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**AN BILLE UM IOMPAR AR BHÓITHRE, 2011**  
**ROAD TRANSPORT BILL 2011**

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**EXPLANATORY MEMORANDUM**

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**1. Purpose of the Bill**

1.1 The purpose of the Bill is to amend provisions in the Road Transport Acts to:

- (a) give effect in primary legislation to a number of issues which are currently provided for in regulations<sup>1</sup>, but which will be affected by the coming into force of EU Regulations on the occupation of road transport operator on 4 December 2011<sup>2</sup>, and
- (b) to make provision for (i) amendments to the “good repute” aspects of road transport operator licencing (*sections 2-4*), (ii) on-line publication of details from the national register of licensed road transport operators, in order to facilitate public access to information on licensed businesses (*section 12*), and (iii) minor amendments to existing provisions relating to e.g. definitions, false declarations, conditions on licences etc.

**2. Provisions of the Bill**

2.1 *Section 1 — Definitions:* These are standard provisions.

2.2 *Section 2 — Obligation on operator to inform Minister of certain convictions.* This requires an applicant or licensed operator to inform the Minister of certain serious convictions, which apply to the operator, certain specified positions within the operation (e.g. director, business partner etc.), and to drivers with passenger transport operations. Serious convictions are the following, whether in Ireland or in another jurisdiction:

- murder,
- manslaughter,
- certain non-fatal offences against the person,
- drug trafficking,

<sup>1</sup>S.I.s No. 59 and 60 of 1991

<sup>2</sup>EU Regulations 1071, 1072 and 1073 of 2009, OJ Refs L300/51, L300/72 and L300/88 of 14.11.2009

- human trafficking,
  - certain money laundering, theft and fraud offences,
  - certain sexual offences,
  - firearms offences,
  - aiding and abetting the above.
- 2.3 The notification is to include certain details of the conviction, including the nature of the offence, the penalty or sentence, whether the offence was committed in the course of or connected with a road transport business. Failure to inform the Minister, or providing false information, will be an offence and also grounds for refusing an application or suspending or withdrawing a licence.
- 2.4 *Section 3 — Obligation to inform operator of certain convictions.* This section requires those holding certain specified positions within the operation (e.g. director, business partner etc.), and drivers with passenger transport operations to inform the operator of any of the specified convictions which apply to them, and makes it an offence to fail to do so.
- 2.5 *Section 4 — Minister to consider certain convictions.* This section provides that the convictions set out in *section 2* are to be considered by the Minister in relation to the good repute of an applicant or operator, i.e. one of the four criteria for a road transport operator licence (the others being financial standing, professional competence (of the transport manager), and establishment in the State). It restates the Minister's powers to decide if good repute is not satisfied, and if the application can be refused or the licence suspended or withdrawn.
- 2.6 *Section 5 — Appeal:* This Section enables the current provisions relating to appeals to the District Court against refusal, withdrawal or suspension of a passenger transport operator's licence to be maintained, once the current Regulations cease to have effect. It takes the opportunity to combine the appeal provisions for road haulage and passenger transport operator licences.
- 2.7 *Section 6 — Evidence of foreign convictions.* This sets out the nature of evidence of foreign convictions required in proceedings under the Act for an offence in *section 2* (i.e. failing to inform the Minister of, or giving false information in relation to, the specified convictions).
- 2.8 *Section 7 — Continued compliance — operator's licence.* For the avoidance of doubt, this restates and clarifies existing provisions so that the Minister may request and must be provided with any necessary information from an applicant or a licence holder, to satisfy himself or herself that the person meets or continues to meet the requirements for obtaining a licence. The Section also provides that the licence is the property of the Minister and must be returned on request where it is suspended or withdrawn.
- 2.9 *Section 8 — Change of details — operator's licence or application.* This is a new provision which requires an applicant or licenced operator to notify the Minister of any changes in details or circumstances which would cause him or her to no longer meet the requirements for a licence.

