



An Roinn Iompair,  
Turasóireachta agus Spóirt  
Department of Transport,  
Tourism and Sport

# Sustainable Mobility Policy Review

Background Paper 7

Regulation of Public Transport

## Contents

Context and questions for consideration .....	1
1 Structure of the paper .....	2
2 Institutional arrangements .....	4
3 State-funded bus and rail services.....	10
4 Commercial bus services .....	21
5 Licensing regime for the large public service vehicle (LPSV) sector .....	23
6 Small public service vehicle (SPSV) sector .....	24
7 International services and Brexit.....	28
8 Passenger rights.....	30
9 Rail regulation .....	32
10 Emerging regulatory issues .....	36
Acronyms.....	39
References .....	40

## List of Figures

Figure 2.1:	Public transport stakeholders .....	9
Figure 3.1	2018 passenger journeys.....	11
Figure 3.2	Bus Éireann PSO passenger journeys 2013-2018.....	14
Figure 3.3	Dublin Bus PSO passenger journeys 2013-2018 .....	15
Figure 3.4	Iarnród Éireann PSO passenger journeys 2013-2018 .....	16
Figure 3.5	Luas passenger journeys 2013-2018 .....	17
Figure 3.6	Local Link passenger journeys 2013-2018 .....	19
Figure 4.1:	Commercial bus passenger numbers 2013-2018.....	21

## List of Tables

Table 9.1:	IMMAC 2014-2019 annual spend .....	35
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## Context and questions for consideration

This background paper is one of a number of papers that have been prepared by the Department of Transport, Tourism and Sport to inform a public consultation on Ireland's sustainable mobility policy. The review work arises from a commitment in the *Programme for a Partnership Government*<sup>1</sup> to review public transport policy "to ensure services are sustainable into the future and are meeting the needs of a modern economy". The public consultation is designed to give stakeholders, interested parties and the general public the opportunity to reflect on the information and analysis in the papers, to share their views, and to contribute to the development of a Sustainable Mobility Policy Statement.

Sustainable Mobility can be described as linking people and places in a sustainable way by supporting:

- comfortable and affordable journeys to and from work, home, school, college, shops and leisure;
- travelling by cleaner and greener transport; and
- a shift away from the private car to greater use of active travel (walking and cycling) and public transport (e.g. bus, rail, tram).

All elements of sustainable mobility (public transport, cycling, walking) are being considered in the policy review. Each background paper includes a number of questions to generate ideas about the extent to which the present approach to sustainable mobility is working well, the areas which are not, and future priorities.

This background paper sets out the key regulatory arrangements for public transport in Ireland and poses the questions below on this issue. Participants in the public consultation are not confined to answering the suggested questions below and are invited to offer any other contribution they wish to make. It is recommended that submissions are confined to circa 2,500 words or less.

- 7.1 Are there further opportunities to improve the institutional arrangements for the regulation of the public transport sector?
- 7.2 Will the legislative framework for the public transport sector meet future needs?
- 7.3 How can public transport stakeholders – users, staff, providers and regulators – work more collaboratively in the delivery of public transport in Ireland including ensuring a voice for the passenger?
- 7.4 Are there international best practice examples around the regulation of public transport that could be applied in an Irish context?

# 1 Structure of the paper

This background paper describes the present key regulatory arrangements for public transport in Ireland. Public transport is regulated to optimise conditions for the transport of passengers from the perspective of service provision, integration, safety, consumer pricing, passenger rights, accessibility and choice. Public transport services in Ireland are generally regulated at national level, rather than locally. This is undertaken within the context of an extensive body of relevant European Union (EU) legislation that govern rail and bus markets in particular.

In recent years, there have been some significant changes to how public transport is organised and delivered. A key ambition of these changes has been to ensure that the needs of the passenger are central to the delivery of public transport services.

In many respects, the national regulatory framework for public transport reflects EU law that applies across all Member States and, like other Member States, Ireland now has independent transport-focused statutory authorities responsible for matters such as allocation of funding, licensing (viz. the National Transport Authority) and oversight of safety (viz. the Commission for Railway Regulation).

The background paper is structured as follows:

**Section 2: Institutional arrangements** sets out the roles of the institutions within the public transport area in Ireland. This includes the Minister and the Department of Transport, Tourism and Sport; the State bodies involved with transport; the State-owned commercial public transport companies; local authorities; and the private firms and community bodies involved in public transport provision throughout the country.

**Section 3: State-funded bus and rail services** sets out the position in relation to the regulation of Public Service Obligation (PSO) public transport services in Ireland. The Section outlines how the regulation of PSO bus and rail services is governed by EU legislation which provides a framework for how EU Member States award contracts and pay compensation (i.e. subsidy) for the provision of PSO services. It also describes the National Transport Authority's (NTA) statutory responsibility for regulating and contracting PSO bus and rail services and allocating PSO funding to the operators.

**Section 4: Commercial bus services** sets out the NTA's statutory responsibility for the licensing of public bus passenger services which are delivered by private operators and which do not receive any PSO subsidy.

**Section 5: Licensing regime for the Large Public Service (LPSV) sector** identifies the stakeholders and the legislation underpinning the licensing framework for the LPSV sector (vehicles with capacity to carry more than eight passengers for reward).

- Section 6: Small public service vehicle sector** describes the regulatory framework which applies to the vehicles, drivers and services provided by the SPSV sector (taxis, hackneys and limousines) which operate on a commercial basis without operational subvention.
- Section 7: International services and Brexit** sets out the implications of the withdrawal of the United Kingdom (UK) from the EU for a segment of bus and rail services.
- Section 8: Passenger rights** outlines the measures under EU legislation which protect the rights of bus, coach and rail passengers and the NTA's role as Ireland's National Enforcement Body.
- Section 9: Rail regulation** describes the licensing and regulatory framework in place for rail which is governed by both EU and national frameworks. It outlines the role of the Commission for Railway Regulation in this area including in the area of rail safety. The Section also looks at the contractual arrangements for the maintenance and renewal of the heavy rail network under the Infrastructure Manager Multi-Annual Contract (IMMAC) between the Minister for Transport, Tourism and Sport and Iarnród Éireann.
- Section 10: Emerging regulatory issues** outlines a number of emerging issues in the public transport area which may require regulation. This includes issues such as Mobility as a Service (MaaS) and emerging Intelligent Transport Systems.

## 2 Institutional arrangements

### 2.1 Introduction

There are many stakeholders in the public transport sector in Ireland and over the last decade or so, there have been several changes in the way that public transport is organised and governed. The institutions within the public transport area include:

- Minister & Department of Transport Tourism and Sport
- National Transport Authority
- Transport Infrastructure Ireland
- Commission for Railway Regulation
- Railway Accident Investigation Unit
- CIÉ and subsidiaries (Dublin Bus, Bus Éireann, Iarnród Éireann)
- private light rail operator (Transdev)
- private operators (both commercial and subsidised services – large public service vehicles and small public service vehicles)
- Local authorities
- Transport Coordination Units (Local Link)

### 2.2 Department of Transport, Tourism and Sport

The Minister and the Department of Transport, Tourism and Sport (DTTAS) have responsibility in relation to the following three key areas:

- Policy and statutory frameworks;
- Aggregate funding; and
- Corporate governance of the State transport bodies and a shareholder role for the State-owned commercial public transport companies.

In fulfilling these responsibilities, DTTAS works on a number of fronts. It develops public transport policy and provides a public transport perspective and input when other relevant Government policies are being devised. DTTAS also develops the statutory and legislative frameworks to govern the public transport sector.

State funding (Exchequer) for public transport is channelled through DTTAS and is set out in the annual Estimates of Expenditure<sup>2</sup> which is produced by the Department of Public Expenditure and Reform. This funding mainly flows to the National Transport Authority for infrastructure investment and public transport service support. DTTAS also provides direct funding to Iarnród Éireann for the maintenance of the heavy rail network under the Infrastructure Manager Multi-Annual Contract (IMMAC) in accordance with EU requirements. The roads sector is closely aligned to the public transport sector and funding for roads flows to Transport Infrastructure Ireland and to the relevant local authorities.

DTTAS oversees corporate governance in the State bodies involved with public transport (CIÉ, Commission for Railway Regulation, National Transport Authority and Transport Infrastructure Ireland). It also exercises the shareholder role on behalf of the Minister in relation to the State-owned commercial public transport companies - CIÉ and its subsidiaries (Bus Éireann, Dublin Bus

and Iarnród Éireann). The *Code of Practice for the Governance of State Bodies* provides a framework for the application of best practice in corporate governance by both commercial and non-commercial State bodies<sup>3</sup>.

The *Code* requires Performance Delivery Agreements (PDA) and Oversight Agreements with non-commercial State bodies and DTTAS has PDAs and Oversight Agreements with the Commission for Railway Regulation, the National Transport Authority and Transport Infrastructure Ireland. These agreements cover matters such as legal frameworks, operational and performance measurements. Both documents are reviewed annually, with the Oversight Agreement being reissued annually and the PDA every three years.

As required by the *Code*, the Minister has issued a Shareholder Expectation letter to the Chairperson of CIÉ, which is reviewed annually by DTTAS, in conjunction with CIÉ. This letter cover matters such as key financial performance indicators, sectoral policy objectives and governance arrangements.

### 2.3 National Transport Authority

The National Transport Authority (NTA) was established as a non-commercial State body under the *Dublin Transport Authority Act 2008*<sup>4</sup>. Its roles and functions in relation to public transport are set out in that Act and a number of other Acts - the *Public Transport Regulation Act 2009*<sup>5</sup>, the *Taxi Regulation Act 2013*<sup>6</sup> and the *Public Transport Act 2016*<sup>7</sup>. Under the legislation, the NTA acts as an independent regulatory, funding and strategy body, and it has a considerable role in relation to the public transport sector in Ireland. At national level, the NTA has the following responsibilities in relation to public transport:

- Securing the provision of public passenger land transport services including the provision of subsidised bus and rail services through contracts;
- The provision of light rail services directly or through assignment to Transport Infrastructure Ireland;
- Licensing of public bus passenger services delivered by private operators;
- Regulation of small public service vehicles (taxis, hackneys and limousines);
- Integrated information systems for public transport customers and management of the Integrated Ticketing Scheme for Ireland (the Leap Card);
- The enforcement body for passenger rights in relation to rail, buses and coaches;
- The designated competent authority in Ireland for the purposes of EU law on the common rules for access to the international market for coach and bus services;
- The provision of public transport infrastructure and active travel (cycling and walking) infrastructure including bus stops, bus shelters, bus stations and bus fleets, as well as facilities and schemes to promote active travel.

The NTA has additional responsibilities within the Greater Dublin Area (GDA) which comprises the local authority areas of Dublin City, Fingal, Dún Laoghaire-Rathdown, South Dublin, Kildare, Meath and Wicklow. These responsibilities include:

- Strategic planning of transport;
- Development of an integrated, accessible public transport network;



- The provision of public transport infrastructure including light rail, metro and heavy rail; and
- Effective management of traffic and transport demand.

While the above statutory responsibilities currently only apply to the GDA, the *National Planning Framework*<sup>8</sup> commits to extending the NTA's statutory remit in these matters to the other cities.

The NTA also manages a number of transport-related programmes on behalf of DTTAS. This includes the Rural Transport Programme (Local Link), investment programmes in the cities outside of the GDA (Cork, Galway, Limerick and Waterford), the Accessibility Programme, the Smarter Travel Workplace/Campus programmes and the Green Schools (Travel) programme.

## 2.4 Transport Infrastructure Ireland

Transport Infrastructure Ireland (TII) is a non-commercial State body and was established through a merger of the National Roads Authority and the Railway Procurement Agency under the *Roads Act 2015*<sup>9</sup>. TII's primary function is to provide an integrated approach to the future development and operation of the national road network and light rail infrastructure in Ireland.

