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Welsh Affairs Committee

The Proposed Legislative Competence Order relating to Transport

Eighth Report of Session 2009–10

*Report, together with formal minutes, oral and
written evidence*

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The Welsh Affairs Committee

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Contents

Report	<i>Page</i>
Summary	3
1 Introduction	4
Introduction of this proposed Order	4
Background to the LCO process in this instance	4
Our Inquiry	5
2 Purpose of the proposed Order	6
Concessionary Fare Scheme	6
Existing Policy	7
Need for further legislation	7
Learner Travel	8
Existing Policy	9
Need for further legislation	10
Potential Impact on Local Bus Services	10
3 Scope of the Proposed Order	11
Concessionary Travel	11
Learner Transport Safety	11
Non-contracted services	11
4 Cross-Border Issues	12
Competition	12
Alignment of the concessionary fare schemes	13
5 Drafting	13
“Description”	13
Bus Services	14
Use of ‘carve-outs’	15
6 Conclusion	16
Annex	16
Introduction of this proposed Order	16
Conclusions and recommendations	18
Formal Minutes	20
Witnesses	21
List of written evidence	21
List of Reports from the Committee during the current Parliament	22

2 The Proposed Legislative Competence Order relating to Transport

Summary

This proposed Order would extend the legislative competence of the National Assembly for Wales over two distinct transport issues: concessionary fares and learner transport safety.

The intention regarding concessionary fares is to bring the whole of the All Wales Concessionary Fares Scheme under the purview of the Welsh Assembly Government. Concerns were expressed in evidence that the proposed Order could allow changes to be made in the current range of entitlements available to Welsh pass holders. However, the proposed Order in itself will not bring about any variation to the scheme. We conclude that the proposed extension of competence is appropriate in order to enable the Welsh Assembly Government to keep the Welsh Concessionary Fares Scheme coherent and workable. The concerns that were expressed to us are ones that should be considered fully by the Welsh Assembly Government when drafting proposals and by the Assembly when considering any proposed Measure put before it and do not constitute a reason for opposing the transfer of legislative competence.

The intention regarding learner transport safety is to enable the National Assembly to regulate safety standards on vehicles contracted to carry learners to and from home and schools and places of training. This is consistent with existing Welsh Assembly Government policy. The Order will enable the Welsh Assembly Government to fulfil its commitment to bring forward legislation on learner transport safety. Evidence we were given about the potential impact of those proposals on local bus services will need to be dealt with fully in the impact assessment which has to be undertaken by the Assembly in considering any future Measures in this area following the making of the proposed Order. These concerns do not constitute a reason for opposing the transfer of legislative competence.

We conclude that the purpose of the proposed Order is clear and that it is consistent with the existing powers and responsibilities of the National Assembly for Wales and we therefore recommend that the LCO should proceed.

1 Introduction

Introduction of this proposed Order

1. The proposed Order is designed to achieve two goals if made:
 - First, it will give the National Assembly for Wales broad powers over the administration of the All Wales Concessionary Fares Scheme;
 - Second, it would enable the Assembly to pass Measures defining and regulating safety standards for vehicles contracted to transport learners to and from schools and places of training.

These two issues have been grouped together in the proposed Order because they both relate to transport. However, they are separate and distinct areas of competence.

2. The proposed National Assembly for Wales (Legislative Competence) (Transport) Order 2010 is the fifteenth proposed LCO on which we have reported. The full background to the LCO process in general and the details regarding this particular proposed Order are contained in an Annex to this Report.

Background to the LCO process in this instance

3. The All Wales Concessionary Fare Scheme was introduced in 2002. The proposals relating to concessionary fares set out in the proposed Order follow concern expressed about the sustainability of the scheme in its current form. In the 2007-08 Welsh Assembly Government budget, £56.3m was allocated for concessionary travel and the total cost of the scheme has continued to rise. It is now argued that the cost of funding concessionary fares is putting pressure on the wider transport budget and on the provision of other, vital, non-commercial transport services, such as evening, weekend, and rural bus services.

4. The proposals relating to learner transport safety set out in the proposed Order follow a long period of debate and consultation on this issue in Wales. The Education and Inspections Act 2006 provided the National Assembly for Wales with a framework power to make provision about “the travel of persons receiving primary, secondary or further education or training to and from the schools or other places where they receive it”. This framework power enabled the Welsh Assembly Government to pass the Learner Travel (Wales) Measure which received Royal Assent in December 2008. During the consultation process for the Measure, two issues of particular concern were identified: the condition of vehicles in which learners are transported to and from schools and places of training, and disruptive behaviour on those vehicles which could compromise the safety of learners and other passengers.

5. Several exceptions to the competence of the National Assembly have prevented the Welsh Assembly Government from responding adequately to these concerns. These exceptions are listed in Paragraph A1 of Part 2 of Schedule 5 of the Government of Wales Act 2006 and cover the use, construction and equipment of vehicles used to transport learners; they include the power to legislate over vehicle standards and licensing, vehicle inspection, seating arrangements such as the ‘3 for 2 concession’ (the practice of seating

three children under fourteen in a bench seat designed for two adults), installation of seatbelts, driver licensing and transport security.

6. This led to a call by Welsh Ministers, which received cross-party support, to seek wider powers over learner transport and in December 2008, Ieuan Wyn Jones AM, Deputy First Minister and Minister for Economy and Transport, announced that he would be seeking a transfer of competence over the regulation of the use of motor vehicles contracted to provide school transport.

7. The Welsh Assembly Government first stated that it intended to seek competence in this area during the passage of the Learner Travel (Wales) Measure 2008. On 14 July 2009, the LCO was announced as part of the Welsh Assembly Government's legislative programme for 2009-10. A proposed Order was laid before Parliament and referred to this Committee on 14 December 2009. The Parliamentary Under-Secretary of State told us that, in this instance, the process of reaching a consensus between the Welsh Assembly Government, the Wales Office and the Department for Transport on the text of an LCO took around three months.¹ **Although this is a relatively small and straightforward proposal, we hope the Parliamentary Under Secretary is correct in his assessment that this is evidence that all three parties to the process of clearance are now beginning to recognise the need for speed and clarity in these negotiations.**²

Our Inquiry

8. We examined the scope and appropriateness of the proposed National Assembly for Wales (Legislative Competence) (Transport) Order 2010 under the terms of the Government of Wales Act 2006. We considered whether the proposed Order is in the spirit and scope of the devolution settlement; the advantages of a legislative approach to learner safety and the new competence in relation to concessionary fares; the extent to which there is a demand for legislation which might follow the adoption of the proposed Order; the potential for the Measures flowing from the proposed Order to increase the regulatory burden on the public and private sector; and the possible cross border implications of that increased regulatory burden.

