



## 2011 CHAPTER 11

### PART 1

#### PUBLIC PASSENGER TRANSPORT SERVICES

##### *General*

##### **Provision of public passenger transport services**

1.—(1) The Department must secure the provision of public passenger transport services with due regard to accessibility, economy, efficiency, safety of operation and sustainability.

(2) For that purpose the Department may—

- (a) enter into agreements with any operator for the provision of public passenger transport services;
- (b) enter into agreements with any person for the provision of services which are ancillary to public passenger transport services;
- (c) issue permits to any operator for the provision of non-contracted services;
- (d) determine the general level and structure of fares for services provided under a service agreement or a service permit;
- (e) provide vehicles, ticketing machines and systems, and other facilities on such terms as the Department thinks fit; and
- (f) exploit any commercial opportunities which the Department considers appropriate.

(3) The Department must, subject to subsection (1) and Regulation (EC) No. 1370/2007, secure that most public passenger transport services continue to be provided by the Holding Company and its subsidiaries.

(4) In this Act—

“public passenger transport services” means services available to the general public for the carriage of passengers and their luggage by road or rail at separate fares;

“service agreement” means an agreement entered into under this section;

“service permit” means a permit issued under this section.

(5) In this section—

“the Holding Company” has the same meaning as in the 1967 Act;

“non-contracted services” means public passenger transport services for the provision of which there is no service agreement, excluding rail services;

“operator” means—

(a) the railway undertaking; or

(b) any person who holds an operator’s licence;

“operator’s licence” means—

(a) a licence under Part 2 of the 1967 Act; or

(b) an operator’s licence within the meaning of the Taxis Act (Northern Ireland) 2008 (c. 4);

“the railway undertaking” has the same meaning as in the 1967 Act.

(6) References in this Act to the provision of services under a service agreement include references to securing the provision of services.

(7) A person who, without reasonable excuse, provides an unregulated service shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(8) In subsection (7), “unregulated service”, in relation to a person, means a public passenger transport service other than an exempt service or a service for the provision of which—

(a) there is a service agreement with that person; or

(b) that person holds a service permit or is otherwise authorised to provide that service.

(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*

#### **Service agreements**

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

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*Status: This is the original version (as it was originally enacted).*

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(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.

### *Service permits*

#### **Interpretation**

3. In sections 4 to 17 “permit” means a service permit.

#### **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.

(3) Without prejudice to subsection (2), regulations under that subsection shall require the applicant to provide prescribed particulars as to—

- (a) the services to be provided under the permit; and
- (b) the vehicles to be used on those services.

(4) The Department may require an applicant to provide, in such form as the Department may require, such further information as the Department may consider necessary for dealing with the application.

(5) If a person fails, without reasonable excuse, to provide information when required to do so under subsection (4), the Department may decline to proceed further with the application and refuse to issue the permit.

#### **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.

(2) A person who knowingly fails to comply with subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) For the purposes of this section an application shall be taken to be disposed of—

- (a) in a case where the Department is required by virtue of regulations under section 45(2)(a) to cause a statement containing its decision on the application to be issued, on the date on which that statement is issued, and

- (b) in any other case, on the date on which the applicant receives notice from the Department of its decision on the application.

### **Matters to which Department must have regard**

6.—(1) In deciding whether to issue or refuse a permit or to attach conditions to a permit, the Department shall in particular have regard (where appropriate) to the following matters—

- (a) the suitability of the routes 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 grant of the permit would be expected to have on—
    - (i) other holders of permits;
    - (ii) persons with whom the Department has a service agreement;
  - (e) the need for ensuring fair competition among persons providing public passenger transport services;
  - (f) such other matters as may be prescribed.
- (2) The Department shall also 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;
    - (iv) a Northern Ireland department; or
    - (v) the Northern Ireland Tourist Board.
- (3) In subsection (2)(b)(i) “services” means—
- (a) public passenger transport services; or
  - (b) any other services to which section 33(1)(a) applies.

### **Duration**

7.—(1) A permit shall, unless previously revoked, continue in force for a period of three years from the date on which it is expressed to take effect or such other period as may be specified in the permit.

(2) Nothing in this section shall prevent the attachment to a permit of a condition that the service shall be limited to one or more than one particular period or occasion.

(3) If the holder of a permit requests the Department to terminate it at any time, the Department shall comply with the request unless it is considering giving a direction in respect of the permit under section 10.

(4) If on the date of the expiration of a permit an application is before the Department for the grant of a new permit in substitution for an existing permit held by the applicant, the existing permit shall continue in force until the application is disposed of.