TII's role in the context of national roads is to secure the provision of a safe and efficient network. In addition to having overall responsibility for the planning and supervision of construction and maintenance of national roads, TII has a number of specific functions relating to design, construction, improvement, maintenance, signage, funding, research, standards and testing. Many of TII's functions are discharged through local authorities, which are the roads authorities for their respective administrative areas.

TII's role in the context of light rail is to secure the provision of, or to provide, light rail and metro infrastructure, as determined by the Minister. TII (along with the NTA) is the contracting authority to the Luas operating contract with the private sector operator Transdev Ireland. Additional responsibilities include life cycle asset management of all Luas infrastructure and rolling stock; service planning and timetabling; and development of fare policy in conjunction with the NTA.

## 2.5 Commission for Railway Regulation

The Commission for Railway Regulation (CRR) was established as a statutory agency in 2006 under the *Railway Safety Act 2005*<sup>10</sup>. It exercises two important roles: firstly, it is the national body for oversight and authorisations in relation to safe operations of the railways, and secondly it has a role in relation to the economic aspect of the railway and facilitating market access.

The functions and roles of the CRR are set out in the 2005 legislation and a number of statutory instruments in compliance with EU law. In discharging these functions the CRR has wide-ranging powers of inspection and enforcement. The CRR's principal functions are to:

- Foster and encourage railway safety;
- Enforce legislation relating to railway safety;
- Investigate and report on railway accidents and incidents for the purpose of determining compliance with safety management systems and safety targets; and
- Ensure non-discriminatory access to the railway market in Ireland.

The CRR has three main roles:

- It is the National Safety Authority for the railway system in Ireland. The CRR's safety regulatory responsibility is to ensure that each railway organisation understands and effectively manages the risk to safety;
- It is both a Regulatory Body and Licensing Authority in respect of market access as part of the Single European Railway Area. This involves ensuring that licensed railway undertakings that hold EU safety certificates are granted access to the Iarnród Éireann network in a fair and transparent manner.
- It is the Independent Monitoring Body in respect of the contract between the Minister and Iarnród Éireann for rail infrastructure management and funding (IMMAC).

The CRR also provides independent technical advice and support on railway matters to the Minister for Transport, Tourism and Sport and DTTAS, including recommendations relevant to railway legislation.

## **2.6 Railway Accident and Investigation Unit**

Another important body in the area of rail safety regulation is the Railway Accident and Investigation Unit (RAIU) which conducts investigations into accidents/incidents on railways in Ireland. The RAIU is a statutory body that performs its functions independent of DTTAS. It was established by the *Railway Safety Act 2005* as amended by the *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014 (SI 258/2014)*<sup>11</sup>. The establishment of the RAIU fulfils Ireland's duty to provide an independent rail accident investigation body under the *EU Railway Safety Directive (2004/49/EC)*<sup>12</sup>.

## **2.7 CIÉ and subsidiaries**

Within the State sector, the next set of stakeholders in the public transport sector is probably the most visible to the travelling public as they are the bodies that provide many of the services across the country. These are the long-standing Coras Iompair Éireann (CIÉ), and its three wholly-owned operating subsidiaries: Bus Éireann, Dublin Bus and Iarnród Éireann. The public transport services provided by the CIÉ subsidiaries are mostly operated under contract with the NTA. The companies are responsible for running all their services and they also decide on strategy and operations in relation to the commercial aspects of their operations.

## **2.8 Private light rail operator (Transdev)**

The Luas is the light rail service operating in Dublin. Luas operating contracts are awarded by competitive tendering and Transdev currently manages all aspect of the day-to-day operations of the Luas services under an operating contract.

## **2.9 Private operators (both commercial and subsidised services – large public service vehicles and small public service vehicles)**

This includes private operators of both large public service vehicles (LPSVs) and small public service vehicles. LPSVs are vehicles with capacity to carry more than eight passengers for reward - normally buses and coaches.

Small public service vehicles (SPSVs) are vehicles with the capacity to carry up to eight passengers (excluding the driver) for reward, and include taxis, hackneys, wheelchair accessible taxis, wheelchair accessible hackneys, and limousines. The NTA is the Regulator of the sector while DTTAS has responsibility for policy oversight.

## **2.10 Local authorities**

Local authorities have a number of roles that contribute to the public transport sector in Ireland. The improvement and maintenance of regional and local roads is a core statutory responsibility of each local authority. The road network is an important element of the public transport and active travel sector for the provision of effective bus and taxi services and cycling and walking infrastructure. Local authorities are statutorily responsible for approving bus stop locations and also have a statutory role in traffic management within their areas of responsibility. There is close engagement between the local authorities and the NTA on traffic management measures and the NTA provides capital funding to local authorities for sustainable urban transport projects in the cities which includes traffic management measures. This can include bus priority improvements, junction upgrades, speed management, traffic calming, safety measures and parking management.

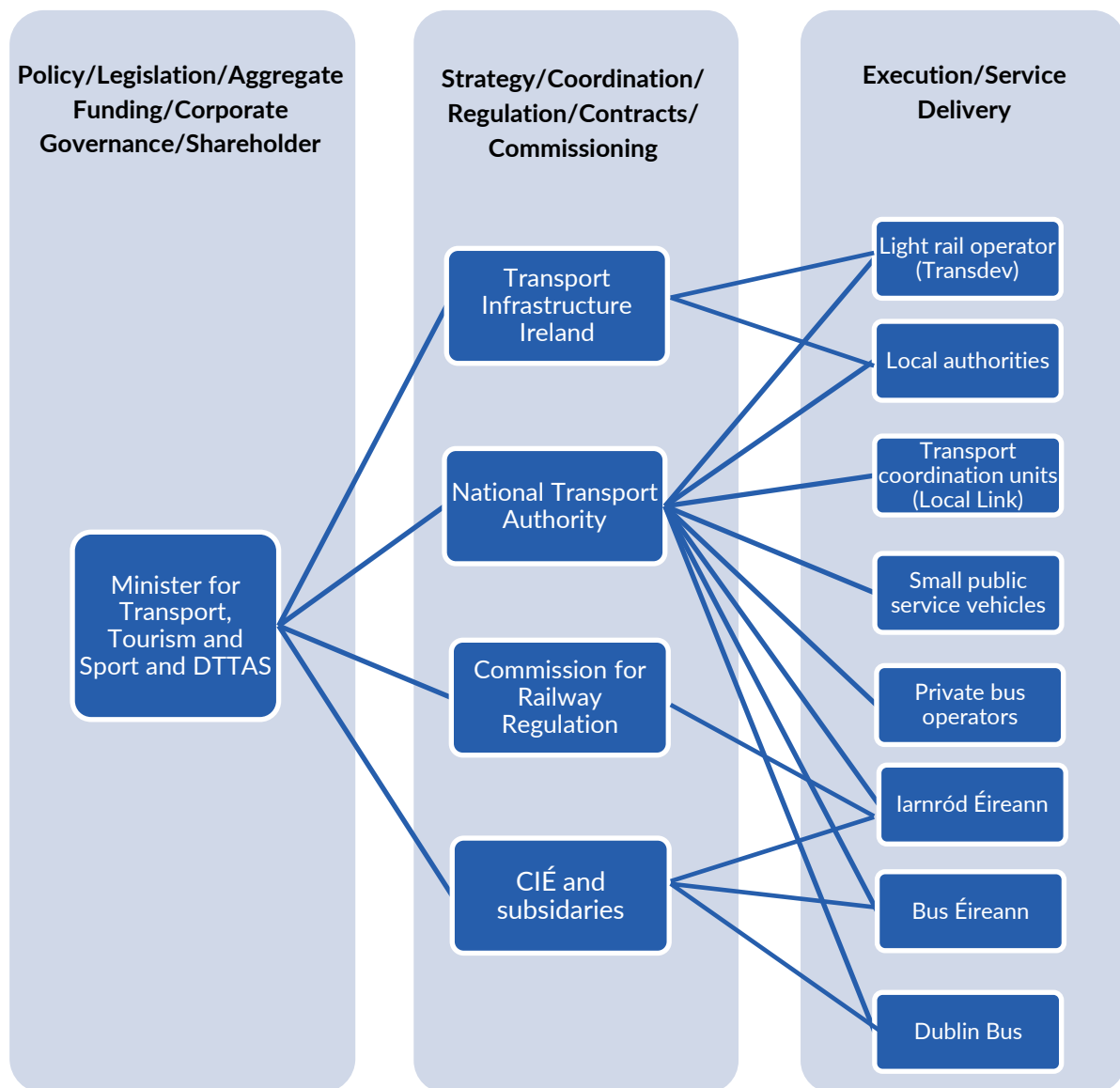
Local authorities are also the planning authorities for their areas of responsibility and are responsible for determining the majority of local planning applications and for enforcement. The local authorities prepare development plans, local area plans and planning schemes which guide development in their areas including transport related development. The NTA works closely with the local authorities in the preparation or review of these plans. The draft Regional Spatial and Economic Strategies prepared by the three Regional Assemblies include commitments for the development of Local Transport Plans to support the delivery of the *National Planning Framework* at local level. These plans will be prepared in conjunction with the NTA. Planning issues are dealt with in more detail in *Background Paper 6: Land-Use Planning and Transport Planning*.

## **2.11 Transport Coordination Units (Local Link)**

There are 15 Transport Coordination Units (TCUs) which manage the Local Link rural transport services on a day to day basis on behalf of the NTA. The TCUs, branded as Local Link offices, are independent charitable entities established for the prime purpose of serving their local community. They operate under the control of independent boards. Personnel are employed by the boards to carry out the necessary activities of the Local Link offices.

Figure 2.1 illustrates the relationships between all of the stakeholders outlined in this Section. The following sections will detail the underlying regulatory arrangements that are in place across the public transport sector.

Figure 2.1: Public transport stakeholders



## 3 State-funded bus and rail services

### 3.1 Introduction

The majority of bus and rail services in Ireland are Public Service Obligation (PSO) services. These are socially necessary but financially unviable services which are provided as a public good and are subsidised by Exchequer (or taxpayer) funding. The subsidised funding of PSO bus and rail services is governed by Public Services Contracts between the NTA and relevant operators. The NTA monitors performance of the operators and publishes regular reports on that performance. The annual funding allocations for the operators are decided by the NTA in exercise of its statutory mandate and in accordance with the various contract arrangements that it has in place with the PSO service providers.

The three main objectives of the PSO programme are to:

- Provide transport services which are socially beneficial but financially unviable;
- Encourage modal shift and public transport use through higher service provision and lower fares;
- Increase accessibility and social equity.

Currently the vast majority of PSO bus services are provided by Dublin Bus and Bus Éireann through what are known as direct award contracts with the NTA. Dublin Bus operates a comprehensive network of passenger services in Dublin under its PSO arrangements. It also operates a small number of commercial services, which do not receive subvention e.g. Airlink Express and various tourist related bus services. Bus Éireann operates three types of public transport services – provincial city services, rural services and intercity services. The company also runs school bus services for the Department of Education and Skills but this is separate from public transport and not covered in this paper. Bus Éireann Expressway services are not subvented and are operated as a commercial bus service in competition with private operators on main trunk routes. There are also a small number of PSO bus routes currently operated by private operators. Go-Ahead entered the PSO bus market in September 2018.

Local Link provides bus services in many areas of rural Ireland through a mixture of regular rural services and demand responsive door to door services. While passenger journeys tend to be local in nature, they can and do facilitate connecting to mainline inter-urban services. This programme (Rural Transport Programme) is also funded by the Exchequer through the NTA.

On the rail side, Iarnród Éireann provides PSO heavy rail<sup>i</sup> services under a direct award contract with the NTA. The NTA is also responsible for securing the provision of light railway passenger services in the GDA and has assigned aspects of this function to Transport Infrastructure Ireland in relation to the operation of the Luas. The Luas services are operated by Transdev under a joint contract with the NTA and TII. Although Luas does not receive ongoing PSO funding from the NTA, in 2017, the NTA provided a PSO grant to TII for the mobilisation of Luas Cross City. All capital works on the Luas such as the rail lines and the trams are funded by the Exchequer.

