



AN BILLE UM RIALÁIL IOMPAIR PHOIBLÍ 2009
PUBLIC TRANSPORT REGULATION BILL 2009

EXPLANATORY AND FINANCIAL MEMORANDUM

[This Memorandum is not part of the Bill and does not purport to be a legal interpretation]

General

The primary purpose of the Bill is to establish a modern system for the licensing of commercial public bus passenger services with the objective of promoting regulated competition in the provision of licensed public bus passenger services on a national basis in the public interest, as well as the promotion of integrated, well-functioning and cost efficient public passenger transport services. The Bill will also provide for the introduction of new contractual arrangements for the procurement of public land transport services on a national basis that is modelled on the approach established in the Dublin Transport Authority Act 2008 in respect of the Greater Dublin Area. In addition the Bill will also see the role of the Commission for Taxi Regulation being assumed by the Dublin Transport Authority and the re-naming of that body as the National Transport Authority so as to reflect its expanded role.

The Bill contains a series of amendments to existing legislation that facilitate the changes referred to above as well as other necessary changes to the Taxi Regulation Act 2003, the Roads Act 1993 and 2007, the Road Traffic Act 1994, the Planning and Development Act 2000 and the Transport (Railway Infrastructure) Act 2001.

The Bill contains six Parts and two Schedules. The main provisions are summarised below. In this Memorandum a reference to “the Minister” is to the Minister for Transport and a reference to “the Authority” is to the Dublin Transport Authority or the renamed National Transport Authority.

PART 1

PRELIMINARY AND GENERAL (*Sections 1 to 4*)

This Part contains standard provisions regarding short title, definitions of key terms used in the Bill and expenses of the Minister. It also sets out arrangements for the laying of orders and regulations made by the Minister under the Bill before the Houses of the Oireachtas.

PART 2

LICENSING OF PUBLIC BUS PASSENGER SERVICES

(Section 5 to 27)

The Part establishes a new regulatory regime for the licensing of commercial public bus services. The new regime will apply in respect of all such services, including those provided by Bus Éireann and Dublin Bus. In particular it will feature a modern set of criteria against which applications for licences will be considered and will be supported by an up to date system of penalties.

Section 5 sets out arrangements for the commencement of this Part of the Bill by Ministerial Orders.

Section 6 provides that national bus passenger services, other than those that are being provided subject to a public transport services contract or an international service, may only be provided under a licence granted under this Bill. A person who provides such a service without the required licence will be committing an offence.

Section 7 empowers the Authority to grant licences. It also specifies certain essential elements of licences (i.e. the commencement and completion points and the route) and provides that failure to comply with those elements will constitute an offence.

Section 8 enables the Authority to specify different categories of bus passenger services for which licences will be granted and their period of validity.

Section 9 empowers the Authority to determine the form of an application and the supporting documents and other information necessary for the consideration of a licence. It also provides that where an application is not made in compliance with the established requirements, the Authority will not be obliged to give it consideration.

Section 10 sets down the factors to be taken into account by the Authority when considering applications for licences. Such consideration must be pursued having regard to the general objectives of the Authority provided for in section 10 of the Dublin Transport Authority Act 2008, which is updated through *section 28* of this Bill.

Subsection (1) provides that in the case of applications for all licences, the demand or potential demand for the proposed bus service having regard to the needs of consumers must be taken into account. In addition, it refers to a range of other strategic provisions that the Authority may have regard to in respect of applications for all or any category of licences. These include the impact the proposed bus service would have on existing public passenger transport services on or in the vicinity of the route that are subject to public transport services contracts under Part 3 Chapter 2 of the Dublin Transport Authority Act 2008. *Subsection (2)* makes reference to additional matters that the Authority may examine in relation to the consideration of an application while *subsection (3)* establishes requirements that must be complied with by all applicants for licences. *Subsection (4)* provides that the Authority may give guidance to applicants in relation to the consideration of applications through guidelines which are to be drawn up by the Authority under *section 23* of the Bill. *Subsection (5)* provides that where an application complies with requirements applied under the section, the Authority will grant a licence, while *subsection (6)* requires that the

Authority must inform an applicant of the reasons for a refusal to grant a licence.

Section 11 provides that the Authority may make an offer of the grant of a licence in respect of all licences or in respect of certain categories of licences. This provision means that applicants will not be forced to pursue all of the requirements necessary to obtain a licence (e.g. the purchase of appropriate vehicles) until they have received an indication from the Authority that it is proposed to grant a licence.

Section 12 gives the Authority the power to determine the fees to be charged. Such fees will not be refundable and will be used to defray the expenses of the Authority.