(5) If on the date of the expiration of a permit the permit is, by virtue of regulations under section 14(2), held by a person other than the person to whom the permit was issued, the permit shall continue in force until the application by that other person is disposed of in accordance with those regulations.

(6) A permit held by an individual terminates if—

(a) the individual dies, or

(b) the individual becomes a patient within the meaning of Article 2(2) of the [Mental Health \(Northern Ireland\) Order 1986 \(NI 4\)](#).

### **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.

### **Conditions**

**9.—**(1) On issuing a permit or on varying a permit under section 8, the Department may attach to the permit such conditions as it thinks fit.

(2) On varying a permit under section 8, the Department may vary or remove any condition attached to the permit under this section.

(3) Any person who contravenes any condition attached under this section to a permit of which that person is the holder shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(4) If any person acting with the knowledge or consent of the holder of a permit contravenes any condition attached to it under this section, the holder of the permit shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

### **Revocation, suspension and curtailment of permits**

**10.—**(1) Subject to the following provisions of this section and the provisions of section 12, the Department may direct that a permit be revoked, suspended or curtailed (within the meaning given in subsection (6)) for any reasonable cause including any of the following—

- (a) that the permit-holder has contravened any condition attached to the permit;
- (b) that during the 3 years ending with the date on which the direction is given there has occurred a prescribed event affecting information required to be given to the Department under section 4 or 5;
- (c) that the permit-holder made, or procured to be made, for the purposes of the permit-holder's application for the permit, a statement of fact that, whether to the permit-holder's knowledge or not, was false, or a statement of expectation that has not been fulfilled;
- (d) that the permit-holder, being an individual, has been adjudged bankrupt or, being a company, has gone into liquidation, other than voluntary liquidation for the purposes of reconstruction;
- (e) that since the permit was issued there has been a material change in any of the circumstances of the permit-holder that were relevant to the issue or variation of the permit;
- (f) that the permit is liable to revocation, suspension or curtailment by virtue of a direction given under section 11(3);
- (g) that an operator's licence (within the meaning of section 1) held by the permit-holder has been revoked or suspended or has expired;
- (h) that the permit-holder has been convicted of an offence under the National Minimum Wage Act 1998 (c. 39);
- (i) that the Department considers that it is in the public interest for any service specified in the permit to be provided under a service agreement.

(2) Where the Department has power to give a direction in respect of a permit under subsection (1) the Department also has power to direct that a condition be attached to the permit.

(3) Where the existence of any of the grounds mentioned in subsection (1) (except paragraph (i)) is brought to the notice of the Department, the Department shall consider whether or not to give a direction under this section in respect of that permit.

(4) Where the Department has given a direction suspending or curtailing a permit under subsection (1) it may—

- (a) cancel the direction;
- (b) with the consent of the permit-holder, vary the direction.

(5) Where a permit is suspended under this section, the permit remains in force during the time of its suspension subject to the limitation that no services are authorised to be provided under it.

(6) In this Act references to directing that a permit be curtailed are references to directing (with effect for the remainder of the duration of the permit or for any shorter period) either or both of the following—

- (a) that one or more of the vehicles specified in the permit be removed from it; and
- (b) that one or more of the services specified in the permit be removed from it.

### **Disqualification**

**11.—**(1) Where, under section 10(1), the Department directs that a permit be revoked, the Department may order the person who was the holder of the permit to be disqualified (either indefinitely or for such period as the Department thinks fit) from holding or obtaining a permit; and so long as the disqualification is in force, notwithstanding anything in section 6, no permit may be issued to that person.

(2) If a person applies for or obtains a permit while disqualified under subsection (1)—

- (a) the person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale, and
- (b) any permit issued on the application, or (as the case may be) the permit obtained by that person, shall be void.

(3) Where the Department makes an order under subsection (1) in respect of any person, the Department may direct that if that person, at any time or during such period as the Department may specify—

- (a) is a director of, or holds a controlling interest in—
  - (i) a company which holds a permit of the kind to which the order in question applies, or
  - (ii) a company of which such a company is a subsidiary, or
- (b) provides any service in partnership with a person who holds such a permit, that permit of that company or, (as the case may be), of that person, shall be liable to revocation, suspension or curtailment under section 10.