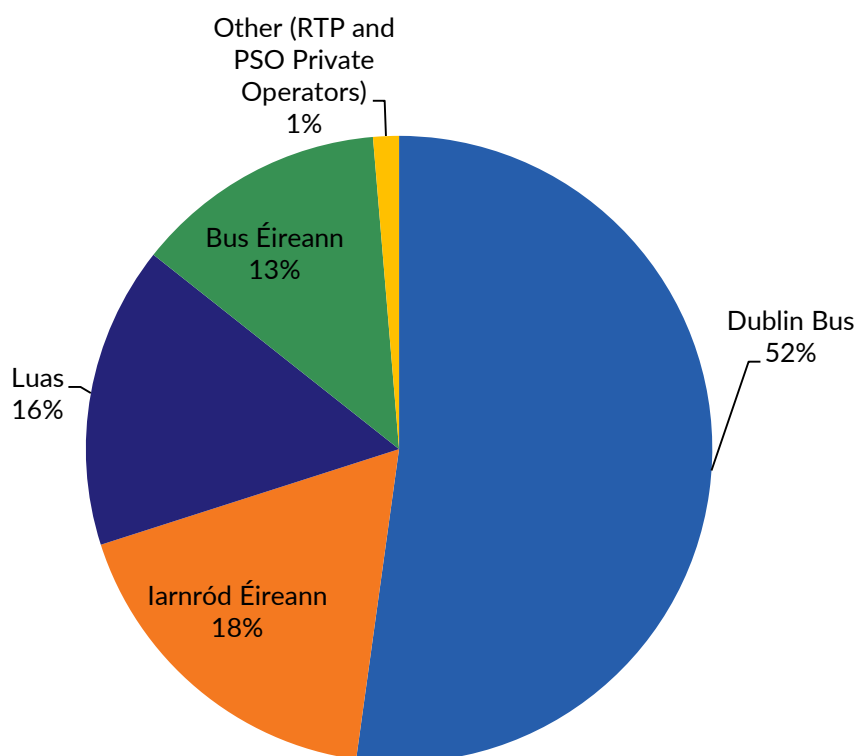
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<sup>i</sup> DART, Commuter and Inter-City rail

Further information about PSO funding allocations for public transport is available in *Background Paper 9: Statistics and Trends*.

Figure 3.1 below shows a breakdown of the 2018 passenger journey on State funded bus and rail services.

**Figure 3.1** 2018 passenger journeys



Source: NTA Bus and Rail Statistics

The legal and regulatory framework governing the provision of PSO public transport services has significantly developed in recent years. Prior to 2009, payments were made directly by the then Department of Transport to CIÉ. In 2003, Memoranda of Understanding (also known as Service Level Agreements) were put in place between the Department and the individual CIÉ operating companies. These outlined the level of service expected and from, 2005 onwards, introduced an element of incentivised performance through linking payment increases with performance. The organisation and provision of PSO public transport services is now governed in detail by both EU and Irish legislation as described in the following sections.

### 3.2 EU and national frameworks

In 2007, the EU adopted *EU Regulation 1370/2007*<sup>13</sup> on public transport services by rail and by road. It sets a framework for how Member States “*may act in the field of public passenger transport to guarantee the provision of services of general interest which are among other things more numerous, safer, of a higher quality or provided at lower cost than those that market forces alone would have allowed.*” These services are known as PSO services. The *Regulation* sets out how Member States may award exclusive rights for operating these PSO services. It also regulates how Member States may pay compensation (i.e. subvention) for the provision of these services and aims to

improve transparency around the subvention payments. It does this by requiring that all PSO arrangements must be subject to formal legal contracts.

Contracts can be awarded following a competitive tendering procedure, or alternatively, can be directly awarded (without a competitive tendering procedure) to a publicly controlled operator, known as an internal operator. Directly awarded contracts to internal operators must conform to the EU Regulation's provisions regarding such contracts. The Annex to the regulation sets out the rules applicable to how direct award public service contracts are compensated. These rules are designed to ensure that operators are not overcompensated but that the amount paid is appropriate and reflective of a desire to improve the efficiency and quality of service. Where contracts are awarded on the basis of a competitive tender, these provisions do not apply but the regulation still requires that there must be no overcompensation.

The *Dublin Transport Authority Act 2008*, as amended by the *Public Transport Regulation Act 2009*, translated the principles of the EU Regulation into an Irish legal context. The legislation established the NTA and set out its statutory responsibilities. This included responsibility for procuring public passenger transport services and that this must be done under public transport services contracts between the NTA and operators. The NTA has the power to decide that a PSO should be applied in respect of a particular public transport service and to secure that service by means of a public transport service contract.

In relation to the existing PSO bus and rail services operated by Bus Éireann, Dublin Bus and Iarnród Éireann, the legislation gave the NTA the power to grant direct award contracts with the three companies in respect of these services for a period of 5 years for existing PSO bus services and 10 years for PSO rail services. It also provided for the replacement of the previous funding arrangements between the Minister for Transport and the CIÉ companies by authorising direct award contracts between the NTA and each company.

The legislation set out certain rules for these direct award contracts with the three CIÉ companies for the existing PSO services. It allows the NTA to review these contracts at any time but it must carry out a full review at the end of the 5 or 10 year contract period. The legislation also allows the NTA to engage in subsequent direct award contracts with the CIÉ companies. However, the NTA can only enter into subsequent direct award contracts where it is satisfied that the continued adequacy of the PSO services can only be guaranteed in the general economic interest by entering into such direct award contracts. Where the NTA proposes to make subsequent direct award contracts with the three companies, it must engage in a public consultation process before either renewing or replacing the contract. It must report on the operation of the services to which the contract relates and states the reasons for amending the contract or entering into a subsequent direct award contract.

The rules for public transport services contracts are also set out in the Irish legislation. These apply for both direct award and competitively tendered contracts and must comply with the rules of *EU Regulation 1370/2007*. All compensation paid by the NTA under the direct awards contracts must be calculated and paid in accordance with the EU Regulation. The principal matters to be addressed by public transport services contracts include:

- routes to be operated;

- areas to be served;
- the integration of services;
- frequency, fares, service levels;
- the terms and conditions where an operator proposes to subcontract services;
- provisions for review;
- incentives for exceeding specified performance standards;
- penalties for non-compliance with contractual requirements;
- duration of contracts;
- requirements relating to applicable law on pay and terms and conditions of employment.

The NTA awarded the first direct award public service contracts in 2009 when it entered into contracts with Bus Éireann and Dublin Bus for a period of 5 years and Iarnród Éireann for a period of 10 years in respect of the existing PSO services operated by the companies. The contracts met the criteria set down in the EU Regulation, setting standards of operational performance and customer service and contained penalties for non-performance.

### **3.3 PSO bus services and bus market opening**

In accordance with the legislation, the NTA carried out a review of the first PSO direct award contracts with Dublin Bus and Bus Éireann in 2013. Following this review and a public consultation period, the NTA decided to enter into subsequent direct award contracts with Dublin Bus and Bus Éireann for five years from 1 December 2014 to 30 November 2019. The NTA concluded however that the contracts held by the two companies should be amended to allow for approximately 10% of those PSO services be tendered on the open market under a competitive tendering process.

The NTA considered that the general economic interest would be best served in the following five years by Bus Éireann and Dublin Bus retaining a substantial proportion of services, but not all services. It also considered that there was value in introducing competition in the bus services market while maintaining a smaller direct award contract.

The 10% of PSO routes referred to above were contracted to both bus companies until the completion of three competitive tendering processes which took place in 2017. The three competitions related to Dublin Metropolitan (23 Dublin Bus routes and 1 new route), Dublin Commuter (6 Bus Éireann routes) and Waterford (5 Bus Éireann routes). It was open to Dublin Bus and Bus Éireann to compete in these tender competitions.

Go-Ahead was announced by the NTA in August 2017 as the preferred bidder for the Dublin Metropolitan competition and, in March 2018, they also won the tendering competition in the Dublin Commuter Area. In November 2017, the NTA announced Bus Éireann as the preferred bidder in the tendering competition in Waterford city.

As the second set of direct award contracts with Dublin Bus and Bus Éireann expire in end November 2019, the NTA launched a public consultation in October 2018 in relation to these contracts. This is in line with its statutory requirements and informed the NTA's decision on the renewal of the contracts, including in relation to the direct award/competitive tender balance of

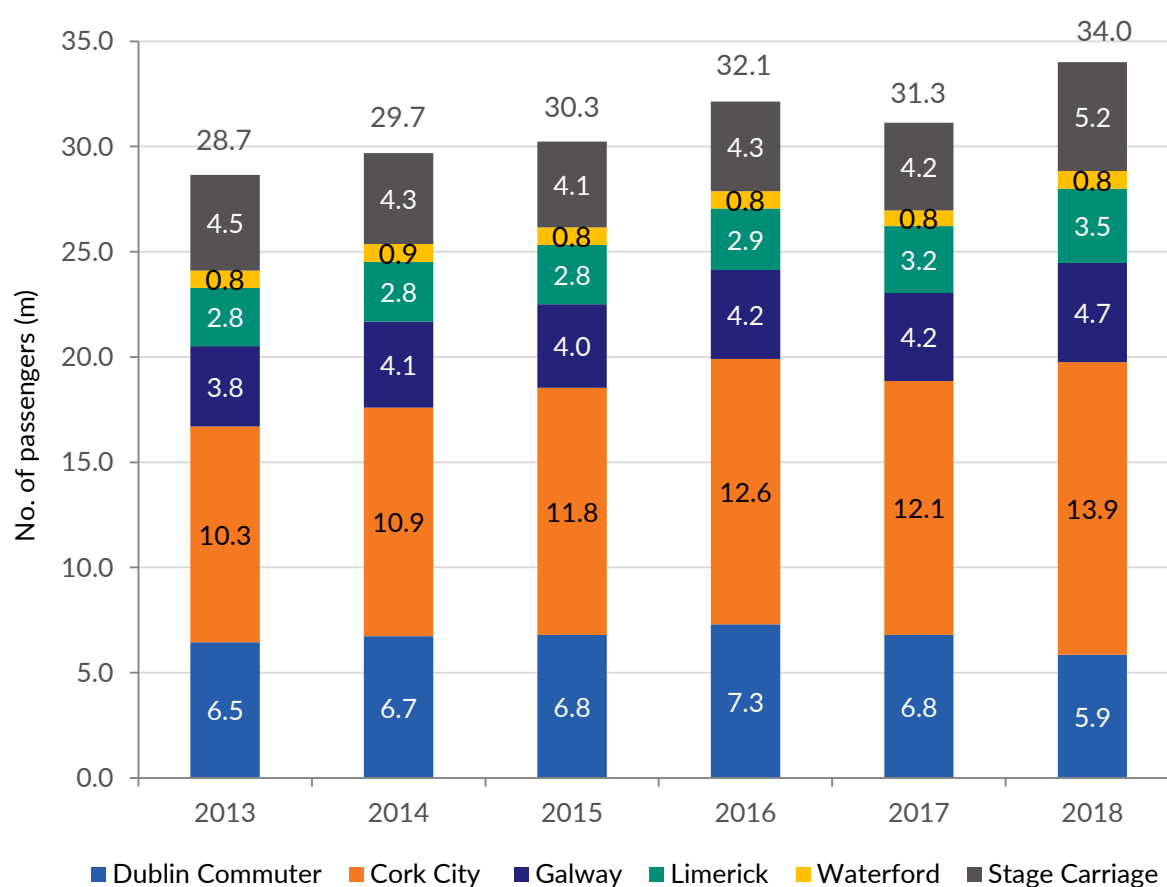


the contracts. Following this process, the NTA announced in November 2018 that it had decided to directly award a new five-year contract to Dublin Bus in December 2019 for the PSO services that it currently operates.

