in their letter that the changes to the guidelines and the process involved in making an application for a permit increase barriers and limit the opportunity for the private sector to apply for, and be successful in, attaining permits for services. Rather, the Department has amended the process to reflect the lessons

learnt through the JR application and also to increase transparency and provide guidance to anyone making an application.

In terms of engagement, the Department established a Bus Operator Forum for CBSP in December 2019 which has continued to meet regularly. The aim of this forum is to increase communication and engagement with the industry and work in collaboration with those who deliver a valuable addition to the public transport offering in NI.

BCNI have also provided the Committee with a copy of their feedback on the draft guidelines which have been summarised by BCNI to the points listed below:

- a) Changes to application process and increase in timescales for decision process;
- b) Proof of demand including definitive list of demand requirements and challenges to proof of demand;
- c) Permit renewals being treated as new applications;
- d) Determination process;
- e) Omission of the mention of the journey planner;
- f) Omission of detailed information on the different service permit categories;
- g) The 30 minute rule; and
- h) Cost to enter bus stations.

The Department will set out its response to each of these areas in turn.

- a) Changes to application process and increase in timescales for decision process;*
and,
- d) Determination process*

The changes in the application and determination process have been detailed previously.

The Department recognises that there has been a significant increase in the indicative timeframe provided in the guidelines for processing applications. In providing this indicative timeframe the Department intended to assist operators plan. It is worth noting that, following feedback from consultees, the increase in timescales includes increased time allotted to consultees to provide feedback. It also allows for input from specialist areas where necessary and more time to analyse, review and scrutinise applications.

A shorter timeframe is possible if information is readily available and the Department will continue to work with operators to streamline the process.

- b) Proof of demand including definitive list of demand requirements and challenges to proof of demand*

Officials accept the feedback regarding providing more guidance on evidence of demand. The Department want applicants to be able to submit any information relevant to their applications and therefore do not want to be definitive. The evidence being offered will depend on the service being applied for and the Department will work with the industry to provide examples.

c) Permit renewals being treated as new applications

CBSP renewals are required to be assessed against the same legislative criteria as new applications. However, they are determined by the Head of Public Transport Regulation Branch and do not go to a panel. Department recognises the renewals process may present opportunities for refinement and streamlining and will keep this under review as the next generation of renewals are processed and lessons can be learned.

e) Omission of the mention of the journey planner

Prior to the introduction of the bus permit system, a pilot was introduced in 2012 to include private operators on the Translink Journey Planner. A single private operator chose to take part in this pilot. This process is no longer viable due to the increased level of information and data required by the system. The department is engaging with Translink on this issue and due to this uncertainty, the Journey Planner content has been removed from the draft guidelines until a clearer position is available.

f) Omission of detailed information on the different service permit categories

Officials intend to add more details related to the service categories to the next iteration of the draft guidelines.

g) The 30 minute rule

The intention behind the 30 minute rule is to measure adequacy of services while providing protection to existing operators on a route. Officials are currently reviewing the policy and will engage with the industry and stakeholders in due course.

h) Cost to enter bus stations

The Department is not aware of any issues relating to the costs to access bus stations and this would be a matter for Translink and the private operator to discuss as part of any contractual agreement.

In addition to the issues covered above, the feedback from BCNI also comments on matters contained within the Transport Act (NI) 2011. One of these relates to Shared Facilities Regulations. The Transport Act (NI) 2011 included the ability for the Department to introduce Shared Facilities Regulations which would provide the Department with the vires to designate Translink facilities as a shared facility therefore allowing the Department to direct Translink to permit private operators access if required. These regulations were due to be placed before the Assembly prior to its suspension in 2017 and were not able to be progressed in this mandate due to resource availability and the requirement to prioritise EU Exit related legislation. We are currently working on the new PSA with Translink including a partnership approach towards station access.

Hannon Coach

As stated in the letter from Hannon Coach the overall timescale from the submission of their initial application in May 2017 to the communication of the outcome for their six applications in March 2021 was almost 4 years. While this timescale is regrettable, Hannon Coach were made aware of the reasons for delay at each stage.

As outlined previously, in considering any applications the Department is bound by the Transport Act (NI) 2011 to consider a number of issues and to consult with specific stakeholders, including the Consumer Council NI.

In relation to this case, following a determination panel and consideration by Minister Mallon, the Department has determined that the applications are refused in line with the legislative criteria as set out in the Transport Act (NI) 2011.

The Department provided Hannon Coach with a written explanation of the reasons for the refusal of their applications.

Forward Plan

As stated previously, the Department is currently working on a wider consultation plan with an aim to have the new guidelines published later this year. In the intervening period, given the JR application, and lessons learnt by the department in relation to the process, the Department will continue with the process currently in place and will work with operators to minimise the timescale for processing any new applications.

Yours sincerely,

DEPARTMENTAL ASSEMBLY LIAISON OFFICER