9. We received a number of written submissions, which are published with this Report. We held an oral evidence session with Mr Ieuan Wyn Jones AM, Deputy First Minister and Minister for the Economy and Transport in the Welsh Assembly Government; and Mr Wayne David MP, Parliamentary Under-Secretary of State in the Wales Office. We are grateful for the cooperation of all our witnesses and for the assistance of our Specialist Advisers, Professor Keith Patchett, Emeritus Professor of Law, University of Wales,³ and Dr Sian Thornthwaite, independent consultant specialising in young people's transport and travel.⁴

¹ Qq 76-77

² Qq 75 and 79

³ See Formal Minutes for the Committee for 28 November 2006 at <http://www.parliament.uk/documents/upload/final%20FORMAL%20MINUTES%2006%2007.pdf>

⁴ See Formal Minutes for the Committee for 15 December 2009 at http://www.parliament.uk/parliamentary_committees/welsh_affairs_committee/wac_formal_minutes_09_10.cfm

2 Purpose of the proposed Order

10. The full background to the proposed Order is laid out in the accompanying Explanatory Memorandum reproduced at the end of this Report. If granted, the proposed Order will have two effects. First, it will grant the National Assembly wide ranging powers to deal with the Welsh Concessionary Fare Scheme as it deems appropriate. Second, it will create exceptions to the current limitations to the competence of the Assembly on transport safety, allowing it to:

- pass Measures regulating the “description” of vehicles contracted to transport learners to and from schools and places of training
- pass Measures requiring local authorities to ensure that vehicles contracted to transport learners to and from schools and places of training carry a supervisory adult.

Concessionary Fare Scheme

11. Regarding the Concessionary Travel Scheme, the proposed Order would insert a new Matter (10.2) in Field 10 of Schedule 5 to the Government of Wales Act 2006 (highways and transport) as follows:

Concessionary travel on the following services—

- (a) bus services;
- (b) Welsh services provided under a franchise agreement to which the Welsh Ministers are a party.

12. The Explanatory Memorandum describes the objective of the proposed Order in respect of the Concessionary Fare Scheme as being the safeguarding of the “long term sustainability of the concessionary travel scheme”.⁵ If granted, the proposed extension of competence could:

...enable the National Assembly to consider legislating to exercise more rigorous control over the scheme. For example, the National Assembly could legislate to allow the Assembly Government to directly negotiate reimbursement of operating costs with the operators and/ or administer the scheme directly.⁶

13. The Deputy First Minister clarified further in his evidence to us that the overall purpose of the proposal was to “correct” the existing situation in which the Welsh Assembly Government have competence over part of the scheme but not over the whole. He added

I think it makes a great deal of sense for the Assembly to have competence over the whole issue of concessionary fares because there may well be issues in the future that we might want to deal with which currently we cannot because only part of the

⁵ Explanatory Memorandum, paragraph 21

⁶ Explanatory Memorandum, paragraph 24

legislative competence lies with the Assembly. I think it is a lot neater to have the whole.⁷

Existing Policy

14. The current powers of Ministers over the Concessionary Fare Scheme are set out in Sections 145B to 152 of the Transport Act 2000. The Concessionary Bus Travel Act 2007 provides for mandatory travel concessions to be given by operators of eligible services to older people and disabled travellers.

15. Welsh Assembly Ministers currently have the power to adjust the way in which participating operators are reimbursed. They also have powers of variation under Section 147 of the Transport Act 2000, including the power to make any amendment of that Act that could have been made under the revoked Travel Concessions (Extension of Entitlement) (Wales) Order 2001. This includes the power to adjust the current range of entitlements available under the scheme.

Need for further legislation

16. The concessionary fares scheme in Wales is currently administered by individual local authorities who negotiate with participating operators. If granted, the proposed Order would allow the Assembly to legislate for the Welsh Assembly Government to enter into direct negotiations with operators over the reimbursement of costs. It is argued that this could help to control the rising cost of the scheme. The Explanatory Memorandum states:

The current mechanisms for reimbursing operators via local authorities fails to build in sufficient incentives to control costs since local authorities are reimbursed by the Assembly Government for the full costs incurred.⁸

17. The proposed Order would also permit the National Assembly to pass Measures to adjust the legislative framework of the scheme. Bus and train operators participating in the scheme can take cases to appeal; however, under the current powers Welsh Ministers can determine those appeals. If the Welsh Assembly Government were negotiating contracts directly with operators, this would clearly lead to a conflict of interest, so the proposed Order would enable the Assembly to establish an independent appeals panel.

18. The Guide Dogs for the Blind Association expressed concern to us that the Welsh Assembly Government might be seeking the extension of competence in order to make changes to the range of entitlements currently available to pass holders, for example, by restricting free travel to off-peak times, as is currently the case in England.⁹ The Deputy First Minister pointed out that the Assembly holds powers of variation over concessionary entitlements and that it therefore already has the power to adjust them. However, the Minister also stressed that there is no current intention to make any such changes to the scheme. The proposed Order would not in itself bring about variations to the scheme and

⁷ Q 7

⁸ Explanatory Memorandum, paragraph 21

⁹ Ev 20

while the Welsh Assembly Government in drafting Measures and the Assembly in scrutinising any proposals would need to be aware of the concerns expressed by the Guide Dogs for the Blind Association in order to protect the services available to blind people, this is not a reason for opposing the Order.

19. Given the commitment to maintain the current level of concessionary entitlement, we sought some clarification on how the possible changes to the administration of the concessionary fares scheme, set out in the Explanatory Memorandum, could help to control the rising cost of the scheme. In response, the Deputy First Minister confirmed that:

... we are satisfied that if we can maintain the existing entitlement, provided we can control the budget by having an understanding with bus operators about that reimbursement rate, we are confident that this year we will be able to achieve that; that is maintain the concessionary entitlement and control the budget.¹⁰

20. The Welsh Assembly Government’s argument for an extension of competence is that the current arrangements give the Assembly control over only parts of the legislation affecting concessionary travel and that this inhibits a logical approach to legislation.¹¹ We accept this rationale for the extension of competence.

Learner Travel

21. In order to achieve the Welsh Assembly Government’s policy objectives on learner transport safety, the proposed LCO seeks to carve out new areas of competence by amending two existing exceptions relating to highways and transport. The Assembly is therefore seeking to amend Part 2 (Exceptions to Matters) of Schedule 5, Paragraph A1 (2) of the Government of Wales Act 2006, which currently reads:

(2) Regulation of the use of relevant vehicles on roads, the construction and use of relevant vehicles, and conditions under which relevant vehicles may be so used, apart from—

(a) regulation of use of relevant vehicles carrying animals for the purposes of protecting human, animal, fish or plant health or the environment, and

(b) regulation relating to Matter 10.1

The proposed amendment would add:

(c) regulation of the description of vehicle which may be used pursuant to learner transport arrangements (including description by reference to a vehicle’s construction or equipment which differ from the standards that would or might otherwise apply to that vehicle.)

Sub-Paragraph (14) of Paragraph A1 of Part 2 of Schedule 5 of the Government of Wales Act, which currently reads “Transport Security” would have added the words:

¹⁰ Q 6

¹¹ Q 9

(apart from the regulation relating to the carriage of supervising adults on vehicles used pursuant to learner transport arrangements)

And a definition would be added at the end as follows:

In paragraphs (2) and (14) “learner transport arrangements” means arrangements of the kind described in Matter 5.10 which consist of the provision of motor vehicles and are made by –

(a) public authorities (within the meaning of field 15) exercising functions relating to education or training

(b) institutions of other bodies concerned with the provision of education or training

22. This could allow Measures to be passed to stipulate that all vehicles contracted to transport learners must be single deck and equipped with seatbelts and, where appropriate, closed circuit television. It could also introduce a statutory requirement for all vehicles transporting learners to carry a supervisory adult to deter or penalise disruptive behaviour which could otherwise compromise the safety of learners.