In relation to the PSO bus services operated by Bus Éireann, the NTA has decided to directly award a new contract to Bus Éireann in December 2019 for the PSO services that it currently operates. However, this contract will be amended in 2021 to reduce it by up to 5% of services and those services will be tendered on the open market through a competitive tendering process. The services that the NTA are proposing to include in the competitive tender are routes serving the Dublin Commuter area in the Eastern Region. The level of customer services on these routes has been below performance targets. It is open to Bus Éireann to compete in this open tender competition.

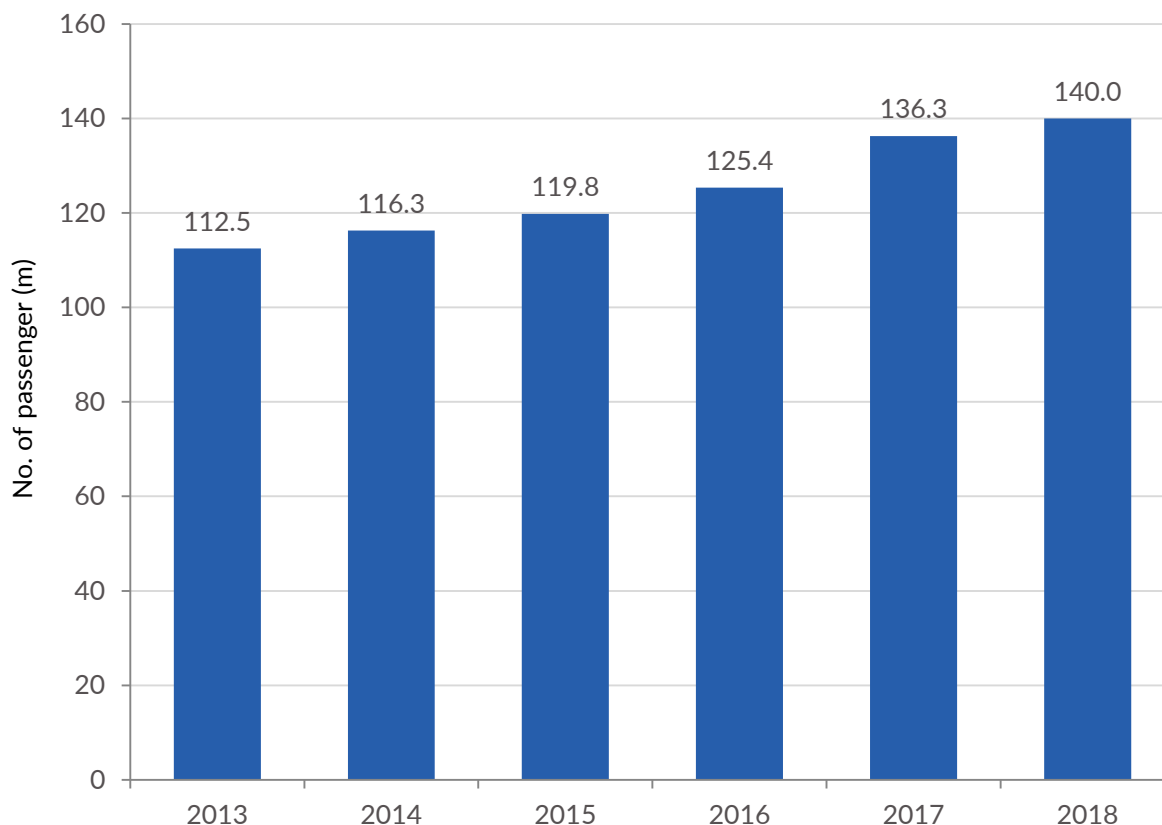
Figure 3.2 and Figure 3.3 show the PSO passenger numbers for Bus Éireann and Dublin Bus for 2013 to 2018 in respect of the services under the direct award contracts with the NTA. For these years, Bus Éireann PSO services operated in the Dublin commuter area; Cork city and commuter area; city services in Galway, Limerick and Waterford; and stage carriage services. The stage carriage services provided by Bus Éireann are services linking satellite towns and villages to the main towns and cities throughout the country. The Dublin Bus PSO services are mainly within Dublin city and county with some services in north Kildare and north Wicklow.

**Figure 3.2 Bus Éireann PSO passenger journeys 2013-2018**



Source: NTA Bus and Rail Statistics

**Figure 3.3 Dublin Bus PSO passenger journeys 2013-2018**



Source: NTA Bus and Rail Statistics

In 2015, trade unions expressed concern that the *Dublin Transport Authority Act 2008* could lead to compulsory tendering of all PSO bus routes post 2019 and also that the legislation imposes additional conditions, above and beyond those required under the EU Regulation, on the NTA when it assesses whether to renew direct award contracts. Following reference in a Labour Relations Commission 'terms of settlement' (following industrial action in 2015), DTTAS is examining section 52 of the *Dublin Transport Authority Act 2008* as regards concerns expressed on perceived ambiguities in the text of the Act.

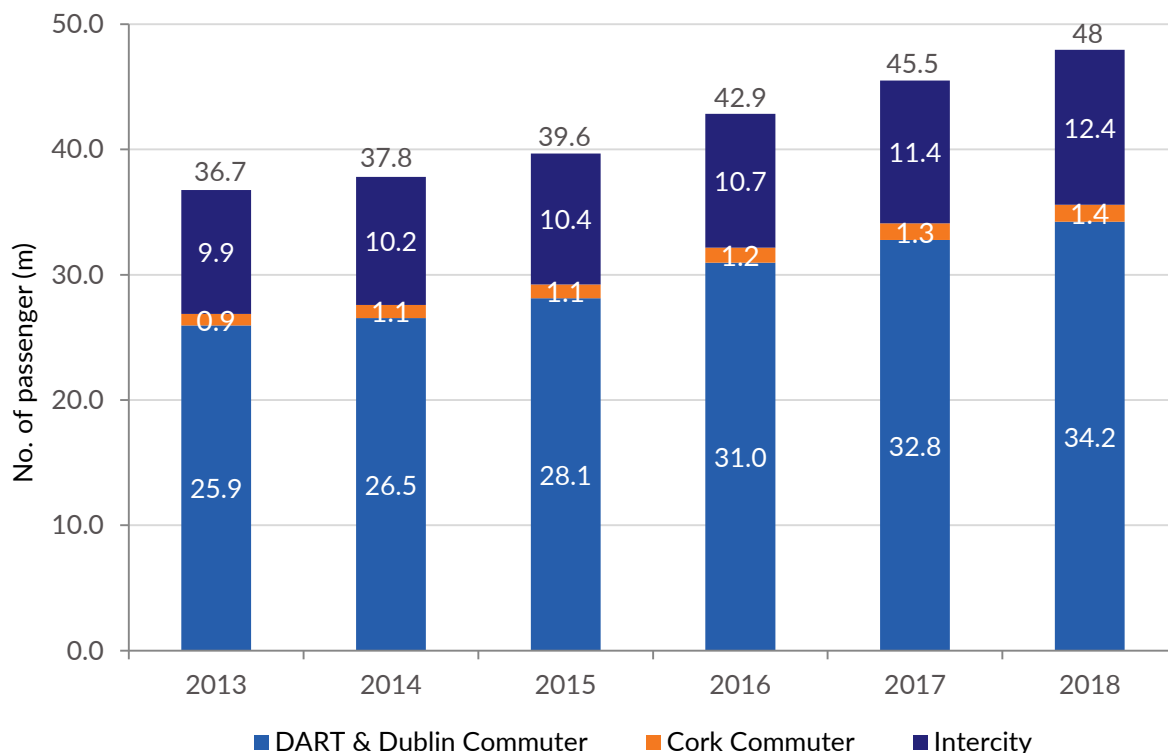
### 3.4 PSO rail services

Iarnród Éireann provides PSO rail services under a direct award contract with the NTA. In line with the legislation, this direct award contract was awarded in November 2009 for a period of 10 years and relates to DART, commuter (Cork and Dublin), and intercity (between cities and towns) services.

The EU *Fourth Railway Package*<sup>14</sup> was adopted at EU level in 2016 and consists of a Technical Pillar and a Market Pillar. The Market Pillar introduced changes to governance of railway infrastructure management to support domestic passenger market opening and changes to the regulation on awarding public service contracts. A measure in the Market Pillar proposed to apply mandatory competitive tendering for domestic passenger rail services. However, Ireland and a number of other Member States who have a small percentage of the EU rail market, may continue with direct award of rail public service contracts up to 2026, subject to meeting a number of criteria.

The current 10 year direct award PSO contract with Iarnród Éireann expires at the end of November 2019. There is no review process under the *Dublin Transport Authority Act 2008* for public services contracts for rail services as there is for bus. The NTA is proposing to directly award a new contract for rail services to Iarnród Éireann. In compliance with the legislation, it will publish a substantiated decision and inform the EU Commission. It is envisaged that the direct award contract will be for ten years from 1 December 2019. Figure 3.4 shows Iarnród Éireann PSO passenger numbers for the years 2013 to 2018.

**Figure 3.4 Iarnród Éireann PSO passenger journeys 2013-2018**



Source: NTA Bus and Rail Statistics

### 3.5 Light rail services

The NTA's statutory responsibility for securing the provision of public passenger transport services includes light rail services (i.e. Luas). The *Dublin Transport Authority Act 2008*, as amended, allows the NTA to assign this function to Transport Infrastructure Ireland (TII). The legislation requires that light rail services are awarded by means of a competitive tendering procedure.

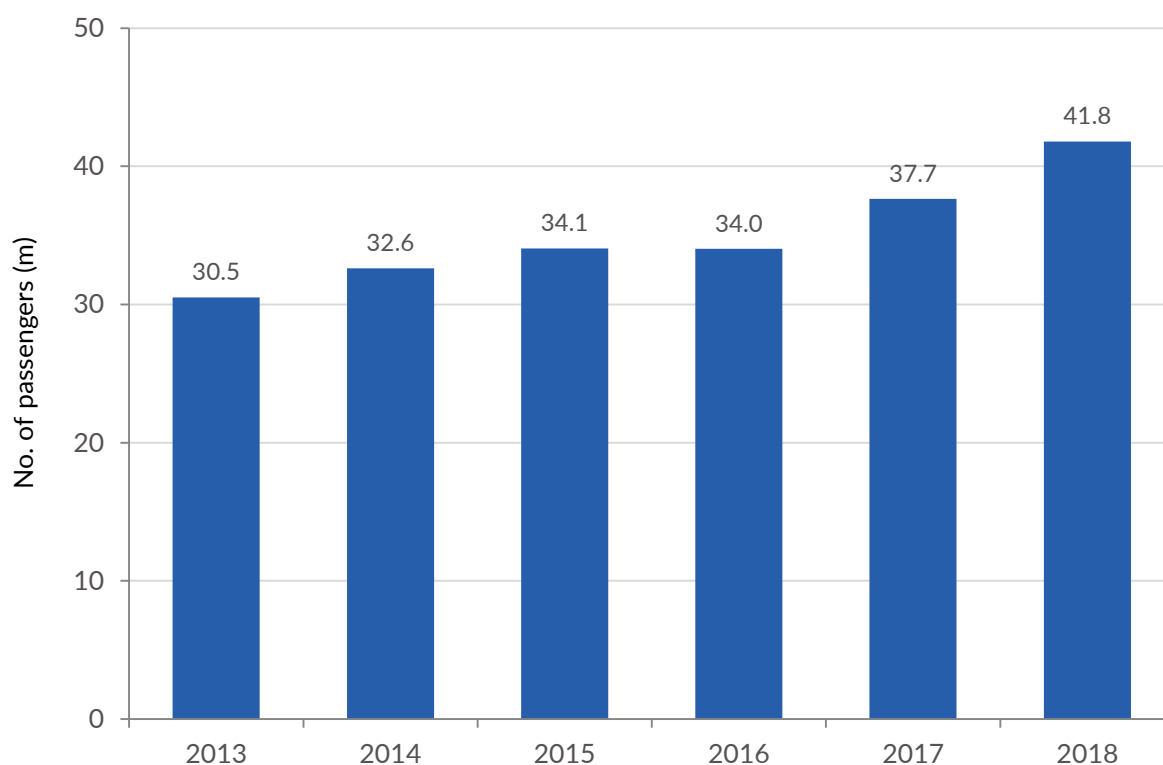
The first Luas operating contract was awarded in 2004 to Connex for five years. The second Luas operating contract was awarded in 2009 to Veolia Transport. During the term of that contract, Veolia merged with Transdev. In 2014 the third Luas operating contract was awarded to Transdev. All of these contracts were awarded following a competitive tendering process in line with the legislation and were awarded for a period of five years. The *Dublin Transport Authority Act 2008* states that the maximum length a contract can last is 15 years.

