EXPLANATORY MEMORANDUM TO

THE BUS OPERATOR (CORONAVIRUS, FINANCIAL ASSISTANCE) REGULATIONS (NORTHERN IRELAND) 2022

S.R. 2022 No. 44

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. The First Minister and deputy First Minister, acting jointly, made a determination on 24th January 2022 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 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 during the eligible period, i.e. 1st April 2021 to 31st January 2022.

2.3. The Scheme, to be known as the "Bus Operator Financial Assistance Scheme 2022" ("the 2022 Scheme"), 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. 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, for the sharing of information in relation to eligibility with other public bodies and for the use of information provided by applicants under previous Schemes.

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 24th January 2022 that exceptional circumstances, including financial hardship arising from the loss of business, do exist for licensed bus and coach 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. Given the ongoing nature of the Coronavirus pandemic and the associated restrictions, this is the third time that the Infrastructure Minister has sought and received a determination and designation under the 2009 Act in relation to finanical assistance for licenced bus and coach operators. The previous two determinations resulted in the Bus Operator Financial Assistance Scheme 2020(1) and the Bus Operator Financial Assistance Scheme 2021(2).

3.3. Accordingly, these Regulations make provision for the "Bus Operator Financial Assistance Scheme 2022" ("the 2022 Scheme"). The 2022 Scheme recognises that some private bus and coach sector operators continue to have to cope with having significant monthly standstill overheads and excessive ongoing financial commitments. 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. Eligible income totals for the corresponding periods in 2018/19 and 2019/20 will be used to determine the amount by which income has fallen in the eligible period.

3.4. To be eligible for the 2022 Scheme, a licensed bus or coach operator must satisfy the Department that for the duration of the eligible period (1st April 2021 to 31st January 2022), 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.

In addition, at the point of approval to make a financial assistance payment, applicants must still hold a bus operator's licence and have as the main purpose of their business the carriage of passengers and their luggage for reward by road.

(1) S.R. 2020 No. 282
(2) S.R. 2021 No. 62

3.5. 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.

3.6. As operators have had no option but to use their reserves to keep their businesses open, financial assistance under this Scheme is again based on the reserves that licensed bus and coach operators are required to hold in satisfying the requirement of 'financial standing'. In the first two schemes this was £8,000 for the first vehicle and £4,450 for each additional vehicle. However as this scheme will cover a period of 10 months (not 6 months as in the first two schemes) the payment will be on a pro-rata basis i.e. £13,350 for the first vehicle and £7,400 for each additional vehicle subject to an applicants eligible expenditure not exceeding their eligible income.

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 total of an amount of £13,350, for the first eligible vehicle, plus an amount of £7,400 for each additional eligible vehicle; or
- the amount by which their eligible expenditure exceeds their eligible income for the eligible period.

3.8. 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 2022 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 2022 will be approximately £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.