23. The safety of school buses and coaches in Wales is a longstanding issue of public concern. This concern has been heightened since the accident in the Vale of Glamorgan in December 2002, in which Stuart Cunningham Jones, a pupil at Cowbridge Comprehensive, was killed whilst travelling on a school bus.

24. Despite this concern, statistically it is clear that in the UK as whole great improvements have been made in school transport safety: the number of deaths on the school journey in the UK halved between 1997 and 2007. Mr Wayne David MP, Parliamentary Under-Secretary of State in the Wales Office, referred to the progress that has been made, but argued that there was still room for improvement and that the proposed Order would provide an “additional stimulus” to the drive to improve standards.¹²

Existing Policy

25. The Learner Travel Measure in Wales has introduced a broader entitlement to school transport than in England, with a requirement that free transport is provided to a child at primary school living more than 2 miles from school, and 3 miles for secondary pupils. School transport in Wales is consequently one of the most visible local authority functions.

26. Learner transport in Wales is provided by a range of services, from contracted vehicles providing a dedicated home to school service, to seats on public service buses. Some authorities also use rail services, pay a mileage allowance to parents, or operate their own vehicles.

27. The Welsh Assembly Government has recently issued guidance to local authorities on contracting learner transport, which encourages authorities to prioritise safety standards. However, this guidance is ‘good practice’ rather than statutory and consequently practices currently vary from authority to authority.

¹² Q 57

Need for further legislation

28. We asked our witnesses to comment on what specific advantages they felt the legislative approach set out in the proposed Order had over the current contractual approach. In response, the Deputy First Minister drew our attention to the scale and complexity of the task of negotiating contractual terms with each of the twenty-two local authorities in Wales.¹³ The Parliamentary Under Secretary at the Wales Office was of the opinion that a single, statutory, Wales-wide approach would be welcomed by local authorities and also by parents, who would appreciate the greater clarity of a consistent set of learner transport safety standards, although there was little supporting evidence for this view.¹⁴

29. Learners are likely to have their own ideas of what changes are needed and to have their own notions of what constitutes a safe and comfortable journey to school. We asked what efforts had been made to consult learners about their expectations of the proposed legislative changes, in particular through the Children’s Commission and Funky Dragon, the Children and Young People’s Assembly for Wales. We were told that more consultation of this kind was envisaged at Measure stage.¹⁵ We urge the Welsh Assembly Government to take this form of consultation very seriously. There is clearly a strong consensus behind the policy approach which has led to this Order, but engaging those directly affected will help to enhance the reputation of the Welsh Assembly Government and the Assembly as a whole.

Potential Impact on Local Bus Services

30. We asked witnesses whether they perceived any risk that enhanced safety standards on contracted vehicles might “fragment” the existing, and often socially necessary, public bus services which run alongside contracted learner transport, as a result of a perception by parents that regular bus services were a less safe option for their children. The Deputy First Minister argued that the LCO had two objectives which should be considered mutually reinforcing: to promote learner safety and to encourage learners to travel by bus and not by private car. He did not anticipate any negative effects on local bus services arising from the proposed Order or Measures which might follow it.¹⁶

31. While the evidence for legislative solutions to the learner transport safety issue is not wholly persuasive, we recognise that it is appropriate for decisions about learner transport to be made by the National Assembly in relation to Wales, and that it is consistent with the overall devolution settlement to transfer this competence.

¹³ Q 12

¹⁴ Q 71

¹⁵ Q 42

¹⁶ Q 28

3 Scope of the Proposed Order

Concessionary Travel

32. The All Wales Concessionary Fare Scheme provides free bus travel for people over 60 and disabled people of all ages. A pilot scheme providing free rail travel to pass holders on certain lines will run until March 2010. The scheme also includes the Community Transport Concessionary Fares Initiative, a pilot scheme which has been extended until 31 March 2012. The Initiative aims to test the provision of more accessible travel opportunities for severely disabled people who are unable to use, or do not have access to, conventional local bus services. The overall goal of the Initiative is to “develop a model that provides an acceptable level of concessionary travel; supports the broader development of the community transport sector and is more sustainable in the long term”.¹⁷

33. The Community Transport Association (CTA Cymru) submitted evidence in which it expressed concern that the Explanatory Memorandum accompanying the Order makes no reference to the Community Transport Concessionary Fares Initiative, which is currently being piloted in Wales.¹⁸ We asked the witnesses if the proposed Order could enable the Concessionary Fares Scheme to be extended to Community Transport. The Deputy First Minister confirmed that the intention of the Welsh Assembly Government is to limit the scope of Measures flowing from the proposed Order to registered bus services. He stated:

I think there is a danger that if it is extended to community transport that that would open the door to have a range of ad hoc services that could then qualify for concessionary fares, so our current intention is that it should be limited to registered bus services but if community transport groups were wishing to operate registered services then of course they would qualify.¹⁹

34. As evidence submitted by the Community Transport Association points out, it is unfortunate that the Explanatory Memorandum accompanying the proposed Order made no reference to the Community Transport Concessionary Fares Initiative. We are satisfied that in this instance it is appropriate to limit the scope of the proposed Order to registered buses. However, at Measure stage the Welsh Assembly Government will need to work with the Community Transport Association to clarify how the Measures which could follow the proposed Order might interact with the Initiative.

Learner Transport Safety

Non-contracted services

35. Measures flowing from the Order regarding learner safety would be limited to motor vehicles contracted specifically by local authorities for the transport of learners. This would

¹⁷ Written statement by the Welsh Assembly Government, Ieuan Wyn Jones, Deputy First Minister and Minister for the Economy and Transport, 10 March 2009 <http://wales.gov.uk/docs/cabinetstatements/2009/090310commtransen.doc>

¹⁸ Ev 19

¹⁹ Q 4

include, for example, contracted taxis and private hire vehicles, but would not include travel by rail. It would also exclude all learners travelling on local bus services, even if their travel is provided at the local authority's expense.

36. We expressed some concern that the scope of the Order was limited to contracted services. Many children in Wales travel to school on public buses,²⁰ and it appears to us potentially anomalous to exclude these learners from any Measures which could be passed requiring the introduction of enhanced safety standards on learner transport. In response the Deputy First Minister noted that previous legislation circumscribes to a certain extent the scope of the LCO and any future Measures. He described this as a “legislative barrier” to the regulation of safety standards on local bus services.²¹ The Parliamentary Under Secretary of State made a similar argument: in essence he stated that the competence sought was logical within the existing statutory architecture.²²

37. Witnesses also confirmed that the Assembly was not seeking competence to legislate for safety measures for, for example, pedestrian or cycle-using learners. The Deputy First Minister told us, “It is not a policy decision by us not to do it, it is just that the current settlement would not allow us to do it”.²³

38. The proposed Order will enable the National Assembly to legislate learner safety standards on dedicated learner transport and not on other public transport. This reflects the current structure of the law in the area of learner travel and we accept that, at this stage, it would not be appropriate to seek to undo this situation through the LCO process. We draw this anomaly to the attention of the Secretary of State for Transport and the Secretary of State for Wales and suggest that consideration be given to appropriate policy and legislative changes.