The current operating contract with Transdev expires in November 2019 and, following a competitive tendering process, Transdev was recently awarded the Luas operating contract for six more years. The new contract will come into force on 1 December 2019.

Under the operating contract, Transdev manages all aspects of the day-to-day operations of the Luas services. The NTA oversees TII's management of the operating contract. TII report on Luas financial and operational performance to the NTA on a monthly basis.

Figure 3.5 shows Luas passenger journeys for 2013 to 2018. The opening of Luas Cross City in December 2017 has influenced the growth in passenger numbers in 2018.

**Figure 3.5 Luas passenger journeys 2013-2018**



Source: NTA Bus and Rail Statistics

### 3.6 Rural Transport Programme (Local Link)

The NTA assumed responsibility for the management of the Rural Transport Programme (RTP) on behalf of DTTAS in 2012. The programme operates under the brand 'Local Link' and its objective is to provide a quality nationwide community based public transport system in rural Ireland which responds to local needs. There are two main types of contract that support the delivery of the Local Link services across the country. They are:

- contracts relating to the management of Local Link services (management contracts); and
- contracts relating to the operation of Local Link services (bus service contracts).

In 2014, the NTA awarded management contracts to 17 Transport Coordination Units (TCUs) following a major restructuring of the RTP. The selection process used at that time was confined

to the 35 rural transport groups which had been delivering RTP services up to that point. The TCUs are responsible for managing the services at local level on behalf of the NTA.

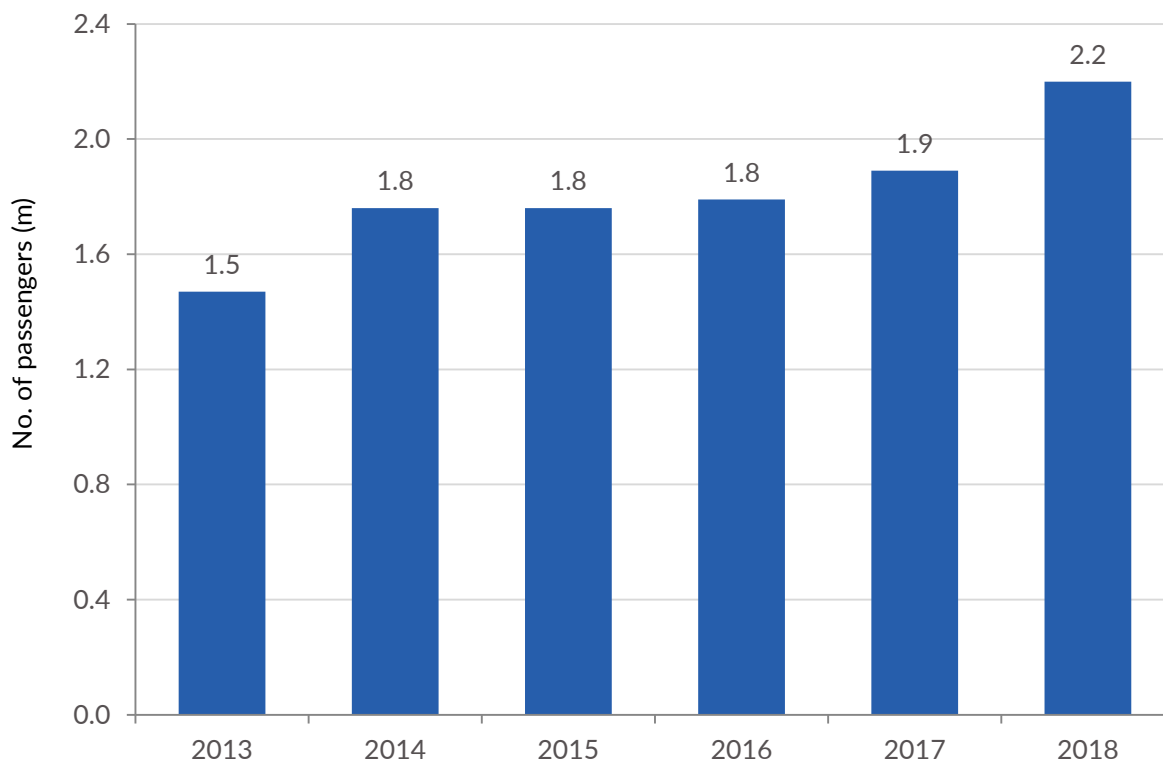
The TCUs, branded as Local Link offices, are independent charitable entities established for the prime purpose of serving their local community. They operate under the control of independent voluntary boards. Personnel are employed by the boards to carry out the necessary activities of the Local Link offices. The NTA contracts the management of rural transport services with the Local Link offices through a Grant Agreement. Under that agreement, the offices are obliged to comply with financial, governance and other guidelines from the NTA. The NTA applies a robust system of regular reporting by the Local Link offices. The reporting is based on an agreed programme of annual activities and related financial budgets.

The 4-year grant agreements between the NTA and the TCUs expired recently. The NTA commenced a procurement process in September 2018 for the selection of TCUs to manage the delivery of Local Link services over the next four years, on behalf of the NTA. The procurement process was in line with EU and national procurement requirements, having regard in particular to changes in the EU procurement directives since 2014. It was open to all existing TCUs to tender for the new contracts. Arising from the procurement process the number of TCUs has reduced from 17 to 15. The NTA's 4-year contractual arrangement with the successful tenderers for the TCUs will run to end 2022. Review periods will be built into the contract as previously. The TCU contracts focus solely on the management/administrative services provided by a TCU and do not include the provision of bus services funded under the RTP which are the subject of separate contracts between the NTA and bus operators.

In the case of the bus service contracts, a retendering process of the existing 1,035 contracted services commenced in 2016 and, as of September 2019, 90% of services had been retendered.

Figure 3.6 shows the passenger numbers using Local Link services from 2013 to 2018. The NTA also has arrangements in place with six entities to which it directly awards the delivery of Local Link services under the provisions of the *Dublin Transport Authority Act 2008*. These entities provide rural transport services using their own bus fleet. The six entities comprise three Local Link offices which operate their own fleet of vehicles and three of the original 35 rural transport groups who also own their own vehicles. The current Direct Award entities pre-existed the restructuring programme. No new direct award entities have been formed and no expansion of their bus fleets has taken place since NTA took over responsibility for the RTP in 2012.

**Figure 3.6** Local Link passenger journeys 2013-2018



Source: NTA Bus and Rail Statistics

### 3.7 International practice on PSO services

In 2016, a study was carried out for the European Commission in relation to EU *Regulation 1370/2007*<sup>15</sup>. It considered the economic and financial effects of the implementation of the regulation on public passenger transport services. The study looked at a number of aspects of PSO services in EU Member States including institutional arrangements for public transport, the competitive environment and levels of public funding available for public transport services.

The study found that the institutional arrangements for the public transport sector varied between Member States in terms of the capabilities of the national authorities in the area of public transport as well as the number of authorities with responsibility for public transport (known as 'competent authorities') in some Member States. It considered that there can be clear advantages of having a small number of competent authorities within one Member State, as that can facilitate better access to expert skills and resources and the coordination and dissemination of best practices.

The study acknowledged that the information available on the competitive environment for awarding PSO services in EU Member States was limited. It did find that some Member States have established relatively well developed competitive frameworks with well-equipped authorities to stimulate competition (e.g. Sweden, Denmark, Netherlands and London), but that the situation remains somewhat unclear in many other countries.

As part of the work, case studies were carried out on eight public transport networks and services in different EU Member States. This included a case study on the PSO services operated by Bus

Éireann. The seven other case studies included urban rail, metro, light rail and trolley bus networks in Sweden, Italy, Hungary, Bulgaria, France, Germany and the UK. Apart from the NTA, which was the only national level authority in the case studies, the other public transport networks were under regional or local authorities. Of the eight case studies, four of the contracts were awarded by competitive tender, one contract was awarded by a mix of competitive and direct award, and three contracts (including Ireland) were by direct award.

The study referred to a 2012 submission from Ireland's Competition and Consumer Protection Commission (then the Competition Authority) to the NTA as part of the public consultation on the 2014 Public Bus Service Contracts. The submission highlighted the benefits of competitive tendering and stated that *"International experience of competitive tendering for subsidised public services is favourable. There are many benefits associated with introducing competitive tendering for subsidised public bus services, provided that the system of competitive tendering is well designed. Experience has shown that these benefits include the NTA's three main objectives of (i) improved service quality, (ii) a more integrated transport system, and (iii) greater value for taxpayer's money."*

The 2016 EU study concluded that as EU *Regulation 1370/2007* had only been in force since 2009 that there was insufficient evidence at that stage to determine its economic and financial impact with confidence. However, it did identify a number of benefits:

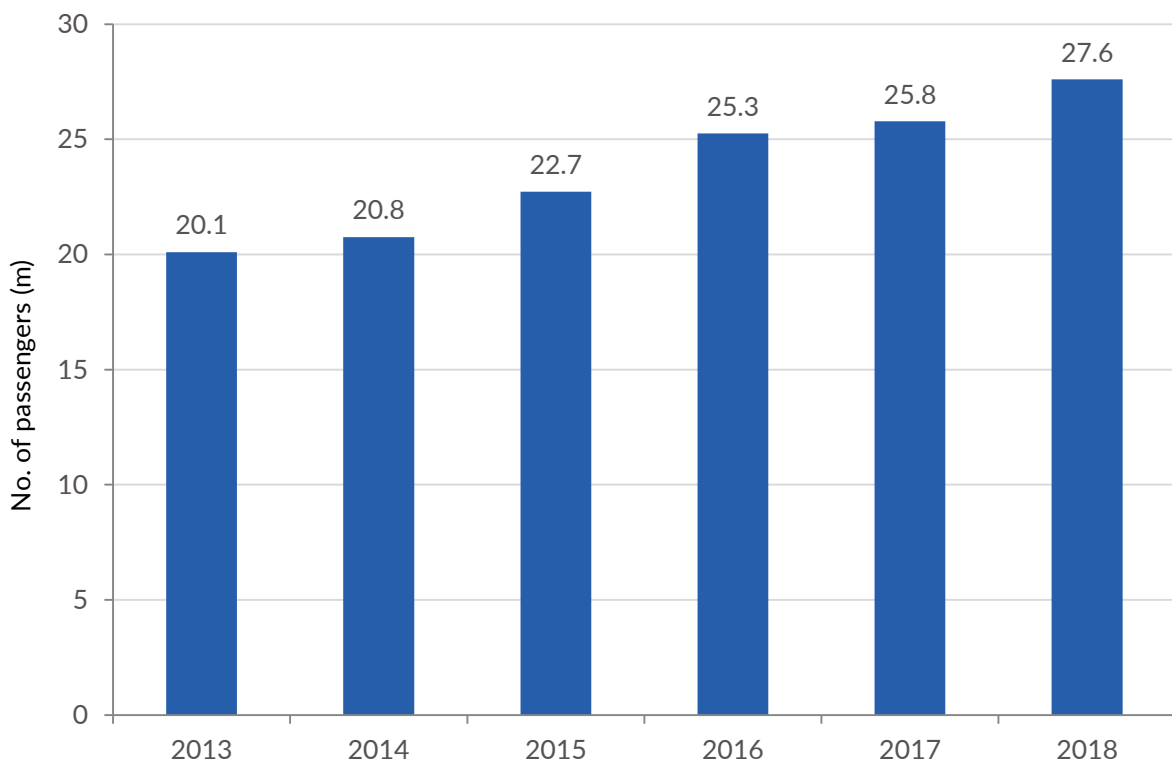
- Clearer definition of policy objectives as a basis for specifying service requirements and other contractual obligations;
- Greater transparency particularly of methods and levels of compensation including in the case of direct awards;
- Reduced uncertainty for both the competent authority and operators over legal obligations; and
- A more considered approach to the design of public service contracts (e.g. in the development of effective incentives on operators to deliver services in line with public sector objectives).