Section 13 provides that the Authority may apply conditions to the grant of either an original licence, an amended licence or the renewal of a licence. *Subsection (2)* sets out a series of specific areas relating to the licence holder, provision of a service, ticketing, number of vehicles and accessibility and emission standards that may be imposed. *Subsection (3)* allows the Authority to require a licence holder to provide and publish a timetable for the licensed service and *subsection (4)* provides that the Authority may require that details of a licence be displayed in the vehicle providing the service. *Subsection (5)* provides that the Authority can itself publish a timetable. *Subsection (6)* allows the Authority to establish different conditions in relation to different categories of licences and *subsection (7)* provides that non-compliance with conditions by a licence holder is an offence.

Section 14 sets out requirements that must be complied with where the holder of a licence proposes to alter a public bus passenger service.

Section 15 provides that, subject to any extension granted by the Authority at the request of the applicant, a public bus service must be fully in operation within 4 months of the date on which the licence was granted. Where this requirement is not complied with, the relevant licence will be revoked.

Section 16 provides for the renewal of licences.

Section 17 establishes a framework to allow for the continued operation of a public bus passenger service in the event of the death of a licence holder.

Section 18 sets out specific circumstances where the Authority may allow a licence to be transferred to another party.

Section 19 sets out the circumstances where the Authority may revoke a licence. In particular it establishes that a revocation may be invoked where the Authority is satisfied that a service is not being provided or where there is a conviction for an offence under this Part of the Bill.

Section 20 sets out arrangements through which existing commercial services being operated by Dublin Bus, Bus Éireann and private operators can be brought within the new licensing regime.

Section 21 provides for the designation by the Authority of deciding officers who will be tasked with the determination of applications for the grant of licences and their revocation.

Section 22 establishes an appeals system against decisions taken in relation to applications for licences and their revocation. Officers specifically appointed for that purpose by the Chief Executive Officer of the Authority will determine appeals. Where an applicant is dissatisfied with a decision relating to appeal, he or she may appeal that decision to the Circuit Court.

Section 23 provides that the Authority shall prepare and publish guidelines in relation to the licensing regime established under this Part. Both the initial guidelines and any amendments or replacements must be the subject of consultation with the Minister for Transport, the Competition Authority and the public generally and must be laid before the Houses of the Oireachtas. Of particular importance is that the guidelines must set out what approach will be applied by the Authority in respect of the determination of applications for licences under *section 10* of the Bill.

Section 24 provides that offences under this Part of the Bill can be prosecuted by the Authority or a member of the Garda Síochána. Provision is also made for offences by a body corporate. Summary conviction for an offence can lead to a fine of up to €5,000.

Section 25 provides that the Authority must carry out a review of the operation of this Part every 5 years or at the specific request of the Minister.

Section 26 is a general provision in relation to notifications or notices given by the Authority under this Part of the Bill.

Section 27 provides for a number of necessary repeals arising from the provisions of Part 2 of the Bill.

PART 3

AMENDMENTS TO NAME AND FUNCTIONS OF DUBLIN TRANSPORT AUTHORITY (*Sections 28 and 29*)

The focus of this Part of the Bill is to provide for the expansion of the role of the Authority to encompass functions relating to the licensing of public bus passenger services under Part 2 of this Bill, to provide for the subsuming of the Commission for Taxi Regulation into the Authority, the expansion nationally of its role in relation to public service contracts and, finally, to rename the Authority as the National Transport Authority.

Section 28 provides the basis for a significant expansion of the role of the Authority through the making of a series of amendments to the Dublin Transport Authority Act 2008. In particular *paragraphs (b), (c) and (d)* provide the basis for the expansion nationally of the role and functional area of the Authority in relation to the issues of the licensing of public bus passenger services and the regulation of small public service vehicles and their drivers. *Paragraph (c)* provides for the revision of the objectives of the Authority to include regulated competition in the provision of licensed public bus passenger services in the public interest and the provision of a well-functioning, attractive, integrated and safe public transport system of services and networks for all users. *Paragraphs (e), (j) and (k)* relate to the subsuming of the Commission for Taxi Regulation into the Authority, and *paragraphs (f), (g) and (h)* address the issue of the expansion of the Authority's role in relation to public service contracts.

Section 29 provides that the name of the Authority will be the National Transport Authority or An tÚdarás Náisiúnta Iompair, and

empowers the Minister to seek the submission of a report from the Authority as to the further expansion to a national remit of all of its powers, functions and duties established in the Dublin Transport Authority Act 2008 and this Bill.

PART 4

DISSOLUTION OF COMMISSION FOR TAXI REGULATION AND TRANSFER OF STAFF AND FUNCTIONS OF COMMISSION (*Sections 30 to 40*)

This Part provides for the dissolution of the Commission for Taxi Regulation and the transfer of the staff, functions, duties and ongoing responsibilities of the Commission to the Authority.

Section 30 provides that the Commission for Taxi Regulation will be dissolved by means of an order made by the Minister at the request of the Authority.

