

Joint Oireachtas Committee on Transport

Pre-Legislative Scrutiny on

The Heads of the Parts of the Bill (Miscellaneous Provisions – Withdrawal of the United Kingdom from the European Union on 29 March 2019)

Opening Statement

Thank you, Chairman.

Today I am here in response to an invitation by the Committee to assist in the consideration of the General Scheme for Parts 9 and 10 of the Miscellaneous Provisions Bill on the Withdrawal of the United Kingdom from the EU. The General Scheme was approved by Government for publication and has been submitted to the Office of the Parliamentary Counsel in the Office of the Attorney General for formal drafting. As you know, this Bill is commonly known as the Brexit Omnibus Bill.

Strategic Context

Before proceeding to consider the Draft General Scheme here today, it is important to recall some of the core principles set out in the Protocol on Ireland and Northern Ireland, which is an integral part of the Withdrawal Agreement. As we all know, the Protocol is aimed to protect the Good Friday Agreement and the important gains of the peace process; by underpinning continuing North South Cooperation; by guaranteeing that there will be no hard border on the island of Ireland; and by protecting the all island economy. All this provides a critical backdrop to the discussion we will have here today regarding the Rail and Bus Parts of the Brexit Omnibus Bill.

These Bus and Rail Parts form part of our contingency planning arrangements. We are all aware of the strategic importance of keeping channels open and maintaining ease in flows and linkages between people, communities and businesses across the Border. Public Transport provision is an important component here, especially when we recall the symbolism of the Enterprise, a well-used Rail Service linking Dublin and Belfast on a daily basis. Bus services are also key in linking communities.

Parts 9 and 10 of the Omnibus Bill were developed to help ensure the continuation of the Enterprise and of cross border bus services under future scenarios. I am grateful for the support these Parts

have received thus far. I trust that we can continue to work together to advance the necessary legislation.

Changes in Legislation

These Parts set out the changes proposed in primary legislation to cover the future continuation of rail and bus services between Ireland and the UK in the event of a no-deal Brexit. I think the Committee will agree that the regulatory framework applying and the provision of rail and bus services operating in this country are of the highest standard. This will not change. However, post-Brexit, the UK's changed status from Member State to third country will mean that rail and bus services between Ireland and the UK will need to be managed under slightly different legislative arrangements.

You see, in the event of a no-deal Brexit, there is a need to consider the appropriate legislative basis to allow for rail and bus services between Ireland and the United Kingdom, including Northern Ireland, given the new context where the UK is no longer a Member State of the EU. As you are now aware, we need to make a small number of changes to legislation to facilitate the running of public transport services into and out of a 'third country'.

These proposed legislative challenges will provide for operation of cross-border rail services, principally the "Enterprise" service on the Dublin/Belfast line, and the operation of bus and coach services between Ireland and the United Kingdom, including Northern Ireland. My Department has had engagement with stakeholders including public transport operators, the Commissioner for Railway Regulation and the National Transport Authority, as well as with the European Commission. These discussions have served to underline the importance of consistently complying with EU law while exploring and searching for pragmatic solutions to address new scenarios. Some issues are being considered at an operational level and there may be practical answers emerging at different levels. While it is clear to me that providing necessary underpinning legislation for new scenarios is an important step, it has also become obvious that other stakeholders have roles to play in progressing this critical agenda. My Department will continue its engagement and oversight to help ensure that any necessary contingency plans are agreed and advanced.

I would now like to speak for a few moments on each of these Parts.

Bus and Coach Services

Part 10 addresses Bus and Coach Services. A significant number of cross-border bus and coach services support the needs of businesses and the surrounding communities. These will rely on provision being made for the future continuation of cross-border services once the UK leaves the European Union. I'm advised that - on a daily basis, Monday to Friday - there are over 300 cross-border bus journeys authorised by the National Transport Authority, or NTA. These services range from daily regular services to Local Link services. They are operated by both private and public companies. This figure does not take into account the occasional journeys which capture the 'once off' community-related bus and coach services. These would include instances like a GAA or rugby club near Clones, for example, which brings a team to participate in a Saturday morning blitz taking place across the Border. I think you will agree that a significant number of people are relying on us to ensure continuity of service and to continue to take steps to ensure the highest safety and quality of service standards are maintained.