## 4 Commercial bus services

Licensed commercial public bus passenger services deliver around 13% of total annual passenger journeys made nationally by bus and journeys on the commercial bus sector have grown by 37% from 2013. Figure 4.1 shows the number of passenger journeys on these services from 2013 to 2018. While commercial licensed services do not receive any PSO subsidy, some commercial bus services receive payments from the Department of Employment Affairs and Social Protection's Free Travel Scheme in compensation for the revenue foregone from carrying those passengers entitled to free travel.

There is large variability and diversity in the scale, frequency and type of commercial bus services provided by operators. They include large scale inter-city and inter-urban bus services which provide connections to and from the country's main towns, cities and airports; commuter services that bring passenger to employment and education; urban and suburban services as well as rural services that link small towns, villages and rural areas.

**Figure 4.1: Commercial bus passenger numbers 2013-2018**



Source: NTA

The *Public Transport Regulation Act 2009* established a new regulatory regime for the licensing of commercial public bus passenger services. Under the Act, the NTA was given responsibility for the regulation of these services. It now regulates competition in the sector in the public interest based on demand or potential demand for services. The regulatory regime has also provided for greater integration of overall public transport services, thus offering the customer a wider range



of travel choices and improved connections with other bus services. The changes introduced under the 2009 Act included:

- The replacement of the Minister with the NTA as the body responsible for the regulation of the commercial public bus passenger sector;
- A listing of the criteria used to make decisions regarding applications, including the general objective of the need to provide a well-functioning, attractive, competitive, integrated and safe public transport system of services and networks for all users which deliver value for money;
- The inclusion of an appeals process to the NTA prior to recourse to the courts;
- The inclusion of Dublin Bus and Bus Éireann commercial services (i.e. non-PSO services) so that these are subject to the same regulatory regime as the commercial services of other bus operators;
- The requirement for the NTA to develop Guidelines;
- The increase of the period of validity of a licence from one year to up to five years, allowing greater financial certainty for the industry;
- Discretion for the NTA to determine the level of increase in the fees for application and issuing of licences.

In 2010, the NTA published the required “*Guidelines for the Licensing of Public Bus Passenger Services*”<sup>16</sup>, which provides advice and guidance to potential licence applicants about the process and principles of the commercial public bus licensing system.

The legislation ensures that when considering a licence application, the NTA has to have regard to its general objectives, as well as supporting modal shift to public transport and the need to regulate competition in the public interest. The needs of passengers are central to the licensing process.

Following consultation with the industry, the NTA approved revised bus licensing fees for implementation in 2019.

The 2009 Act requires the NTA to undertake a review of the operation of the licensing of public bus passenger services at least every five years. The NTA has completed a formal review as required and this is under consideration by DTTAS. The review is primarily concerned with procedural and compliance issues related to the licensing system.

In September 2019, the NTA launched a public consultation<sup>17</sup> process on proposals for improving accessibility standards on commercial licensed bus services.

## 5 Licensing regime for the large public service vehicle (LPSV) sector

DTTAS has responsibility for policy oversight in respect of the Large Public Service Vehicle (LPSV) sector. An LPSV is a vehicle with capacity to carry more than eight passengers for reward (normally buses and coaches).

The LPSV vehicle licensing regime is a multi-faceted framework which regulates:

- entry into the profession of a road passenger transport operator;
- vehicle standards and suitability for carriage of passengers; and
- access to operate certain routes.

This framework requires cross agency collaboration and encompasses multiple State agencies including An Garda Síochána, the Road Safety Authority, DTTAS and the NTA.

The licensing of LSPVs is governed by multiple pieces of legislation including the *Public Transport Regulation Act 2009*, the *Road Traffic and Transport Act 2006*<sup>18</sup>, the *Road Safety Authority (Commercial Vehicle Roadworthiness) Act 2012*<sup>19</sup> and the *Road Traffic Act 1961*<sup>20</sup>.

DTTAS established an inter-agency working group in 2017 to undertake a high level review of the licensing process for the LPSV sector. The working group comprises representatives from a number of agencies, including the Road Safety Authority, An Garda Síochána, the NTA and various Divisions of DTTAS. It was tasked with reviewing the findings and seeking solutions that will deliver better outcomes for those seeking to be licensed to operate an LPSV vehicle. DTTAS is continuing to work closely with the bodies involved to improve outcomes for operators.

## 6 Small public service vehicle (SPSV) sector

### 6.1 Introduction

Ireland's small public service vehicle (SPSV) sector is part of the public transport sector where services are provided by private operators on a commercial basis without operational subvention. SPSVs are public transport vehicles with seating for up to eight passengers in addition to the driver. There are currently three broad categories of SPSV:

- Taxi (standard and wheelchair accessible);
- Hackney (standard, wheelchair accessible and local area); and
- Limousine.

SPSV service provision remains a national competence in terms of regulation and is not governed by any regulation at EU level. The regulatory framework applies to the vehicles, the drivers, and the services to the travelling public that they provide. The overall objective of the legislation and the regulatory framework is to protect the consumer interest and to uphold safety for the passengers. The rules do not limit the number of operators; rather, they concentrate on ensuring standards of safety and service that will benefit the public. In this aspect, Ireland differs from many other jurisdictions in that there is no limit on the number of licences available for taxis, hackneys or limousines.

In 2011, the NTA assumed responsibility for the regulation for the SPSV sector taking over the functions of the Commission for Taxi Regulation. The provisions to enable this were included in the *Public Transport Regulation Act 2009*. The regulatory framework for the industry is covered under the *Taxi Regulation Act 2013* and the *Public Transport Act 2016*, together with the *Taxi Regulation (Small Public Service Vehicle) Regulations 2015*<sup>21</sup> and *2016*<sup>22</sup>. The 2013 legislation, and NTA's subsequent implementation of it, was informed by *The Taxi Regulation Review*<sup>23</sup>, that was published by the Government in January 2012.

### 6.2 Driver and vehicle licensing

The NTA is the licensing authority for SPSVs and dispatch operators (booking service providers). This includes the granting, renewal and revocation of each vehicle and dispatch operator licence, together with all associated licencing, inspection and compliance activity. Each licence requires renewal on at least an annual basis, allowing the NTA to monitor the quality of the vehicles and services provided. At the end of 2018 there were 20,733 valid vehicle licences.

The operation of an SPSV vehicle not only requires that the vehicle is licensed as an SPSV but that the driver is the holder of a valid SPSV driver's licence, together with a standard driving licence. An Garda Síochána is the licensing authority for SPSV driver licences. A current SPSV driver licence permits the holder to drive all categories of SPSV and is normally valid for a period of five years. The NTA, working closely with An Garda Síochána, administers the application and renewal processes, together with the issue of SPSV driver identification cards. Vetting remains the responsibility of An Garda Síochána. There were 26,405 valid SPSV driver licences at the end of 2018.

New applicants for an SPSV driver's licence must complete the Skills Development Programme and pass the SPSV Driver Entry Test, which comprises two modules covering both regulatory

industry knowledge and area knowledge for the county in which the applicant wishes to operate. The NTA provides and manages this Skills Development Programme. In October 2017, the NTA introduced changes to this test by reducing the pass mark from 80% to 75%. In addition, it was made possible for candidates to carry over a pass in one module for a period of twelve months while attempting to pass the second module. The NTA noted an increased number of applicants successfully passing the Test after the implementation of these changes. In order to attract more entrants to the industry, the NTA launched a taxi driver recruitment campaign in February 2018. This advertising campaign included broadcast, online and print media.

In relation to the hackney and taxi vehicles, since 2010 the NTA has required that all new entrants to the industry wishing to operate these types of SPSVs must have wheelchair accessible vehicles (WAVs). In 2018, there were over 2,200 WAVs in the SPSV fleet nationally, up approximately 1,300 from July 2014 when an Exchequer funded grant scheme to support WAV purchases by taxi operators was introduced.

Another more recent trend in the industry is the beginning of a move towards greener automotive technologies in the taxi fleet. A new grant scheme (the "Electric SPSV Grant Scheme"<sup>24</sup>) to encourage such a shift was introduced in 2018 as a Climate Action initiative.

Both licensed driver and vehicle numbers have shown a positive growth in numbers in recent years. This may be attributed to the changes made by the NTA to the SPSV Driver Entry Test, the NTA's recruitment drive, or grants made available towards certain SPSV purchases.

As part of the *Transport Strategy for the GDA*, the NTA will support the implementation and expansion of car-club schemes, car-pooling and car-sharing. Car-sharing technology has seen a rise in popularity in recent times. The NTA directly promotes the development of car-sharing arrangements through the Smarter Travel Workplaces and Smarter Travel Campus programmes. Non-commercial car sharing arrangements are supported by legislation under the provisions of the *Taxi Regulation Act 2013*. Commercial car-club schemes are excluded unless the vehicles and drivers are appropriately licenced.

### **6.3 Taxi fares**

The NTA is responsible for setting the National Maximum Taxi Fare. Only taxi journey fares are controlled by way of a maximum ceiling. This is because taxis may be hailed on the street or taken from a rank with no prior booking (public hire). All hackney and limousine journeys are pre-booked (private hire) and, therefore, both passenger and driver are aware of the journey details and fare agreed for that journey in advance.

A maximum taxi fare review is carried out approximately every two years to monitor and adjust for changes in the operating costs and market environment facing the industry. Following the 2017 fare review and associated public consultation, a fare increase of approximately 3% on average was applied from February 2018 through the *Taxi Regulation (Maximum Fares) Order 2017*<sup>25</sup>.

In September 2019, the NTA published the findings of the *2019 National Maximum Taxi Fare Review*<sup>26</sup> for public consultation.

## 6.4 NTA review

The NTA is currently undertaking a review of key aspects of taxi, hackney and limousine operations with the intention of developing a five year strategy for the SPSV industry that will guide its regulatory development over that timeframe. This review is being carried out with the assistance and input of the Advisory Committee on SPSVs. This committee is an independent committee and was established to provide advice in relation to issues relevant to SPSVs and their drivers. The committee consists of a Chairperson and 17 ordinary members.

The review of the SPSV sector is considering a variety of issues like vehicle licensing, vehicle standards, driver licensing, wheelchair accessible vehicles, fixed payment offences and technological developments. The NTA intends to conduct a public consultation process in relation to the proposals emerging from the review process.

## 6.5 Local Area Hackney Licence and Community Transport Services

The 2012 *Taxi Regulation Review Report* recommended the introduction of a Local Area Hackney Licence, so as to address transport deficits that would not otherwise be addressed in certain rural areas. The NTA made regulations permitting the issue of such licences with effect from December 2013. The aim was to enable a special part-time hackney service to be provided in rural areas which are likely to be too small to support a full-time taxi or hackney operation, and which are also too far away from adjacent centres to be serviced by normal taxis or hackneys from those adjacent centres.

The take-up of the Local Area Hackney Licence has been low despite the fact that the costs of a licence are set low and some of the standards that must be met are lower than for a standard taxi or hackney operation.

The key barriers to entry to the scheme have been identified as the cost of insurance and the level of bureaucracy in the application process. In order to address these barriers to the provision of needed services, it was announced in May 2019 that the NTA planned to:

- Simplify the administration involved in the Local Area Hackney application process; and
- Pilot a number of hackney services that will receive grant-aid in areas that have no hackney or taxi service operating currently.