4 Cross-Border Issues

Competition

39. We asked witnesses if they anticipated that any cross-border issues could arise from Measures flowing from the Order. In particular, we asked about the potential impact of the introduction of Wales-wide enhanced learner transport safety standards on companies on both sides of the border currently operating, or planning to bid for, learner transport contracts.²⁴ We raised the question of companies based in England and providing learner transport on both sides of the border, which might in future be required to meet a different standard in Wales.

²⁰ The precise numbers are held by each local authority, but the Assembly Committee meeting heard evidence that around 50% of Welsh learners travel to school on public or service buses.

²¹ Q 29

²² Qq 64-66

²³ Q 15

²⁴ Q 37

40. Both the Welsh Assembly Government and the Wales Office said that any effect on competition across the border would be very limited.²⁵ Mr Wayne David MP gave his view that “Obviously cost will be a factor but I would very much hope that bus contractors would be very concerned about the safety of the children they are transporting and that factor would be foremost in their minds rather than simply pounds, shillings and pence”.²⁶ He added “when there is full consultation, as there will be with the Measure, the views of English-based contractors will be taken into account”.²⁷

41. The National Assembly for Wales will wish to give further consideration to the potential impact on cross-border competition of any Measures flowing from this Order.

Alignment of the concessionary fare schemes

42. The Concessionary Bus Travel Act 2007 includes a provision that would allow a single pass to be issued for use throughout the United Kingdom at a future date. Our report on cross-border provision of public services in Wales stressed the desirability of aligning the funding mechanisms and entitlements or concessionary bus travel in England and Wales in order to encourage cross-border transport and tourism and eliminate the current inconvenience to pass holders who cross the border to use services.²⁸ We asked witnesses whether the proposed LCO could advance the key goal of cross-border harmonisation.

43. Both Ministers were convinced of the importance of harmonisation, but neither considered that it had any bearing on the drafting of the proposed Order. They believed that the current barriers to harmonisation were budgetary problems and discrepancies in eligibility criteria between England and Wales. The proposed Order would neither create nor remove barriers to harmonisation.²⁹

5 Drafting

“Description”

44. The proposed Order would add the words:

(c) regulation of the *description* of vehicle which may be used pursuant to learner transport arrangements (including description by reference to a vehicle’s construction or equipment which differ from the standards that would or might otherwise apply to that vehicle.)

We sought clarification on the use of the term “description” in the proposal. We were concerned that this drafting might not be wide enough to permit the Welsh Assembly

²⁵ Q 39

²⁶ Q 69

²⁷ Q 73

²⁸ Welsh Affairs Committee, *Cross-border provision of public services for Wales: Transport*, Tenth Report of Session 2008-09, HC 58, Paragraph 104.

²⁹ Q 41

Government to achieve its two stated priorities on the safety of vehicles transporting learners: legislating to ensure that all such vehicles are single deck, and that they are equipped with seatbelts. We were also concerned with the relationship between this proposed Order and the Road Vehicles (Construction and Use) Regulations 1986.³⁰

45. Lynsey Edwards, a lawyer in the Welsh Assembly Government, stated that the use of the word “description” in the proposed Order was carefully calibrated to enable the Assembly to bring forward legislation regulating bus standards while keeping the competence of the UK government and EU regulations intact. She explained that the term “description”:

...has been used deliberately to enable the widest possible interpretation without actually going into vehicle safety standards and technical specifications, so under the term “description” we would be able to regulate the age, the size, the colour of the vehicle and the installation of seat belts and CCTV.³¹

46. The technical standards of vehicles which apply throughout the UK will remain within the remit of the UK government, working increasingly within the framework of European law. Susan Olley, Legal Adviser to the Wales Office, argued that the term “description” would allow future Measures to “make reference” to technical standards without exceeding the boundaries of National Assembly competence.

...It includes making reference to those technical standards as part of the description, as in two-point attachment seat belts but not specifying how they may be attached, or three-point attachment seat belts, but not going behind that to talk about the materials used in constructing that equipment.³²

47. Both Ministers were confident that the proposed Order is consistent with the Road Vehicles (Construction and Use) Regulations 1986. Lynsey Edwards stated that because the proposed Order does not seek the competence to legislate on vehicle safety standards, it does not interact with the Regulations.³³

48. We are satisfied that the use of the word “description” will enable the Welsh Assembly Government to achieve its stated policy objectives on learner transport safety without encroaching upon competence which lies at other levels.

Bus Services

49. The Welsh Assembly Government told us in evidence that the use of the term “bus services” in the Order was intended to bear the same meaning as in other transport legislation.³⁴ The Parliamentary Under-Secretary of State clarified in writing that the Local Transport Act 2008 amends the Transport Act 2000 to define “bus services” in section 10

³⁰ Road Vehicles (Construction and Use) Regulations 1986 (as amended by the Road Vehicles (Construction and Use) (Amendment) (No. 2) Regulations 2001).

³¹ Q 43

³² Q 82

³³ Supplementary evidence on the Regulations was provided by the Welsh Assembly Government. See Ev 24.

³⁴ Q 48

as “services using public service vehicles” and that “a future Measure using the competence devolved via this LCO would include a definition of ‘bus services’ compatible with this definition”.³⁵

50. We recommend that the Explanatory Memorandum be amended to specify how the use of the term “bus services” in the LCO relates to its use in other transport legislation.

Use of ‘carve-outs’

51. The proposed Order relies heavily on ‘carve outs’, that is, exceptions to existing exceptions. We criticised the extensive use of ‘carve outs’ in our Report on the Environment LCO on the basis that this was not transparent or easily understood by the general reader and “could risk making the Government of Wales Act 2006 unwieldy and impenetrable”.³⁶ This conclusion was endorsed by the Lords Constitution Committee Report on the Environment LCO.³⁷

52. The Deputy First Minister and his officials argued that the use of an exception to an exception was an appropriate and logical approach in the case of transport security.³⁸ The Wales Office agreed that the competence could not have been provided only by inserting additional Matters in the relevant field. Its legal advisor explained that:

...even had we inserted new Matters we would have had to make carve-outs from the existing exceptions. We avoid duplicating text in any legislation because of the interpretation possibilities that it might give rise to, so we thought the most economical way, certainly for the lawyers, was to just have the carve-out from an existing exception in a sense to reclaim that competence back to the Welsh Assembly Government rather than put in a new Matter...³⁹

53. We are satisfied that the use of ‘carve outs’ to exceptions to the Assembly’s legislative competence is justified in this instance.

³⁵ Ev 24

³⁶ Welsh Affairs Committee, *The Proposed National Assembly for Wales (Legislative Competence) (Environment) Order 2009*, Twelfth Report of 2008-09, HC 678, paragraph 41.