- 2.10 *Section 9 — Requirement to hold operator's licence.* This replaces existing provisions in relation to passenger transport which now require primary legislation, and also combines the similar road haulage provisions (already in primary legislation) and passenger transport provisions into one. It provides that (a) a person may not carry on the business of a road transport operator without a licence, (b) a licensed operator may not operate a vehicle that is not specified in the licence, (c) a person may not engage the services of a road transport operator for hire and reward unless the services are exempted or the operator is licensed, and (d) the types of carriage listed in the Schedule such as carriage of mail, carriage of refuse, funeral transport etc., are exempted from the requirement to have a licence. The Section also provides for offences and penalties.
- 2.11 *Section 10 — Prohibition on purporting to operate other than in accordance with operator's licence.* This Section prohibits a person purporting to operate other than in accordance with a licence, such as by advertising themselves as a licensed haulier when in fact they have no such licence.
- 2.12 *Section 11 — Obligation to carry copy of operator's licence etc. and display transport disc on vehicle.* This requires operators to ensure that all appropriate documentation is in place in their vehicles at all times, and empowers the Gardaí and transport officers to inspect such documents when required.
- 2.13 *Section 12 — Registers.* This Section restates and adds to the existing provisions in relation to a register under section 10 of the Road Transport Act 1986 (which it repeals). It repeats existing provisions in relation to a register of operator licences and certificates of competence (for transport managers), the register being open for inspection, and obtaining copies of entries. It adds a provision that the register may be published on the internet, and clarifies that the information provided may include vehicle details. The facility to publish on-line is currently not possible without primary legislation, and will facilitate better public access to information on licensed businesses.
- 2.14 *Section 13 — Fees.* This Section restates the provision to charge fees in relation to passenger transport operations. It also takes the opportunity to combine fees provisions for road haulage and transport operations, and to provide for the payment of fees for a wider range of documents, including duplicate or replacement documents, and for training, examinations and certificates of professional competence (for transport managers) which anybody is authorised to carry out on behalf of the Minister.
- 2.15 *Section 14 — False Declarations.* This Section extends the existing provisions in relation to an offence to provide false declarations, statements or information known to be false in relation to obtaining a licence, certificate etc., to include alterations to documents and forgeries.
- 2.16 *Section 15 — Prosecutions and body corporate offence.* This restates the existing standard provision in relation to offences by bodies corporate. The Section also provides that an offence under the Bill may be prosecuted by the Minister or by the Road Safety Authority.

- 2.17 *Section 16 — Transport officers.* This Section restates the existing provisions in relation to the powers of Transport Officers (of the Road Safety Authority), in order to include references to this Bill, the EU Regulations, and any road transport regulations made under the European Communities Act.
- 2.18 *Section 17 — Search Warrants.* This Section restates existing provisions in relation to powers of RSA Transport Officers in relation to road transport enforcement to search premises under warrant.
- 2.19 *Section 18 — Transport Manager.* This restates existing provisions in relation to requirements for Transport Managers (of licensed road transport operations).
- 2.20 *Section 19 — Amendment of section 2 of Road Traffic and Transport Act 2006.* This amends the 2006 Act to include “established in the State” as a criterion for obtaining a road transport operator’s licence, as required under the new EU Regulations (the others being good repute, financial standing and professional competence). It also takes the opportunity (i) to provide that an application form for a licence shall be in such form as the Minister decides (rather than prescribed in regulations which is currently the case for passenger transport operations), and (ii) to state, for clarity, that any conditions attached to a licence must be complied with, and that the Minister may refuse to grant a licence until the applicant has complied with regulations under section 6 of the 2006 Act (re details of the application process).
- 2.21 *Section 20 — Community Licence.* This amends a definition in the Road Transport Act 1999 to include reference to the EU Regulations.
- 2.22 *Section 21 — Notices and notifications.* This is a standard provision in relation to the service of notices and notifications under this Act (e.g. under *section 5 — Appeals*).
- 2.23 *Sections 22 and 23 — Expenses, Short Title and Construction.* These are standard provisions in relation to title and construction. It is proposed that the Bill will come into operation on signature.

Schedule — This lists types of carriage which are exempted from the requirement to hold a road transport operator’s licence.

### **3. Exchequer and Financial Implications**

- 3.1 There are no exchequer or financial implications associated with the proposals.

### **4. Regulatory Impact Analysis**

- 4.1 See the Appendix to this Memorandum.