There will be one pilot project in each of the 15 Local Link Office areas. The NTA launched the pilot scheme in August 2019, seeking applications for the provision of the local area hackney service in each of the 15 designated areas nationwide. The pilot specifically relates to those areas where a full time taxi or hackney service does not appear to be viable.

Under the pilot scheme, the NTA is offering grant funding of €6,000 to individual drivers over a twelve month period. This funding is designed to contribute towards the costs associated with providing the service. The pilot scheme seeks to simplify the application process and make the provision of a service in rural areas sustainable. The pilot will enable the NTA to test this operational model and will help inform the NTA's local transport plans over the next five years.

The NTA is also planning to pilot a Community Transport Service project in each of the 15 Local Link Office areas, at a cost of €5,000 per project for a twelve month period. The *Taxi Regulation Act 2013* defines a “community transport service” as a transport service provided:

- By a person concerned for the social and welfare needs of one or more communities,
- Without a gain for the person providing the service or another, and
- Where the payment for a journey or in respect of passengers using the service does not exceed the cost of providing the service in respect of the journey.

The funding under this pilot is designed to provide a contribution towards the overall costs of running the service.

No new legislation is required for both of these pilot schemes and the *Taxi Regulation Act 2013* will not require to be amended. Both pilot schemes will be administered locally by the existing network of Local Link offices who will act as agents for the NTA. The overall management, funding and regulation of both schemes will rest with the NTA.

## 7 International services and Brexit

### 7.1 Introduction

The withdrawal of the United Kingdom (UK) from the EU has implications for a segment of bus and rail services, particularly in the context of a “no-deal” Brexit. The Government has taken measures to mitigate the negative effect of a “no-deal” Brexit, including passing the *Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019*<sup>27</sup>. The Act contains provisions in relation to the continuation of cross-border bus services. Different arrangements are put in place to ensure continuity of the main Enterprise rail service from Dublin to Belfast.

### 7.2 International bus services

*Regulation (EC) No. 1073/2009*<sup>28</sup> provides common rules for access to the international market for coach and bus services between EU Member States.

The NTA is the designated competent authority in Ireland for the purposes of the regulation. The role of the NTA includes the following tasks:

- Issue of authorisations to Irish bus operators to operate bus services outside of the State;
- Assessment of applications from other EU Member States; and
- Monitoring and securing compliance by bus operators from other countries when operating within the State.

Authorisations for international bus services can only be issued with the agreement of all the designated competent authorities of Member States in whose territories passengers are either picked up or set down.

Currently, the vast majority of services operating in Ireland under *Regulation 1073/2009*, are travelling to and from the UK. In the event of Brexit, bus services travelling to and from the UK will no longer operate under *1073/2009* because the UK will no longer be an EU Member State.

As a result, a number of contingency measures are now being provided in order to mitigate the potential impacts of a no-deal Brexit. Occasional services are proposed to be permitted by the accelerated entry of the UK into the *Interbus Agreement*<sup>29</sup>. The European Council has adopted an EU Regulation<sup>30</sup> which will ensure continuity for scheduled bus services to and from the UK in the event of a no-deal Brexit. This EU Regulation allows current holders of authorisations to continue to provide their services, to ensure continuity of regular bus services between the EU and the UK. All this would be dependent on the UK applying reciprocal measures. This means that scheduled cross-border bus services between Ireland and Northern Ireland can continue to operate.

On 17 March 2019, the President signed into law the *Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019*. This legislation is made up of 15 Parts which prepare Ireland for a no-deal Brexit. Part 10 of this Act provides a further contingency measure for cross-border bus services by giving the NTA new powers in relation to regulating bus services travelling to and from a third country.

### **7.3 Cross-border rail services**

Cross border passenger rail services currently run on the Dublin-Belfast route in joint partnership between Iarnród Éireann and Northern Ireland Railways. There are currently up to 50 services per week in each direction.

The priority is to ensure continuity of the main Dublin-Belfast Enterprise rail services post Brexit. Iarnród Éireann and Northern Ireland Railways are working together intensively to ensure that the Enterprise train service will continue to run post Brexit. The CRR, as the statutorily independent regulatory agency charged with oversight of the safety of all railway activities in Ireland, is engaged and will ensure continued compliance with EU and national law in respect of railway safety and the regulation of railways.



## 8 Passenger rights

### 8.1 Introduction

Since 2004 the EU has introduced regulations on passenger rights across all modes of transport (Air, Rail, Coach and Bus and Sea/Inland waterway). As part of the regulations, all countries in the EU are required to appoint a National Enforcement Body (NEB) to ensure that the regulations are being implemented. In Ireland, the NTA is the designated NEB for rail, coach/bus and sea/inland waterway. The NTA has been given this responsibility under statutory instrument.

In 2018, Ireland ratified the *United Nations Convention on the Rights of Persons with Disabilities*<sup>31</sup>. The implementation of responsibilities relating to public transport under the Convention is being advanced in the context of the *National Disability Inclusion Strategy 2017-2021*<sup>32</sup>, the DTTAS Sectoral Plan<sup>33</sup> for accessible transport under the *Disability Act 2005*<sup>34</sup> and other relevant government strategies and plans. Further information on this issue is contained in *Background Paper 1: Public Transport and Accessibility*.

### 8.2 Rail

*EU Regulation 1371/2007*<sup>35</sup> provides a range of measures to protect rail passengers and their belongings when travelling by train within the EU. The current national legislation in Ireland for the purposes of *Regulation 1371/2007* is set out in the *European Communities (Rail Passengers' Rights and Obligations) Regulations 2010 (SI 646/2010)*<sup>36</sup>. The NTA is designated as the National Enforcement Body to deal with complaints/appeals from rail passengers on matters that come within the ambit of the EU regulation. Irish domestic rail travel is exempted from certain provisions of *EU Regulation 1371/2007* under the *European Union (Rail Passengers' Rights and Obligations)(Domestic Passenger Rail Services) (Renewal of Exemption) Regulations 2014 (SI 549/24)*<sup>37</sup>. However, passengers on domestic rail services in Ireland benefit from measures requiring rail operators to:

- Make it easy for rail passengers to buy tickets;
- Compensate passengers where the operator is liable for the cost of luggage;
- Have adequate insurance;
- Ensure non-discriminatory access for persons with disabilities or reduced mobility relating to rail transport, including stations, ticket reservations and ticket purchases, and at no additional cost to the passenger;
- Provide information on the accessibility of rail service to persons with disabilities and persons with reduced mobility;
- Ensure passengers personal security in railway stations and on trains;
- Compensate passengers in the event of death or injury.

*EU Regulation 1371/2007* has specific provisions relating to the rights of persons with disabilities and persons with reduced mobility. This is to ensure that these passengers can travel in a way that is comparable to other citizens. Railway companies and station managers have to establish non-discriminatory access rules for the transport of persons with disabilities and persons of reduced mobility, including for example the elderly. Railway companies are required to provide these passengers with assistance on board a train and during boarding and disembarking from a train free of charge. The Regulation requires assistance to be provided on condition that the

railway company, the station manager, the ticket vendor or the tour operator, with which the ticket was purchased, is notified of the person's need for such assistance at least 48 hours before the assistance is needed.

Following a successful pilot in 2018, Iarnród Éireann has reduced the notice period for providing assistance to customers on the DART from 24 hours to 4 hours and has also rolled this out to the Maynooth and Northern Commuter lines. Further information on this issue is included in *Background Paper 1: Public Transport and Accessibility*.

The EU published a legislative proposal in 2017 to replace the existing *Regulation 1371/2007* on rail passengers' rights and obligations. The proposed recast EU Regulation seeks to strengthen the rights of rail passengers and to place further obligations on rail operators, station managers, ticket vendors and tour operators. Under the proposals, new obligations would be placed on the NTA, as the National Enforcement Body, to monitor compliance with the new recast EU Regulation. Discussions on the recast EU Regulation are ongoing at EU level.

### 8.3 Bus/coach

The rights of passengers travelling on long distance buses/coaches are covered by *EU Regulation 181/2011*<sup>38</sup> for which the NTA became the National Enforcement Body in March 2013.

Subject to certain exceptions, this *Regulation* applies to passengers travelling with regular services where either the boarding or the alighting point is within the European Union and where the scheduled distance of the service is 250 kilometres or more. Some of its provisions apply to all services, including those of shorter distance. The rights applicable to long distance services (i.e. of more than 250 km) include, amongst others:

- Specific assistance free of charge for persons with disabilities and persons with reduced mobility both at terminals and on board and, where necessary transport free of charge of accompanying people.

Additionally, there are rights applicable to all services (including those below 250 km) including:

- Non-discriminatory treatment of persons with disabilities and persons with reduced mobility as well as financial compensation for loss or damage of their mobility equipment in case of accident; and
- Minimum rules on travel information for all passengers before and during their journey as well as general information about their rights in terminals and online; where feasible, this information shall be provided in accessible formats upon request.

## 9 Rail regulation

### 9.1 Introduction

There is a licensing and regulatory framework in place for rail which is governed by both EU and national frameworks. The Commission for Railway Regulation (CRR) has a key role in this area as the independent statutory body with responsibility for regulation, licensing and supervision of the heavy rail sector in Ireland. The rail regulatory framework also includes the contractual arrangements for the maintenance and renewal of the heavy rail network under the IMMAC contract between the Minister for Transport, Tourism and Sport and Iarnród Éireann.

Under the *Railway Safety Act 2005*, as amended, the CRR is also responsible for the safety regulation of light rail, heritage and touristic railway organisations.

### 9.2 Licensing

The licensing framework for rail is administered by the CRR. Based on EU requirements, a regulatory licensing process applies to operators of heavy rail services and there is also a train driver licence requirement for train drivers on those services. The supervision of compliance with these requirements, including enforcement, are functions of the CRR. These EU licensing requirements do not apply to the operation of light rail services (e.g. Luas) or to the operations of other railway organisations (e.g. heritage, touristic or industrial rail services).

### 9.3 Rail safety

The *Railway Safety Act 2005*, as amended, and national statutory instruments that transpose the provisions of the *EU Railway Safety Directive*, including the *European Union (Railway Safety) Regulations 2013 (SI 444/2013)*<sup>39</sup>, contain the national framework for the regulation of railway safety. The CRR is established under the Act and must report annually to the Minister in relation to the performance of its functions. Additionally, in its role under the EU Regulations as the National Safety Authority for the railway sector, it must report annually to the European Union Agency for Railways. Essentially, the CRR must ensure that each railway organisation operating in the State understands and effectively manages safety risk associated with its activities

Under the Act and the Regulations, the prime duty of care in relation to the day to day safe operation of railways rests on the railway operators and their management and staff. This includes Iarnród Éireann as infrastructure manager and railway undertaking in respect of mainline and DART services; Transdev in respect of light rail (Luas) operations; the Railway Preservation Society of Ireland who operate steam and diesel hauled heritage trains on the mainline railway; Rhomberg Sersa Ireland Ltd who operate on-track machines on the mainline railway; and a number of small self-contained heritage railways.

All of the railway organisations in the State are obliged to implement statutory compliant safety management systems. The CRR approves, supervises and audits these railway operator safety management systems as part of its regulatory function, which includes assessing compliance with fitness for purpose criteria and taking enforcement proceedings where necessary. It assesses the safety of new infrastructure works and rolling stock (trains) before they are constructed, commissioned and brought into service. The CRR also investigates and reports on railway

accidents and incidents for the purposes of determining compliance with safety management systems and safety targets.

In line with the requirements of EU law, the CRR is also the designated national competent authority for the transport of dangerous goods by rail; and cableways relating to installations designed to carry persons.

The Railway Safety Advisory Council is an independent body established and operated under the provisions of the *Railway Safety Act 2005*. Its primary function is to consider issues relevant to railway safety and to make recommendations, as appropriate, to the Minister or the CRR. The Advisory Council comprises a Chairperson and 13 ordinary members.