³⁷ House of Lords Select Committee on the Constitution, *The Proposed National Assembly for Wales (Legislative Competence) (Environment) Order 2009*, Twentieth Report of 2008-09, HL 159, paragraph 5.

³⁸ Q 46

³⁹ Q 86

6 Conclusion

54. We are satisfied that the proposed extension of competence over concessionary fares is necessary in order to allow the Welsh Assembly Government to operate the scheme coherently. It is appropriate for the Welsh Assembly to exercise control over the whole scheme rather than just a part. In respect of the proposals in the Order relating to learner transport safety, we are satisfied that the power to define and regulate safety standards on contracted learner transport should be devolved to the National Assembly. We are confident that the Assembly will wish to undertake a thorough evaluation of the scope of the learner transport proposals and their potential impact upon local bus services at Measure stage.

Annex

The Government of Wales Act 2006 introduced a procedure whereby the National Assembly for Wales can bring forward proposals which would extend the Assembly's lawmaking powers by way of Legislative Competence Orders. The Orders do not themselves change the general law for Wales—they pave the way to subsequent changes in the law applying to Wales within the devolved areas of legislative competence. They do this by adding new “Matters” to the “Fields” of legislative competence set out in Schedule 5 to the Government of Wales Act 2006.

These proposals for draft Orders may be introduced by the Welsh Assembly Government, by committees of the National Assembly, or by individual Assembly Members (chosen by ballot). They are subject to pre-legislative scrutiny by committees of the Assembly appointed for this purpose and, potentially, by committees of the House of Commons and the House of Lords. Whitehall agreement (“clearance”) is a necessary prerequisite before a proposed Order is referred by the Secretary of State for Wales to each House at the pre-legislative scrutiny stage.

Following the pre-legislative scrutiny stage, the National Assembly may agree an actual draft Order. This may take account of committee recommendations (from either its own committees or Westminster) following pre-legislative scrutiny. The draft Order must then be laid before Parliament by the Secretary of State for Wales—and he or she may still decline to do so at this stage. If the draft Order is laid, it is considered by both Houses of Parliament, and may be debated by them. Draft Orders at this stage are not amendable and can only be approved or rejected. If approved by both Houses, and once it is given the Royal Assent in the Privy Council, direct law-making powers are devolved to the Assembly within the scope of the Order in Council. The Assembly then makes those laws in the form of Assembly Measures, which must be passed by the National Assembly but which require no further approval by either Whitehall or the UK Parliament.

Introduction of this proposed Order

The proposed National Assembly for Wales (Legislative Competence) (Transport) Order relating to concessionary fares and learner transport safety was laid before the Assembly on 7 December 2009 by the Deputy First Minister and Minister for Transport, Ieuan Wyn

Jones AM. It was referred to Legislation Committee No. 3, which subsequently held three oral evidence sessions and reported on 29 January 2010. The Order was laid before Parliament on 14 December 2009 and referred to the Welsh Affairs Committee for pre-legislative scrutiny by the Secretary of State.

Conclusions and recommendations

Background to the LCO process in this instance

1. Although this is a relatively small and straightforward proposal, we hope the Parliamentary Under Secretary is correct in his assessment that this is evidence that all three parties to the process of clearance are now beginning to recognise the need for speed and clarity in these negotiations. (Paragraph 7)

Concessionary Fare Scheme

2. The Welsh Assembly Government's argument for an extension of competence is that the current arrangements give the Assembly control over only parts of the legislation affecting concessionary travel and that this inhibits a logical approach to legislation. We accept this rationale for the extension of competence. (Paragraph 20)

Learner Travel

3. While the evidence for legislative solutions to the learner transport safety issue is not wholly persuasive, we recognise that it is appropriate for decisions about learner transport to be made by the National Assembly in relation to Wales, and that it is consistent with the overall devolution settlement to transfer this competence. (Paragraph 31)

Concessionary Travel

4. As evidence submitted by the Community Transport Association points out, it is unfortunate that the Explanatory Memorandum accompanying the proposed Order made no reference to the Community Transport Concessionary Fares Initiative. We are satisfied that in this instance it is appropriate to limit the scope of the proposed Order to registered buses. However, at Measure stage the Welsh Assembly Government will need to work with the Community Transport Association to clarify how the Measures which could follow the proposed Order might interact with the Initiative (Paragraph 34)

Learner Transport Safety

5. The proposed Order will enable the National Assembly to legislate learner safety standards on dedicated learner transport and not on other public transport. This reflects the current structure of the law in the area of learner travel and we accept that, at this stage, it would not be appropriate to seek to undo this situation through the LCO process. We draw this anomaly to the attention of the Secretary of State for Transport and the Secretary of State for Wales and suggest that consideration be given to appropriate policy and legislative changes. (Paragraph 38)

Cross-Border Issues

6. The National Assembly for Wales will wish to give further consideration to the potential impact on cross-border competition of any Measures flowing from this Order. (Paragraph 41)

Drafting

7. We are satisfied that the use of the word “description” will enable the Welsh Assembly Government to achieve its stated policy objectives on learner transport safety without encroaching upon competence which lies at other levels. (Paragraph 48)

Bus Services

8. We recommend that the Explanatory Memorandum be amended to specify how the use of the term “bus services” in the LCO relates to its use in other transport legislation. (Paragraph 50)

Use of ‘carve-outs’

9. We are satisfied that the use of ‘carve outs’ to exceptions to the Assembly's legislative competence is justified in this instance. (Paragraph 53)

Formal Minutes

Tuesday 9 February 2010

Members present:

Dr Hywel Francis, in the Chair

Nia Griffith

Mrs Siân James

Mr David Jones

Alun Michael

Hywel Williams

Mark Williams

Draft Report (*Proposed Legislative Competence Order relating to Transport*) proposed by the Chairman, brought up and read.

Ordered, That the Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 54 read and agreed to.

Annex and Summary agreed to.

Resolved, That the Report be the Eighth Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

Written evidence ordered to be published on 19 January under the title of *Proposed National Assembly for Wales (Legislative Competence) (Transport) Order 2010* was ordered to be reported to the House for printing with the Report.

[Adjourned until Tuesday 23 February at 10 a.m.]