For buses and coach services, legislative changes will be needed so as to allow for their future continuation between Ireland and the UK as a third country. After Brexit, Ireland will be allowed under EU law to enter into a bilateral agreement with the United Kingdom for bus and coach services, so long as no existing bus agreement exists between the UK and the EU. It is anticipated that Ireland would need such a bilateral to allow public passenger bus services to cross the Border. The Heads in Part 10 will lay out the rules so that a competent authority may regulate services to and from a third country. Those rules could then be considered as a backdrop once Ireland begins formal negotiations on a bus bilateral with the UK.

As you may know, the NTA is currently Ireland's competent authority for regulating bus services with other Member States. These Heads will make the NTA the competent authority to similarly regulate bus services between Ireland and third countries.

Similar to rail, the intention of this Part is to maintain the strong regulatory regime that already exists for the purposes of bus and coach services between Ireland and the United Kingdom. The Heads in Part 10 propose amendments to the *Public Transport Regulation Act, 2009*. Engagement with the Office of the Parliamentary Counsel regarding the Bus Heads has commenced. It may well be that further legislative amendments will be identified as needed. For example, it is possible that there will also be a need to reference the *Dublin Transport Authority Act, 2008* to expand the statutory functions of the NTA.

Rail Heads of the Bill

In relation to rail, the Heads proposed would provide in statute that a bilateral or cross border rail agreement may be entered into so as to facilitate continuity of the daily Enterprise rail service running from Ireland into a State that is no longer an EU Member State. Article 14 of EU Directive 34 of 2012 sets down provisions on the making of a cross border rail agreement between an EU Member State and a third country. The Rail Heads in the General Scheme provide powers for the Minister to make a bilateral agreement and also provide for the Minister to make Regulations.

I wish to take the opportunity to highlight for Committee members today, that discussions between the Department and the Parliamentary Counsel regarding these provisions are on-going. When engagement with the OPC regarding formal drafting of these Rail Provisions commenced, some matters came to light which required further consideration and legal advice. Analysis is ongoing at present with a view to establishing whether these rail provisions are best made in the form of primary legislation, or whether secondary legislation might be more appropriate. Given the high priority attached to all Brexit-related legislation, we are deeply engaged so as to determine this matter. Pending that, work is also taking place on the development of draft secondary legislation, to address the contingency that a Statutory Instrument may also be required to supplement the provisions in the current Rail Heads.

Our main goal here is to ensure that an appropriate safety regulatory regime can apply in the case of rail services into the North post-Brexit. I am committed to maintaining the same level of safety as currently applies to the now EU-regulated cross-border rail services from Dublin to Belfast.

As I said earlier, it is evident that the Enterprise rail line is recognised as a symbolic and strategic cross border corridor, a key link between North and South. Legislation is one of the important building blocks as we aim to ensure that this important rail service continues. However I can assure the Committee that a range of measures are under consideration in the context of wider contingency plans.

Concluding Remarks

The intention of these Parts in the Omnibus Bill is to provide robust primary legislation which, in the event of a disorderly exit, will help ensure the future continuation of rail and bus services between Ireland and Northern Ireland, as well as between Ireland and Great Britain.

As I have said, given the Brexit time-lines, my Department is giving clear priority to working closely with the Office of the Parliamentary Counsel to confirm a shared understanding and to advance the drafting of this General Scheme as well as any other legislative provisions which are deemed to be required, whether primary or secondary.

I thank the Chairman for inviting me to make this presentation and look forward to hearing the views of the Committee and to responding to any questions you may have.