Another important body in the area of rail safety regulation is the Railway Accident and Investigation Unit (RAIU) which conducts investigations into accidents/incidents on railways in Ireland. The RAIU is a statutory body that performs its functions independent of DTTAS. It was established by the *Railway Safety Act 2005* as amended by the *European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014 (SI 258/2014)*<sup>40</sup>. The establishment of the RAIU fulfils Ireland's duty to provide an independent rail accident investigation body under the *EU Railway Safety Directive (2004/49/EC)*.

RAIU investigations are carried out in accordance with the *EU Railway Safety Directive* and the Irish legislation. The purpose of RAIU investigations is to make safety recommendations in order to prevent future accidents and improve rail safety. The RAIU has a statutory obligation to publish an annual report<sup>41</sup> each year accounting for the investigations carried out in the preceding year, the safety recommendations that were issued and actions taken in accordance with recommendations issued previously. The RAIU is required to send a copy of the annual report to the European Union Agency for Railways, the CRR and the Minister for Transport, Tourism and Sport.

Full details of safety recommendations issued by the RAIU are set out in the investigation reports which are available on the RAIU website<sup>ii</sup>. The CRR, as the national safety authority, has a role to take the necessary measures to ensure that the safety recommendations are duly taken into consideration and, where appropriate, acted upon.

The regulatory framework for rail safety is in place to ensure safety for passengers, railway workers and for all who come in contact with the railway network. In 2018, the Government approved proposals to make a number of amendments to the drug and alcohol provisions of the *Railway Safety Act 2005* that apply to railway safety critical workers along with some other railway safety amendments. To that end, a Railway Safety (Amendment) Bill is under preparation by DTTAS.

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<sup>ii</sup> [www.raiu.ie](http://www.raiu.ie)

## 9.4 Infrastructure Manager and the Infrastructure Manager Multi-Annual Contract (IMMAC)

The regulatory framework governing both the infrastructure maintenance of, and the service provision on railways is set out in EU and Irish law. This regulatory framework requires the functional separation of the role of maintaining the network (known as the Infrastructure Manager (IM)) from the role of providing services (known as the Railway Undertaking (RU)).

The IM is responsible for establishing, managing and maintaining the railway infrastructure and traffic management, control, command and signalling systems. RUs operate the train services on that network as maintained by the IM. In most European countries these roles are provided by separately constituted entities with extensive State ownership a common feature, albeit in terms of the RU role there are increasing levels of competition, particularly within larger railway networks.

In Ireland, given the isolated status of the railway network from other networks and the relatively small scale of the overall network as compared to others, the regulatory framework described above is implemented through a functional separation of the IM and RU roles within Iarnród Éireann and separate audited accounts are published alongside the consolidated company accounts.

In light of the fact that both the IM and RU are separate functional entities within the one corporate body, an additional feature of the Irish regulatory framework is the “Essential Functions Body” which is designated as Córás Iompair Éireann. This is the body charged with decision-making on train path allocation between different RUs on the network and on the level of access charges to be paid by RUs to the IM for their use of the network.

Funding for both the IM and the RU is similarly governed by EU and Irish law. Funding for both is comprised of a mixture of charges (access charges in the case of the IM and passenger revenue in the case of the RU) and Exchequer subvention (in the form of grants paid under the Infrastructure Manager Multi-Annual Contract for the IM and Public Service Obligation funding for the RU in respect of the provision of PSO services).

It should be noted that in Ireland the RU within Iarnród Éireann is by far the biggest RU using the rail network and therefore access charges paid by RUs to the IM in Ireland are largely charges paid by one functionally separate unit of Iarnród Éireann to another unit of Iarnród Éireann.

It is a requirement of Irish law (*The European Union (Regulation of Railways) Regulations 2015*<sup>42</sup>) that the Minister for Transport, Tourism and Sport enter into an Infrastructure Manager Multi-Annual Contract (IMMAC) with Iarnród Éireann. The Regulations also state that the contract shall set out the level of funding to be provided over the contract period, that the contract period shall be for a period of at least five years and that the Commission for Railway Regulation shall be the independent monitoring body for the purposes of that Contract.

In Ireland the first IMMAC covered the period 2014 to 2018 (extended to 2019 to allow for finalisation of new multi-annual contract period) and Table 9.1 sets out the total expenditure over the period.

**Table 9.1: IMMAC 2014-2019 annual spend**

	2014	2015	2016	2017	2018	2019
<b>IMMAC Total</b>	<b>191.2</b>	<b>205.3</b>	<b>213.4</b>	<b>254.9</b>	<b>247.8</b>	<b>281.3*</b>
<b>IMMAC Exchequer Funding</b>	140.5	144.2	134.0	158.8	160.0	197.0
<b>% Exchequer Funding</b>	73%	70%	63%	62%	65%	70%

Source: DTTAS

*\*2019 total expenditure figure is estimate and subject to revision based on final year outturn.*

In addition to the IMMAC funding which relates specifically to maintaining the railway infrastructure, DTTAS and the NTA also provide funding for investment in network enhancement projects which are dealt with by separate arrangements and are outside the scope of the IMMAC.

As part of the finalisation of the next IMMAC contract for 2020 to 2024, a review of the previous contractual period has been completed and a report is currently being finalised which will be published in due course on the DTTAS website.

## **9.5 Economic regulation**

Since 2015, the CRR is responsible for the economic regulation of the rail sector in respect of State compliance with the provision of the European railway system. Its functions in this regard include:

- Licensing of Railway Undertakings;
- Monitoring the performance of Iarnród Éireann under the terms of the IMMAC in regard to expenditure, maintenance output, and service delivery;
- Oversight of the Iarnród Éireann track access allocation and pricing regime; and
- Dispute resolution about access to train pathways by rail passenger and freight operators.

## 10 Emerging regulatory issues

### 10.1 Introduction

The focus of the public transport regulatory regime is to protect the passenger, ensure safety and enable the effective operation of public transport services and networks. These are vital objectives and must continue to be central to how the public transport sector is operated and regulated. Within this context, though, there is also a need to evolve and be open to new technologies and innovation which can present opportunities for better and enhanced services and offer the potential to bring positive social and environmental benefits. There are a number of innovations and next generation technologies that may shape public transport services in the future and consideration is needed around the appropriate regulatory framework for these emerging trends.

### 10.2 Mobility as a Service (MaaS)/Shared mobility

Mobility as a Service (MaaS) is a recent transport development that involves a shift of thinking about transport means. MaaS integrates various forms of public and private transport services into a single mobility-focused service which is accessible to the end-user (traveller/passenger) on demand. Examples include app-enabled on-demand transport services, car-and-bicycle sharing, and ride-sharing platforms which allow travellers/passengers to plan and pay for travel across different modes of transport under a 'one-stop-shop'. Typically, the aim of MaaS is to provide an alternative to the use of the private car with the objective of being a convenient, more sustainable approach to meeting transport needs. It can help to reduce congestion and address constraints in transport capacity, while providing better value for the end-user.

Over the last few years, there have been some calls for the changing of the present regulatory system so as to allow certain variations on taxi-type services that would not be permitted at present, for example, ride-sharing.

A report published by the International Transport Forum in 2018 - *Shared Mobility Simulations for Dublin*<sup>43</sup> - examined how new shared mobility services could change mobility in the GDA. The report looked at simulations of eleven different shared transport scenarios. It considered that shared, on-demand mobility services could provide significant benefits to the GDA by reducing emissions, congestion and the need for parking space.

### 10.3 Intelligent Transport Systems

Intelligent Transport Systems (ITS) embody the application and integration of advanced communication based technologies to transport. ITS is very broad based and is an enabler that allows transport operators to better plan, design, operate, maintain and manage transport systems.

DTTAS engages on an ongoing basis with national and international ITS organisations and platforms such as ITS Ireland, ERTICO – ITS Europe, the EU ITS Platform (EU EIP) and the C-Roads Platform.

The main areas of focus on ITS are:

### **EU ITS Directive**

DTTAS, along with the relevant State agencies, engages with the European Commission on ITS matters and in particular on the development of delegated regulations under the *ITS Directive (2010/40/EU)*<sup>44</sup>. The delegated authority under the *ITS Directive* allowing the Commission to make Regulations has been extended for a further five years to August 2022. ITS Regulations have already been adopted in the areas of road safety related traffic information, real time traffic information and an EU wide multimodal journey planner.

### **EU Cooperative Intelligent Transport Systems (C-ITS)**

Cooperative Intelligent Transport Systems (C-ITS) focuses on the communication between digital technologies which provide intelligence, placed at the roadside or in vehicles. It is envisaged that in the very near future vehicles will interact directly with each other and with the road infrastructure. This interaction will allow road users and traffic managers to share information and use it to coordinate their actions. The cooperative element, enabled by digital connectivity between vehicles and between vehicles and transport infrastructure, is expected to significantly improve road safety, traffic efficiency and comfort of driving. These outcomes will be achieved by helping the driver to take the right decisions and adapt to the traffic situation.

### **Autonomous Driving**

In October 2018, the Minister announced the development of guidelines for the testing of autonomous vehicles on Irish roads. An Interdepartmental Steering Group on Connected and Autonomous Vehicles comprised of relevant public bodies was established and holds regular meetings to advance work on the guidelines. This work is continuing in 2019 in consultation with stakeholders to ensure the draft guidelines meet their needs.

The guidelines will be supported by a National Connected and Autonomous Vehicle (CAV) roadmap and plan. Work is also underway at EU and international level on the introduction of connected and autonomous driving and DTTAS continues to closely follow and engage with these developments.

## **10.4 Personal powered transporters**

E-scooters and other low-powered vehicles, such as e-skateboards are becoming more popular as a transport option in Ireland, including as a means to integrate with public transport. While a switch to alternatively-powered vehicles is a necessary step-change to effect substantial reductions in transport emissions, it is equally important that the regulation of vehicles and their use protects the lives and safety of all road users and is not simply driven by the market. The Minister recently launched a separate public consultation on Personal Powered Transporters (PPTs), the most common of which are e-scooters. The public consultation follows on from a report commissioned by the Road Safety Authority which broadly supports legalising the use of such vehicles on public roads, but subject to certain criteria. Under current road traffic legislation, the use of these mechanically propelled vehicles is illegal on public roads/in public places.



## 10.5 Other issues

Concerns have been raised in recent years in relation to rickshaws and in November 2018, the Government approved a proposal to amend the *Taxi Regulation Act 2013* to regulate for rickshaws. The legislation will introduce new detention powers which will ensure effective enforcement of a ban on motorised rickshaws carrying passengers for reward, since these are the faster vehicles which create the greater risks. The Bill will give powers to the NTA to introduce a licensing regime for non-motorised rickshaws only. The provisions will largely mirror existing licensing and enforcement requirements for taxis including: vehicle checking and registration; driver vetting and registration; requirements regarding insurance; and fare regulation.

A key component of the new framework will be to ensure that a ban on motorised rickshaws carrying passengers is effectively enforced with the introduction of comprehensive new detention powers. These powers will permit an authorised officer to remove a vehicle for further examination.

DTTAS recognises the need to continuously consider the regulatory framework in place for all modes of transport and will keep appraised of new developments. The regulation of any public passenger service into the future should continue to be determined in the context of the important safety and consumer protection and network effectiveness objectives that underpin our existing legislation.

## Acronyms

CIÉ	Coras Iompair Éireann
CRR	Commission for Railway Regulation
DTTAS	Department of Transport, Tourism and Sport
EU	European Union
GDA	Greater Dublin Area
IMMAC	Infrastructure Manager Multi-Annual Contract
IM	Infrastructure Manager
ITS	Intelligent Transport System
LPSV	Large Public Service Vehicle
MaaS	Mobility as a Service
NEB	National Enforcement Body
NTA	National Transport Authority
PDA	Performance Delivery Agreement
PSO	Public Service Obligation
RAIU	Railway Accident and Investigation Unit
RTP	Rural Transport Programme
RU	Railway Undertaking
SPSV	Small Public Service Vehicle
TCU	Transport Coordination Unit
TII	Transport Infrastructure Ireland
WAV	Wheelchair Accessible Vehicle

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