Sections 31, 32 and 33 provide respectively for the transfer to the Authority of any property, rights and liabilities of the Commission and the preservation of any contracts the Commission had entered into, while *section 34* provides that ongoing legal proceedings involving the Commission will continue in the name of the Authority.

Section 35 provides that references to the Commission in any legislation are to be regarded as references to the Authority.

Section 36 establishes a requirement that the final accounts of the Commission for Taxi Regulation must be drawn up.

Section 37 provides that books and documents which the Commission was required to hold prior to its dissolution will continue to be available for evidential purposes notwithstanding the dissolution of the Commission.

Section 38 establishes the framework necessary to support the transfer of the staff of the Commission to the Authority.

Section 39 facilitates the transfer of the incumbent Commissioner for Taxi Regulation to the employ of the Authority.

Section 40 provides that with effect from the dissolution day of the Commission, the Authority will carry out the functions vested in the Commission under the Taxi Regulation Act 2003 for the purpose of achieving the objectives established for the Commission in that Act.

PART 5

AMENDMENTS TO ACT OF 2003, ACT OF 1993, ACT OF 2000, TRANSPORT (RAILWAY INFRASTRUCTURE) ACT 2001 AND ROADS ACT 2007 (*Sections 41 to 43*)

Section 41 provides that the Acts specified in Schedules 1 and 2 are amended as indicated in the Schedules, and specifies the sections of the Taxi Regulation Act 2003 which are to be repealed on the dissolution day for the Commission for Taxi Regulation.

Section 42 provides that references to the “Commission” are altered to “Authority” and references to the “Council” to “Advisory Committee” in the Taxi Regulation Act 2003 on the dissolution day for the Commission.

Section 43 provides for amendments to the Planning and Development Act 2000 to give the Authority a role in relation to the preparation of Regional Planning Guidelines outside the Greater Dublin Area (GDA) similar to that which it was given in relation to the guidelines for the GDA in the Dublin Transport Authority Act 2008.

Essentially, this will require all regional authorities to consult with the Authority when they are preparing regional planning guidelines for their areas and to include in their guidelines a statement of actions to be taken to ensure effective integration of transport and land use planning. In addition, the Minister for the Environment, Heritage and Local Government is being given power to issue directions to regional authorities outside the GDA to review their draft regional planning guidelines to provide for effective integration of transport and land use planning.

PART 6

MISCELLANEOUS (*Sections 44 and 45*)

Section 44 addresses a legal obligation under EU law to provide for the transposition of Article 6 of EU Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification into Irish law. It designates the Minister for Transport as the competent authority in this regard.

Section 45 seeks to clarify the powers of local road authorities to provide bus priority measures and cycle facilities and, where necessary, provides a step-in power to the Dublin Transport Authority. The section exempts bus priority measures from regulations applying to local authority developments under section 179 of the Planning and Development Act 2000. Bus priority measures will be delivered under the road traffic legislation as an executive function of the relevant county manager, with the exception of such measures that involve road widening. The purpose of the section is to streamline the delivery of bus priority measures.

SCHEDULE 1 (*Section 41(1)*)

AMENDMENT OF CERTAIN ACTS

PART 1

Amendment of Act of 2003

Part 1 of *Schedule 1* introduces a number of technical and other amendments to provisions in the Taxi Regulation Act 2003 to address a range of issues raised with the Department by the Commission for Taxi Regulation. These amendments will assist the Commission for the Taxi Regulation (and the Authority) in achieving its statutory objectives under the Act.

Item 1 is a drafting amendment to *section 34(8)*.

Item 2 extends the provisions of *section 36* to convictions for relevant offences in other jurisdictions outside of the State.

Item 3 arises from the policy to require dispatch operators and the holders of wheelchair accessible taxi licences to register certain information with the Commission. The Register of Licences established by the Commission under *section 38* will contain additional

contact information in respect of such licence holders to facilitate bookings from members of the public.

Item 4 seeks to clarify the provisions of *section 43* of the Taxi Regulation Act 2003 to facilitate improved implementation and enforcement by the Commission for Taxi Regulation. The provisions of *subsection (6)* will empower authorised persons, accompanied by a member of the Garda Síochána, to seize and detain unlicensed vehicles purporting to be licensed small public service vehicles or to seize or confiscate internal or external vehicle signage in such cases as appropriate.

PART 2

Amendment of Act of 1993

Part 2 of *Schedule 1* provides for a number of technical amendments to the provisions of the Roads Act 1993.

Item 1 removes the cross-reference to *section 18* of the Roads Act 1993 from *section 22(2)* as the former section was deleted in its entirety by *section 11* of the Roads Act 2007. The purpose of item 2 is to restate in *section 61* the provision of a specific offence for contraventions of toll bye-laws, while item 4 confirms the penalty for such an offence in *section 81*. Item 3 repeals *section 77* of the 1993 Act as it was made redundant by the Environmental Noise Regulations 2006 (S.I. No. 140 of 2006) which transposed EU Directive 2002/49/EC relating to the assessment and management of environmental noise.

