EXPLANATORY MEMORANDUM TO

THE BUS OPERATOR (CORONAVIRUS, FINANCIAL ASSISTANCE) REGULATIONS (NORTHERN IRELAND) 2021

S.R. 2021 No. 62

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department for Infrastructure to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made using sections 1(2), 3 and 4 of the Financial Assistance Act (Northern Ireland) 2009 ("the 2009 Act") and is subject to the negative resolution procedure.

1.3. The Department for Infrastructure has been designated as a relevant Department under section 1(3)(a) of the 2009 Act and in accordance with that Act, this Rule is made with the approval of the Executive Office.

2. Purpose

2.1. Following their determination of 3rd November 2020, the First Minister and deputy First Minister, again acting jointly, made a further determination on 23rd February 2021 that exceptional circumstances exist for licensed bus and coach operators as a consequence of the outbreak of Coronavirus. These exceptional circumstances include financial hardship arising from the loss of business. The determination states that it is desirable to provide financial assistance to mitigate the effect of the outbreak on licensed bus and coach operators.

2.2. Accordingly, these Regulations provide for the setting up of a further Scheme under which the Department for Infrastructure may make financial assistance payments to eligible licensed bus and coach operators who have suffered because of the exceptional circumstances identified.

2.3. The Scheme, to be known as the "Bus Operator Financial Assistance Scheme 2021" provides for the Department to invite applications for financial assistance funding, sets out the eligibility criteria that will be used to assess grant funding applications and covers how payments will be determined and administered. It also provides for the payment of a supplementary financial assistance amount to those whose payments were capped by the £100,000 maximum applied under the Bus Operator Financial Assistance Scheme 2020 ("the 2020 Scheme"). How a decision made by the Department can be reviewed is also covered, as is the right of the Department to recover payments that are subsequently found to have been made contrary to the Scheme's provisions. In addition, the Scheme also provides for the obtaining of information from other public bodies for use in determining eligibility and for the sharing of information in relation to eligibility with other public bodies.

3. Background

3.1. The 2009 Act enables the First Minister and deputy First Minister, in recognition of exceptional circumstances, to designate a department to make schemes which provide financial assistance. The First Minister and deputy First Minister, following engagement with the Infrastructure Minister, determined on 3rd November 2020 that exceptional circumstances, including financial hardship arising from the loss of business, do exist for licensed bus operators as a consequence of the outbreak of Coronavirus. They therefore designated the Department for Infrastructure as the relevant department (under section 1(1) and (3) of the Financial Assistance Act (Northern Ireland) 2009) to make the required financial assistance scheme.

3.2. The Department subsequently launched the 2020 Scheme via the Bus Operator (Coronavirus, Financial Assistance) Regulations (Northern Ireland) 2020 (S.R. 2020 No. 282) which came into operation on 27th November 2020. This initial Scheme covered an eligible period of 1st April 2020 to 30th September 2020.

3.3. Given the ongoing nature of the Coronavirus pandemic and the associated restrictions, the Infrastructure Minister sought a further determination under the 2009 Act. This resulted in the First Minister and deputy First Minister, acting jointly, making a further determination on 23rd February 2021 that exceptional circumstances exist for licensed bus and coach operators as a consequence of the outbreak of Coronavirus, including financial hardship arising from the loss of business. The determination again states that it is desirable to provide financial assistance to mitigate the effect of the outbreak on licensed bus and coach operators and designates the Department for Infrastructure as the relevant department to make the required financial assistance scheme.

3.4. Accordingly, these Regulations make provision for the "Bus Operator Financial Assistance Scheme 2021" ("the 2021 Scheme"). The 2021 Scheme again recognises that the private bus and coach sector operators continue to have to cope with having significant monthly standstill overheads and excessive ongoing financial commitments. As operators have had no option but to use their reserves to keep their businesses open, the Scheme is based around the reserves that licensed bus and coach operators are statutorily required to hold to satisfy the requirement of 'financial standing'. The financial standing requirements for bus operators that apply to the 2021 Scheme are £8,000 for the first vehicle and £4,450 for each additional vehicle that appears on their operator's licence. The Scheme is therefore designed to provide each eligible operator with a contribution to their overhead costs.

3.5. To be eligible for the 2021 Scheme, a licensed bus or coach operator must satisfy the Department that for the duration of the 1st October 2020 to 31st March 2021 period ("the eligible period"), that they:

- have suffered a significant adverse impact on their income of at least 40% arising from the loss of business;

- had as the main purpose of their business the carriage of passengers and their luggage for reward by road; and
- held a bus operator's licence.

3.6. The Northern Ireland Transport Holding Company, the Education Authority or any business that has received or will receive funding from the Department during the current financial year under the Transport Act (Northern Ireland) 2011 are not eligible under this Scheme.

3.7. Once eligibility has been established a licenced bus or coach operator will receive a financial assistance payment which will be the lower of:

- the amount equivalent to their financial standing requirements, calculated in accordance with the number of their eligible vehicles; or
- the amount by which their eligible expenditure exceeds their eligible income for the eligible period.

The £100k maximum amount payable cap that applied to the 2020 Scheme has been removed.

3.8. Financial assistance payments will be subject to operators providing evidence of the impact that the Coronavirus has had on their financial position and that their overheads have not been covered by income. Income totals for the corresponding periods in 2018/19 and 2019/20 will be used where possible to determine the amount by which income has fallen in the eligible period.

3.9. In addition to any financial assistance payment related to the eligible period under the 2021 Scheme, a supplementary financial assistance payment is available to the small number of operators whose payments were capped by the £100k maximum that applied under the 2020 Scheme. The amount of the supplementary financial assistance payment to be paid to those operators that request it, will be the amount in excess of £100k that would otherwise have been paid had their 2020 Scheme financial assistance payment not been restricted by the £100k cap.

3.10. The overall cost of the Scheme is anticipated to be approximately £3.5m to £4m subject to the eligibility of each licensed bus operator.

4. Consultation

4.1. A formal consultation exercise was not carried out in relation to these Regulations given the need to take urgent action to mitigate the effect of the financial hardship suffered by licensed bus and coach operators due to the Coronavirus outbreak. The Department has engaged with sector representatives and considered their views in relation to the development of the 2021 Scheme. However, in order for it to remain value for money, not all of the suggestions made by sector representatives could be reflected in the Scheme.

5. Equality Impact

5.1. Consideration was given to the compliance of these Regulations with section 75 of the Northern Ireland Act 1998. No differential impact was identified for any group and a full equality impact assessment was considered unnecessary.

6. Regulatory Impact

6.1. A Regulatory Impact Assessment has not been completed given the need to take urgent action to mitigate the effect of the financial hardship suffered by licensed bus and coach operators due to the Coronavirus outbreak. These Regulations will have a positive impact through the provision of financial assistance to licensed bus and coach operators in recognition of the exceptional circumstances that exist.

7. Financial Implications

7.1. It is anticipated that the total cost of the Bus Operator Financial Assistance Scheme 2021 will be approximately £3.5m to £4m, subject to eligibility.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Department has considered the matter of Convention Rights and Community Law and is satisfied that this Statutory Rule is compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. None.

10. Parity or replicatory measure

10.1 There is no equivalent GB Scheme.

11. Additional information

11.1. None.