

Translink
22 Great Victoria Street
Belfast
BT2 7LX

29th September 2017

Elizabeth McLeod
Office of Rail and Road
Tara House
46 Bath Street
2nd Floor (west)
Glasgow
G2 1HG

Dear Sir,

Re: Consultation Response

Consultation on draft guidance for The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016 and Economic Enforcement Policy and Penalties Statement

The Translink Group welcomes the opportunity to respond to ORR's consultation on draft guidance for the NI Regulations and Economic Enforcement Policy and Penalties Statement.

The Translink Group consists of a public corporation, the Northern Ireland Transport Holding Company (NITHC) and seven private limited subsidiary companies (together referred to as "the Group" or "Translink"). Each of the subsidiary companies has the legal status of separate private limited company within the overall Translink group of companies. Translink is the brand name which describes the combined operations of the main subsidiary companies which operate scheduled bus and rail services as part of the integrated transport offering in Northern Ireland.

In order to give effect to EC Directive 2012/34/EU in Northern Ireland, *the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016* ("the NI Regulations") were brought into force on 23 January 2017 appointing ORR as the regulatory body for the railway sector in Northern Ireland, taking over that role from the Department of Infrastructure, Northern Ireland.

According to the Transport Act (NI) 1967 it shall be the duty of the subsidiary of the Holding Company incorporated under the name of the Northern Ireland Railways Company Limited (NIR) to provide, or secure the provision of, railway services in Northern Ireland with due regard to efficiency, economy and safety of operation. That said, in order to comply with the First Railway Package the role and responsibilities of NIR were split to accommodate the separate functions of infrastructure manager and railway undertaking.

www.translink.co.uk • for timetable enquiries call 028 90 66 66 30

The Northern Ireland network is a small, regional rail network operating within the context of an integrated public transport system, markedly different to arrangements in GB. As a consequence, there are marked differences between the Great Britain Regulations and the NI Regulations and this means that the regulatory function performed by ORR in NI will be different to that which ORR exercises in Great Britain. With that in mind, Translink welcomes and endorses the decision by ORR to produce separate guidance to summarise and explain the provisions of the NI Regulations.

Translink notes that ORR has not elected to produce a separate enforcement policy to reflect its new powers under the NI Regulations, but rather subsume NI within its existing enforcement policy document. Translink would ask ORR to give consideration to an appendix to the enforcement policy and penalties statement for NI in light of the differing enforcement powers and controls exercised by ORR in NI and GB. We shall elaborate on this in the responses detailed below.

Consultation questions- Draft guidance for the NI Regulations

Q1. Does the guidance help you understand the impact of the NI Regulations?

In general terms we consider that the guidance is a well-structured, constructive aid which assists Translink in understanding the impact of the NI Regulations. There are however a few areas where we consider clarity is required. Specifically, paragraph 1.30 provides that the NI Regulations *"would not apply to a railway undertaking whose activity is limited to the provision of solely urban, suburban or regional services on local and regional stand-alone networks"*. This paragraph continues that *"at present, we consider that no railway undertaking falls within this provision in NI"*. Latterly it is stated that *"in the event that there was such a railway undertaking in NI... the provisions on management independence, separation of accounts and business plans would still apply"*. We are somewhat confused as to the intent and meaning of this paragraph as it would, upon our reading simply communicate that the NI Regulations apply to railway undertakings operating in NI in any event. We would very be keen to understand the intent of this paragraph.

In the same vein, paragraph 1.31 provides that certain requirements do not apply to *"local and regional stand-alone networks for passenger services on railway infrastructure"*. Translink seeks clarity regarding this aspect of the guidelines.

Q2. Is it clear what your rights and obligations are?

Notwithstanding the above where clarification is sought, we consider that on the whole, the guidelines are clear as to our rights and obligations.

Q3. Is it clear how and when to appeal to ORR?

Yes, the guidance is clear. The clarity provided is welcomed.

Q4. How can we improve the guidance? What areas need to be developed, if any?

As articulated above, there are a few areas we would require some clarification on. A few minor revisions may therefore be required to ensure that the guidelines effectively communicate and explain the scope, rights and responsibilities detailed in the NI Regulations.

We would welcome the opportunity to separately discuss the particulars of the issues identified.