## Road Transport Bill 2011

### Regulatory Impact Analysis

#### *Policy Context /Background*

The main purpose of the Road Transport Bill is to provide the necessary basis in primary legislation for a number of issues previously provided for in regulations made under the European Communities Acts to give effect to Directive 96/26 (on admission to the occupation of road transport operator and passenger transport operator) and other EU Regulations and Directives governing this area. This arises as a result of EU Regulations 1071, 1072 and 1073 of 2009, which, by replacing those Directives and Regulations, change the legislative base of national implementing regulations, and cause them to cease to have effect on 4 December 2011. Most of the provisions of the EU Regulations will have direct effect, some will be given effect by new national regulations under the European Communities Act, and a small number require primary legislation.

The Bill also provides for amendments to current good reputation provisions; it provides for on-line publication of details from the national register of licensed road transport operators in order to facilitate public access to information on licensed businesses; and it includes a number of minor technical issues to give effect to its provisions (e.g. definitions, delivery of notices, false declarations etc.).

#### *Statement of Objectives*

The overall objective is to maintain in place current provisions relating to the licensing of road transport operations (haulage and passenger transport) for hire and reward.

A sub-ordinate objective is to improve provisions in relation to registers of licensed operators by providing certain details on-line, to improve the basis for charging fees for licences and certificates, and to make some minor other amendments.

#### *Identification of Choices/options*

##### *Option 1 — Do Nothing*

This is included for benchmarking purposes, but is not a realistic option and has not been considered, as it would result in certain existing legislation (in national regulations) ceasing to have effect on 4 December 2011. The relevant provisions are in relation to (i) the licensing requirement for passenger transport operators; (ii) taking into account serious convictions such as murder, drug trafficking, etc.; (iii) current exemptions from the requirement to hold a road transport operator licence, such as carriage of mail or refuse, funeral transport etc.; (iv) the ability to charge fees for passenger transport operator licences, and (v) appeal provisions.

##### *Option 2 — Introduce Provisions which correspond to existing legislation and EU requirements only*

This is required as a minimum, to ensure that current aspects of the road transport operator licence regime remain in place and that EU requirements are given effect by the due date.

***Option 3 — Introduce All Proposed Provisions, i.e. Option 2 and the Proposed Additional Provisions:***

This is the preferred option as it makes a small number of amendments to existing provisions. These relate to:

- (i) requiring an applicant or a licence holder to notify the Minister of any changes in details or circumstances which would cause him or her to no longer meet the requirements for a licence (new provision);
- (ii) extending the “good repute” provisions to include serious convictions, in the interests of ensuring high standards and safety in the licensed road transport sector;
- (iii) improving accessibility to the register of licensed operators by allowing details to be provided on-line (on the Department’s website);
- (iv) clarifying existing provisions in relation to information which the Minister may seek in relation to applications for licences or compliance with existing licences, conditions which the Minister can apply to licences.

**Impacts**

***National Competitiveness***

By contributing to better standards in the sector and easier availability of information on licensed operators, the proposals in relation to good repute and the national register should contribute to the competitiveness of the sector.

***Socially excluded or vulnerable groups***

The proposals should have no impact on these groups.

***Environmental Impacts***

There are no environmental impacts associated with the proposals.

***Economic Markets/Consumers and Competition***

The proposals do not involve a policy change in the economic market and will not have any significant impact.

***The Rights of Citizens***

There will be no impact on the rights of citizens.

***Compliance Burden***

The impact of the measures should be minimal, as they primarily restate existing provisions. The measures in relation to good repute may have an impact on a very small number of potential applicants or existing licence holders to whom the relevant serious convictions provisions potentially apply.

***Consultation***

The Bill has not been the subject of consultation, as it primarily relates to existing provisions.

***Enforcement and Compliance***

An Garda Síochána have general enforcement powers in relation to road transport matters. The Road Safety Authority also has functions and certain powers in relation to enforcement of road transport matters. *Section 15* provides that summary offences under

the Bill may be prosecuted by the Minister or the Road Safety Authority.

***Review***

While there is no specific provision for review in the Bill, road transport legislation is the subject of on-going appraisal, informed by practical experience, best practice, and legal advice on legislation as specific issues arise.

*Department of Transport, Tourism and Sport,  
November, 2011.*