Witnesses

Thursday 14 January 2010

Page

Mr Ieuan Wyn Jones AM, Deputy Minister and Minister for the Economy and Transport, **Ms Lynsey Edwards**, Economy and Transport Team, Legal Services Department, **Ms Bethan Bateman**, Principal Policy Analyst Transport and **Mr Martin Stevenson**, Head of Transport Policy and Legislation, Welsh Assembly Government Ev 1

Mr Wayne David MP, Parliamentary Under-Secretary of State, **Mr Chris Stevens**, Legislative Section and **Ms Susan Olley**, Legal Adviser, Wales Office Ev 7

List of written evidence

1	Letter from Rt Hon Peter Hain MP, Secretary of State, Wales Office	Ev 12
2	Welsh Affairs Committee Press Notice	Ev 12
3	Proposed Order for pre-legislative scrutiny	Ev 13
4	Welsh Assembly Government Explanatory Memorandum	Ev 15
5	Written evidence received from The Community Transport Association (CTA Cymru)	Ev 19
6	Written evidence from the Guide Dogs for the Blind Association	Ev 20
7	Written evidence from SWWITCH	Ev 22
8	Supplementary evidence from Wayne David MP, Parliamentary Under-Secretary, Wales Office	Ev 24
9	Supplementary evidence from the Welsh Assembly Government	Ev 24

List of Reports from the Committee during the current Parliament

Session 2009-10

First Report	The Proposed National Assembly for Wales (Legislative Competence) (Culture and other fields) Order 2009	HC 40
Second Report	Proposed National Assembly for Wales (Legislative Competence) (Housing) Order 2009 relating to Domestic Fire Safety	HC 142
Third Report	Work of the Committee 2008-09	HC 154
Fourth Report	The Proposed National Assembly for Wales (Legislative Competence) (Local Government) Order 2009	HC 36
Fifth Report	Review of the LCO Process	HC 155
Sixth Report	Proposed National Assembly for Wales (Legislative Competence) (Housing and Local Government) Order 2010, relating to Sustainable Housing	HC 186
Seventh Report	The Proposed Legislative Competence Order relating to School Governance	HC 274
Eighth Report	The Proposed Legislative Competence Order relating to Transport	HC 273
First Special Report	Proposed National Assembly for Wales (Legislative Competence) (Health and Health Services and Social Welfare) Order 2009: Government Response to the Committee's Fourteenth Report of Session 2008-09	HC 198
Second Special Report	The National Assembly for Wales (Legislative Competence) (Environment) Order 2009: Government Response to the Committee's Twelfth Report of Session 2008-09	HC 243
Third Special Report	Ports in Wales: Government Response to the Committee's Fifteenth Report of Session 2008-09	HC 308

Session 2008-09

First Report	Cross-border provision of public services for Wales: Further and higher education	HC 57
Second Report	Globalisation and its impact on Wales	HC 184 –I, II
Third Report	Proposed National Assembly for Wales (Legislative Competence) (Agriculture and Rural Development) Order 2008	HC 5
Fourth Report	Work of the Committee 2007-08	HC 252
Fifth Report	The provision of cross-border health services for Wales	HC 56
Sixth Report	Proposed National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009	HC 306

Seventh Report	Legal Services Commission Cardiff Office	HC 374
Eighth Report	Potential Benefits of the 2012 Olympics and Paralympics for Wales	HC 162
Ninth Report	The proposed National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2009	HC 348
Tenth Report	Cross-border provision of public services for Wales: Transport	HC 58
Eleventh Report	English Language Television Broadcasting in Wales	HC 502
Twelfth Report	Proposed National Assembly for Wales (Legislative Competence) (Environment) Order 2009	HC 678
Thirteenth Report	Digital Inclusion in Wales	HC 305
Fourteenth Report	Proposed National Assembly for Wales (Legislative Competence) (Health And Health Services And Social Welfare) Order 2009	HC 778
Fifteenth Report	Ports in Wales	HC 601
First Special Report	The proposed draft National Assembly for Wales (Legislative Competence) (Housing) Order 2008: Government Response to the Committee's Seventh Report of Session 2007–08	HC 200
Second Special Report	Cross-border provision of public services for Wales: further and higher education: Government Response to the Committee's First Report of Session 2008-09	HC 378
Third Special Report	Proposed National Assembly for Wales (Legislative Competence) (Agriculture and Rural Development) Order 2008: Government Response to the Committee's Third Report of Session 2008-09	HC 410
Fourth Special Report	Globalisation and its impact on Wales: Government Response to the Committee's Second Report of Session 2008-09	HC 538
Fifth Special Report	The National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009: Government Response to the Committee's Sixth Report of Session 2008-09	HC 605
Sixth Special Report	Legal Services Commission Cardiff Office: Government Response to the Committee's Seventh Report of Session 2008-09	HC 825
Seventh Special Report	Proposed National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2009: Government Response to the Committee's Ninth Report of Session 2008-09	HC 1024
Eighth Special Report	Digital Inclusion in Wales: Government Response to the Committee's Thirteenth Report of Session 2008-09	HC 1050
Session 2007-08		
First Report	Energy in Wales: follow up inquiry	HC 177
Second Report	The proposed Legislative Competence Order in Council on additional learning needs	HC 44

Third Report	Work of the Committee in 2007	HC 325
Fourth Report	The proposed National Assembly for Wales (Legislative Competence) Order in the field of social welfare 2008	HC 257
Fifth Report	The proposed draft National Assembly for Wales (Legislative Competence) (social welfare and other fields) Order 2008	HC 576
Sixth Report	The provision of cross-border health services for Wales: Interim Report	HC 870
Seventh Report	The proposed draft National Assembly for Wales (Legislative Competence) (Housing) Order 2008	HC 812
First Special Report	The proposed Legislative Competence Order in Council on additional learning needs: Government response to the Committee's Second Report of Session 2007-08	HC 377
Second Special Report	Energy in Wales – follow-up inquiry: Government Response to the Committee's First Report of Session 2007-08	HC 435
Third Special Report	The proposed National Assembly for Wales (Legislative Competence) Order in the field of social welfare 2008: Government Response to the Committee's Fourth Report of Session 2007-08	HC 715

Session 2006-07

First Report	Work of the Committee in 2005-06	HC 291
Second Report	Legislative Competence Orders in Council	HC 175
Third Report	Welsh Prisoners in the Prison Estate	HC 74
First Special Report	Government Response to the Committee's Second Report of Session 2006-07, Legislative Competence Orders in Council	HC 986

Session 2005-06

First Report	Government White Paper: Better Governance for Wales	HC 551
Second Report	Proposed Restructuring of the Police Forces in Wales	HC 751
Third Report	Energy in Wales	HC 876-I
Oral and written Evidence	Energy in Wales	HC 876-II
Fourth Report	Future of RAF St Athan	HC 1129
Fifth Report	Current Restructuring of the Police Forces in Wales	HC 1418
Oral and written Evidence	NHS Dentistry in Wales	HC 771-i
First Special Report	Government Response to the Committee's Second and Third Reports of Session 2004–05, Manufacturing and Trade in Wales and Public Services Ombudsman (Wales) Bill	HC 433
Second Special Report	Government Response to the Committee's Fourth	HC 514

	Report of Session 2004-05, Police Service, Crime and Anti-Social Behaviour in Wales	
Third Special Report	Government Response to the Committee's First Report of Session 2005-06, Government White Paper: Better Governance for Wales	HC 839
Fourth Special Report	Government Response to the Committee's Second Report of Session 2005-06, Proposed Restructuring of the Police Forces in Wales	HC 1431
Fifth Special Report	Government Response to the Committee's Third Report of Session 2005-06, Energy in Wales	HC 1656
Sixth Special Report	Government Response to the Committee's Fourth Report of Session 2005-06, Future of RAF St Athan	HC 1657
Seventh Special Report	Government Response to the Committee's Fifth Report of Session 2005-06, Current Restructuring of the Police Forces in Wales	HC 1695

Oral evidence

Taken before the Welsh Affairs Committee on Thursday 14 January 2010

Members present

Mrs Siân C James, in the Chair

Dr Hywel Francis

Mr David Jones

Witnesses: **Mr Ieuan Wyn Jones**, AM, Deputy First Minister and Minister for the Economy and Transport, **Ms Lynsey Edwards**, Economy and Transport Team, Legal Services Department, **Ms Bethan Bateman**, Principal Policy Analyst Transport, and **Mr Martin Stevenson**, Head of Transport Policy and Legislation, Welsh Assembly Government, gave evidence.