PART 3

Amendment of Transport (Railway Infrastructure) Act 2001

Part 3 of *Schedule 1* provides for a number of amendments to certain provisions of the Transport (Railway Infrastructure) Act 2001.

Item 1 replaces the existing provision in *section 25(7)* and updates the adjudication of disputes regarding superannuation benefits. The amendment provides that there is an appeal mechanism in superannuation schemes, such as the Pensions Ombudsman or Trustees, without such appeals being to the Minister.

Item 2 removes the requirement for An Bord Pleanála to seek the consent of the Minister for Transport in order to designate, in a railway order, a railway as a light railway or as a metro. This amendment will contribute to streamlining the railway order process.

Item 3 provides clarification that the form of vesting order to be used by the Railway Procurement Agency (RPA) on foot of a compulsory purchase order shall be the same as that prescribed pursuant to *section 82(1)* of the Housing Act 1966. This is a technical amendment to remove any doubt as to the form of vesting order to be used by the RPA.

PART 4

Amendment of Roads Act 2007

Part 4 of *Schedule 1* provides for a number of typographical corrections to the provisions of the Roads Act 2007.

SCHEDULE 2 (*Section 41(2)*)

Amendment of Act of 2003

Schedule 2 provides for a number of amendments to the provisions of the Taxi Regulation Act 2003 arising from the amalgamation of the Commission for Taxi Regulation (CTR) into the Dublin Transport Authority (DTA) and the conferral of the functions of the CTR on the DTA. The amendments will come into effect when the CTR is dissolved under *section 30* of the Bill.

Item 1 provides for the addition of a number of necessary definitions to *section (2)* of the Taxi Regulation Act 2003. These include the addition of a definition of “Authority”, the deletion of the definition of “Council” and the substitution of the definition of “Advisory Committee” arising from the renaming of the Advisory Council to the Commission for Taxi Regulation as the Advisory Committee on Small Public Service Vehicles. Recognition is also given to the “dissolution day for the Commission”.

Item 2 amends *section 8* of the 2003 Act to make it clear that the Authority will be independent in the exercise of its functions under the Taxi Regulation Act 2003.

Item 3 provides for the substitution of *section 22* of the Taxi Regulation Act 2003 which deals with the disclosure of interests. The substitution is being made to amend the provisions of the section to replace references to the Commission and the Commissioner and in the interests of ensuring that the particular “interests” noted in the original section will continue to have a relevance into the future.

Item 4 provides for the substitution of *section 28* of the Taxi Regulation Act 2003 to allow for the Authority to continue to prepare and publish a strategic plan in relation to the small public service vehicle sector under the 2003 Act.

Item 5 provides for the substitution of *section 31* of the 2003 Act which deals with the publication of reports and codes of practice. This arises from the provisions of *section 38* of the Dublin Transport Authority Act 2008 (Prohibition on unauthorised disclosure of confidential information) and the repeal of the similar provisions in *section 21* of the 2003 Act.

Item 6 provides for the substitution of *section 50(2)(a)* to allow the income from fees set by the Authority under Part 3 of the 2003 Act to be used to fund the expenses incurred by the Authority in the discharge of its functions under the Taxi Regulation Act 2003, the Dublin Transport Authority Act 2008 and this Bill.

Item 7 provides for the substitution of *section 54(1)* of the 2003 Act to change the title of the Advisory Council to the Commission for Taxi Regulation or in the Irish language, An Chomhairle don Choimisiún um Rialáil Tacsaithe, to the Advisory Committee on Small Public Service Vehicles or in the Irish language, An Coiste Comhairleach um Beagfheithiclí Seirbhíse Poiblí.

Item 8 amends *section 55* of the Taxi Regulation Act 2003 to give the Advisory Committee a role in advising the Authority on the preparation and review of the newly named strategy plan under *section 28*, and the draft transport strategy and draft integrated implementation plan provided for under *sections 12* and *13* of the Dublin Transport Authority Act 2008 in relation to issues relevant to small public service vehicles and their drivers. This will facilitate

integration between the Advisory Committee on Small Public Service Vehicles and the Authority.

Financial Implications

This Bill does not have immediate significant financial implications for the exchequer. The National Transport Authority will absorb the Commission for Taxi Regulation, which is self-funding and includes among its assets a carried-over surplus from small public service vehicle licence fee revenue. In the initial years of its operation, this surplus will be available to fund the activities of the Authority in respect of the functions assigned to it under the Dublin Transport Authority Act 2008 and this Bill. It is envisaged that, where possible, licensing and regulatory activities will be maintained on a self-funding basis.

*An Roinn Iompair,
Meán Fómhair, 2009.*