(4) The powers conferred by subsections (1) and (3) in relation to the person who was the holder of a permit shall be exercisable also—

(a) where that person was a company, in relation to any director of that company, and

(b) where that person provided any service under the permit in partnership with other persons, in relation to any of those other persons;

and any reference in this section or in section 10 or 12 to subsection (1) or (3) includes a reference to that subsection as it applies by virtue of this subsection.

(5) Where the Department makes any order disqualifying a person under subsection (1), it may at any time—

(a) cancel that order together with any direction that was given under subsection (3) when the order was made;

(b) cancel any such direction; or

(c) with the consent of the person disqualified, vary the order or any such direction (or both the order and any such direction).

(6) Where a permit is suspended under this section, the permit remains in force during the time of its suspension subject to the limitation that no services are authorised to be provided under it.

(7) For the purposes of this section, a person holds a controlling interest in a company if the person is the beneficial owner of more than half its equity share capital (as defined in section 548 of the Companies Act 2006 (c. 46)).

### **Revocation, disqualification, etc.: supplementary provisions**

**12.—**(1) This subsection applies where—

(a) an application is made for a new permit in respect of a service for which there is an existing permit;

(b) the applicant is the holder of the existing permit; and

(c) the Department considers that it is in the public interest for that service to be provided under a service agreement.

(2) Where subsection (1) applies, the Department shall not refuse the application without first giving the applicant notice that it is considering refusing the application for the reason mentioned in paragraph (c) of that subsection and holding an inquiry if the applicant requests the Department to do so.

(3) The Department shall not—

(a) give a direction under section 10(1) or (2) in respect of any permit, or

(b) make an order or give a direction under section 11(1) or (3) in respect of any person,

without first giving the holder of the permit or (as the case may be) the person concerned notice that it is considering doing so and holding an inquiry if the holder of the permit or (as the case may be) the person concerned requests the Department to do so.



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(4) The Department may direct that any direction or order given or made by it under—

- (a) section 10(1) or (2), or
- (b) section 11(1) or (3),

shall not take effect until the expiry of the time within which an appeal may be made to the Upper Tribunal against the direction or order and, if such an appeal is made, until the appeal has been disposed of.

(5) If the Department refuses to give a direction under subsection (4) the holder of the permit or (as the case may be) the person in respect of whom the direction or order was given or made may apply to the Upper Tribunal for such a direction.

(6) An order under section 11(1) is not a statutory rule for the purpose of the [Statutory Rules \(Northern Ireland\) Order 1979 \(NI 12\)](#).

### *Miscellaneous*

#### **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.

(2) The Department may decline to proceed with—

- (a) any application for a permit, or
- (b) the issue of any permit,

until any fee in respect of the application or issue (as the case may be) is duly paid.

(3) If, in the case of any application for a permit, any fee in respect of the application or the issue of the permit is not duly paid by the prescribed time—

- (a) the application shall be treated as withdrawn at that time, and
- (b) any decision made or direction given on the application, and any permit issued or variation effected in pursuance of such a direction, ceases to have effect or terminates at that time.

(4) The Department may, if it considers there to be exceptional circumstances that justify its doing so in any case where subsection (3) has applied, direct that as from the time mentioned in that subsection its effect in that case be disregarded.

(5) Where such a direction is given in respect of a permit, the Department may vary any such condition as it applies in relation to events occurring before the direction comes into force.

(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.

(4) Regulations may make provision enabling the Department to direct, for the purpose of giving effect to or supplementing a direction given by it by virtue of subsection (2) or (3), that this Act is to apply with specified modifications in relation to the person who is to be treated under the direction as the holder of a permit.

(5) In this section “specified”, in relation to a direction, means specified—

- (a) in the regulations under which the direction was given; or
- (b) in the direction in accordance with those regulations.

#### **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.

*Forgery, false statements, etc.*

**Forgery, etc.**

**16.—**(1) A person who, with intent to deceive—

- (a) forges, alters or uses a permit;
- (b) lends to, or allows to be used by, any other person a permit; or
- (c) makes or has in his or her possession any document so closely resembling a permit as to be calculated to deceive,

shall be guilty of an offence.

(2) A person guilty of an offence under subsection (1) shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(3) In subsection (1) “forges” means makes a false document in order that it may be used as genuine.

**False statements**

**17.—**(1) A person who knowingly or recklessly makes, or causes to be made a statement or furnishes information which is false or misleading in any material particular for the purpose of—

- (a) obtaining the issue of a permit;
- (b) obtaining the variation of a permit;
- (c) preventing the issue or variation of a permit;
- (d) procuring or preventing the imposition of a condition in relation to a permit,

shall be guilty of an offence.

(2) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.