Q1 Chairman: Welcome to the Welsh Affairs Committee and in particular to this session on the proposed National Assembly for Wales (Legislative Competence) (Transport) Order 2010. For the record please could you introduce yourselves.

Mr Wyn Jones: Thank you very much for the welcome. On my right is Martin Stevenson who is the Head of Transport Policy. On my immediate left is Lynsey Edwards who is a lawyer in the Department. On her left is Bethan Bateman who is Principal Policy Analyst in the Department and is primarily responsible for the conduct of the LCO.

Q2 Chairman: Thank you very much. I will start the question session off with a series of questions. What are the limitations to the current powers of the National Assembly over the concessionary fares scheme?

Mr Wyn Jones: The current restrictions are that we are not able to have direct negotiations fully with bus operators over the budget that we have and, secondly, because we would wish to do so, there needs to be a new appeals procedure set up, because under the current legislation if there are disputes between bus operators and ourselves over the budget or the reimbursement formula then the appeal would be to ourselves as Welsh ministers, which would clearly be inappropriate because there would be a conflict of interest. What we want is to have the legislation clarified so that there would be no question that we could have direct negotiations with the bus operators over the extent of the budget and, secondly, if there is a dispute that it is sent to an independent appeals panel which could be set up under the Legislative Competence Order we are now seeking.

Q3 Chairman: What changes in the concessionary fares scheme do you hope to bring about by means of the proposed LCO?

Mr Wyn Jones: We do not intend to change the eligibility or the extent of the current benefits because clearly it is a very successful scheme, as I think we have all acknowledged, so it is primarily then to make sure that the budget that we have allocated on an annual basis is kept within that envelope. We have had some discussions with bus operators over the reimbursement formula, and

those, hopefully, will come to a successful conclusion, but the only arrangement that we want in place is to make sure that we can keep within the financial envelope but in no way to change the criteria or the eligibility for concessionary fares. We do not intend as a matter of policy to change that at all, although of course under the legislation we are perfectly entitled to do it even as things currently stand.

Chairman: Thank you very much. Dr Francis?

Q4 Dr Francis: Good morning. Could I ask about community transport. Would the extension of competence enable the concessionary fares scheme be extended to community transport?

Mr Wyn Jones: I think it could be but the intention that we have is that it should be limited to registered bus services. The reason for that is that we want absolute clarity and certainty about which services are operated. I think there is a danger that if it is extended to community transport that that would open the door to have a range of ad hoc services that could then qualify for concessionary fares, so our current intention is that it should be limited to registered bus services but if community transport groups were wishing to operate registered services then of course they would qualify.

Q5 Dr Francis: Could I refer you to your evidence before the National Assembly Committee on this proposed Order. You stated that if granted competence you intended to maintain the current range of concessionary entitlements. If there are no plans to adjust existing entitlements, how will the proposed changes allow you to continue to fund the concessionary scheme at the current level?

Mr Wyn Jones: We do not intend to change eligibility or the scope of the current entitlement, but obviously in recent years there has been no negotiation with the bus operators over what we call the reimbursement rate to them for concessionary fares. That has been the issue, because if you actually look at the recent history the budget that we have allocated has been exceeded virtually in every year, which means of course that resources have to be found either from within the Department or from reserves to top it up. What we have done is try to negotiate with bus operators on that reimbursement

14 January 2010 Mr Ieuan Wyn Jones, Ms Lynsey Edwards, Ms Bethan Bateman and Mr Martin Stevenson

rate which then brings it back within the financial envelope, but that does not affect people's entitlement to use concessionary fares.

Q6 Mr David Jones: On that point, I understand that there was evidence given in the Assembly yesterday on this issue and that there was some doubt as to whether what is proposed would actually result in lower costs for concessionary fares. That is right, is it not?

Mr Wyn Jones: I have not got a copy of the evidence that was given yesterday but we are satisfied that if we can maintain the existing entitlement, provided we can control the budget by having an understanding with bus operators about that reimbursement rate, we are confident that this year we will be able to achieve that; that is maintain the concessionary entitlement and control the budget.

Q7 Mr David Jones: I understand that one witness yesterday pointed out that the costly procedure of processing passes would remain with the local authorities and another witness pointed out that controlling cost is an operational issue and not a legislative issue.

Mr Wyn Jones: Well, that is absolutely right, but in order to have direct discussions with bus operators it is important for us to have the competence to do so but also for bus operators to have an appeals mechanism. For example, if we cannot agree those reimbursement arrangements with bus operators—as I think there are a number of appeals outstanding currently in England—if we were to have those appeals then obviously they would be entitled to have an independent tribunal to look at it. If I can just answer that in a more general sense to say that currently the problem is that in relation to concessionary fares we have legislative competence over part of the system but not over the whole, and I think it makes a great deal of sense for the Assembly to have competence over the whole issue of concessionary fares because there may well be issues in the future that we might want to deal with which currently we cannot because only part of the legislative competence lies with the Assembly. I think it is a lot neater to have the whole.

Q8 Mr David Jones: Could you give examples of those issues that might arise?

Mr Wyn Jones: Obviously they would be a matter for the Measures that follow. The two matters that I raised would be of immediate concern for us, as I have indicated, the issue of discussions and the issue of an appeals procedure, but a future Assembly might decide to do other things as well.

Q9 Mr David Jones: Yes, but you could apply for a Legislative Competence Order for almost anything on that basis, could you not?

Mr Wyn Jones: Yes, you could, but the intention is that it makes a lot of sense if the Assembly has competence over part of concessionary fares for it to have it over the whole area. It is a lot neater and it means that we would not have to come back to Westminster or Whitehall every time we needed to

amend the Transport Act 2000. I think the problem we have is that there are bits of the Transport Act 2000 that we simply cannot amend but by having competence over the whole area we could.

Q10 Mr David Jones: Could we turn to the second ambit of the proposed LCO and that is learner transport safety. The position at present is that local authorities have discretion in the drawing up of contracts for learner services and there are certain things that they must take into account such as the age of learners, the nature of the route and so on. What are the limitations of the current range of powers available to the Assembly that prevent it achieving what it wants to achieve in relation to safety of learner transport?

Mr Wyn Jones: The powers that came to the Assembly on learner travel came through the Education and Training Act 2006 followed by an Order in Council which gave us Field 5.10 in Part 1 of Schedule 5, which allowed us to look at and to deal with eligibility for transport and behaviour. When I appeared before the Education and Lifelong Learning Committee they expressed concern that the Measure was limited in its scope because it could not deal with safety issues or the type of transport that could be used. What I said to the Committee was that I would seek competence then over the issue of safety, which I am now doing. There is another added benefit as well and that is clearly we are trying to encourage more and more people to use public transport and of course one way of doing that is to encourage more children to use public transport to get to school and if we can make that safer, whether that is in relation to actual or perceived safety, then obviously that is of benefit as well.