Consultation- Economic Enforcement Policy and Penalties Statement

Q5. Do you support the general revisions proposed to ORR's enforcement policy to ensure it covers all relevant operators?

Translink supports revisions to the enforcement policy to ensure that all relevant operators are captured by same. However, as stated above, Translink considers that an appendix to the enforcement policy document detailing application to NI would be apt in light of the differing enforcement powers and controls exercised by ORR in NI and GB. Translink consider that revisions to the established GB enforcement policy to add/include references to NI and the NI Regulations, as appropriate creates confusion as regards the areas of applicability. For example, paragraph 15 states that "*chapters 1 to 5 of this policy are applicable to GB licence holders*". This would seem to imply that the aforementioned chapters are not applicable to NI licence holders, however it is unlikely this is the intention.

Translink are also uncertain as to the benefits of specifically naming the corporate entities that ORR consider as falling within each definition of "relevant operators". In that context, Translink would like to draw your attention to some of the nuances of the NI arrangement which have occasioned some inaccuracies in your allocation of roles when defining the categories of "relevant operators". In paragraph 45 "Northern Ireland Railways (NIR) or Enterprise Northern Ireland Railways Operations Limited" are designated as falling within the definition of "railway undertaking". NIR was founded under the Transport Act (NI) 1967. It has a statutory mandate to provide, or secure the provision of, railway services in Northern Ireland, however in order to comply with the First Railway Package requirement of separation of railway infrastructure management from operation of the rail services, rail services are delivered through NIR Operations Limited and infrastructure management through NIR Networks Limited.

By extension, we would advise that there is no such entity as Enterprise Northern Ireland Railways Operations Limited. Whilst there is a Republic of Ireland, Northern Ireland rail service, it is a joint/shared service operated respectively by Iarnrod Eireann and NIR.

Lastly, we note it is stated that *in practice NIR Networks Ltd falls within the definition of "service provider"*, however conversely in the draft guidance document it is stated "*we would consider NIR Operations Limited... to be a "service provider" for the purposes of the NI Regulations*".

Given the complexity of the arrangements in Northern Ireland ORR might wish to avoid specific designation of the entities in its narrative relating to "relevant operators".

Translink would be keen to discuss the particulars of the above in more detail, should you wish to do so.

Q6. Does ORR's enforcement policy help you understand the impact of the NI Regulations on our enforcement function?

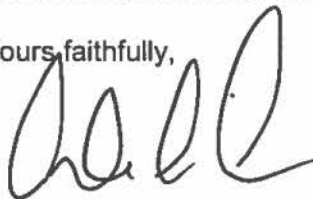
Translink understands the rationale for ORR opting for a UK enforcement policy; however it finds revisions to the enforcement policy to reference NI and the NI A&M Regulations somewhat difficult to understand in terms of the applicability or non-applicability of various sections of the policy to NIR and the extent of the enforcement regime to which relevant operators in NI will be subject. As NIR are not licence holders we assume that any sections of the policy specific to licence holders and licence obligations do not apply to NIR however, there is some ambiguity as, for example in the "proportionality" section of the policy document the exercise of proportionality is referred to as a principle of enforcement with specific reference to enforcing licence obligations and licence conditions. Can you please confirm that the principle of proportionality will apply to NIR, who is not a licence holder?

Q7. Do you have any general comments on how ORR can improve the format and style of its enforcement policy document to make it a more practical reference document?

The NI A&M Regulations differ from the GB Regulations and as such the enforcement policy document has the difficult task of capturing and articulating the nuances of the two sets of regulations. In its current format it is difficult to understand which aspects of the policy document apply to NI and which don't. With that in mind, it is suggested that the document be divided such that there is an NI specific section and GB specific section where ORR's powers of enforcement for each region are articulated, supplemented by a separate narrative covering ORR's enforcement approach in a more generalised manner. Alternatively, ORR might consider adopting the same model as was adopted for the guidance document, i.e. a NI specific document where ORR's distinct NI enforcement powers can be communicated.

Thank-you for the opportunity to respond to this consultation and we hope you find our comments to be both helpful and constructive. We would be keen to discuss these documents with you in more detail and would propose a conference call regarding same. If you think this would be useful, please do not hesitate to contact the undersigned.

Yours faithfully,



Clare McLaughlin
Acting General Counsel & Company Secretary
Translink Group