Q11 Mr David Jones: Would it be possible to adopt a contractual rather than a legislative approach to achieving your aim?

Mr Wyn Jones: I think the difficulty there is you have 22 local authorities and therefore you could potentially have 22 contractual arrangements about the type and safety features on buses. Our feeling is that to have consistency across Wales then we need to have the legislative competence where we could indicate either in a Measure or following Regulations what those standards should be, and I think there would be consistency then across the 22 local authorities.

Q12 Mr David Jones: Have you considered approaching for example the Welsh Local Government Association with a view to seeking to achieve by consensus a uniform contractual approach?

Mr Wyn Jones: No, not in that sense. What we have sought to do, looking at the evidence that was given at the scrutiny committee in relation to the Measure, together with the scrutiny of the Measure as it went through, it was fairly clear that there was a very big consensus in the Assembly that we should go for legislative competence, primarily to ensure consistency of standards. Our belief is that to get that consistency of standards it is proper that there

14 January 2010 Mr Ieuan Wyn Jones, Ms Lynsey Edwards, Ms Bethan Bateman and Mr Martin Stevenson

should be legislative competence to enable us to do so. The problem with the Learner Travel Measure was that although that Field gave us the competence, we were restricted then by an exception which was in Part 2 of the Act which prevented us from doing it in the original Measure. So I am doing this through a Legislative Competence Order to enable me to meet the aspirations of the Committee and the Assembly. I do not think it would be appropriate to try to agree an arrangement with local authorities on the basis of trying to do it with 22 local authorities. Finally, of course, although we can issue guidance to local authorities, that is not statutory.

Mr David Jones: Thank you.

Q13 Dr Francis: If we can turn to the practical benefits and look particularly at the question of the safety of children on school buses. Is there evidence that there is some serious concern about this?

Mr Wyn Jones: Yes, there have been a lot of requests for this piece of legislation, both in the Assembly and of course there has been a campaign, as I think members of the Committee will be aware, by the family of Stuart Cunningham-Jones, following the death of their child. Where I think we would benefit from this Legislative Competence Order is that we would then be able to introduce a Measure that would entitle us for example to say that all buses carrying children to school should have seat belts, which would effectively mean the end of three for two, in other words three children on a seat designed for two, and it would also allow us to have Measures such as CCTV cameras or even look at the introduction of single-decker buses. That is the kind of thing that we would like to do.

Q14 Dr Francis: Do you have the competence to address issues relating to the safety of pedestrians and cycle users?

Mr Wyn Jones: No.

Q15 Dr Francis: Why is that?

Mr Wyn Jones: Because the only thing we could do, although the Learner Travel Measure is much wider in its remit in the sense that we can look at any mode of transport for learners, we are limited to basically contracted bus services and the Legislative Competence Order because that is the extent of the settlement that we have got. It is not a policy decision by us not to do it; it is just that the current settlement would not allow us to do it.

Q16 Dr Francis: For that reason that is why you would not be able to address the question of learner travel by rail as well?

Mr Wyn Jones: That is right, yes. If I may say so, it is not just by buses we can do it. We can do it by private hire vehicles or by taxis. Those are the three modes.

Q17 Mr David Jones: Many school transport operators are small businesses, as you know. To what extent do you estimate that the Measures pursuant to the LCO would impact upon them in terms of their costs?

Mr Wyn Jones: Of course in terms of the LCO, none.

Q18 Mr David Jones: I know that but in terms of what you propose.

Mr Wyn Jones: I think it is important to stress therefore that in terms of the LCO itself then of course the extent of the burden depends on what is contained in the Measure.

Q19 Mr David Jones: Yes, but you clearly know what you want to do in the Measure.

Mr Wyn Jones: I think it would be necessary for us to consult. We are not prescriptive now in saying it should be A, B, C, or D or a combination of them. I think it is important for us to make it clear that there would have to be a Regulatory Impact Assessment, there would have to be consultation and there would be scrutiny, and therefore I am not particularly wanting to be drawn on the full extent of it, but I think it is fair to say that were we to introduce one or more of the Measures that I described to Dr Francis there would be a requirement on them to comply with them and there would be extra cost.

Q20 Mr David Jones: So what has been the response of those operators or representatives of those operators to this?

Mr Wyn Jones: I think those representatives gave evidence to the Committee yesterday but I have not actually seen it myself.

Q21 Mr David Jones: A lot of local authorities rely on in-filling from general bus services to make up necessary buses for school transport. What impact would the proposed Measures have upon those bus companies because clearly your proposal, as I understand it, is intended to apply to dedicated transport?

Mr Wyn Jones: Absolutely.

Q22 Mr David Jones: But if in fact you have to in-fill with a double-decker bus from a general bus company, what would be proposed in respect of that?

Mr Wyn Jones: I would ask Bethan to answer the precise question.

Ms Bateman: My work in the Measure would be that if you were to impose a duty on a local authority to contract for bus services then those bus services would have to have particular safety features, whether that be the fitting of seat belts or using single-decker buses and so on, and that is the way in which we want to impose the requirement.

Q23 Mr David Jones: Yes I understand that, but that is in relation to dedicated transport. What for example if they needed to utilise a bus to in-fill?

Ms Bateman: Then that contracted bus which they were utilising at that time and in-filling with would need to be fitted with seat belts for instance or the other safety features.

Q24 Mr David Jones: That might cause practical problems, might it not?

14 January 2010 Mr Ieuan Wyn Jones, Ms Lynsey Edwards, Ms Bethan Bateman and Mr Martin Stevenson

Ms Bateman: For some. I think it is important to say that a number of the safety features that we are discussing are already fitted on modern vehicles now, so we are talking about relatively small numbers of vehicles, for instance, that would not be fitted with seat belts and there would be cost implications for those and it would be necessary to look at the numbers involved.

Q25 Mr David Jones: What I am more concerned about rather than the cost is the practical arrangements that might need to be made. For example, if there was a particular need to in-fill with a bus from a general bus company and there was no suitable bus available, then in those circumstances there would be no transport for the children, would there?

Ms Bateman: That would be at the point at which a local authority would contract with an operator and say that only buses fitted with those features could be used for the school journey. I think there is sufficient evidence to say that actually public transport buses do have these features although a small number would fall outside of that.

Mr David Jones: Okay, thank you.

Q26 Chairman: Mr Stevenson, did you want to come in there?

Mr Stevenson: It was really just to make the point that our existing non-statutory guidance does provide certain advice to local authorities about how they contract for services and about the three-for-two concession and double-decker buses, and we do put a proviso in so there is a get-out where it says that it can be used “other than for exceptional operational reasons”, so if there is something like inclement weather, vehicle failure or an emergency other vehicles could be used.

Q27 Mr David Jones: So it is proposed that that non-statutory guidance would prevail after a Measure was made?

Mr Stevenson: We have not got there yet.

Mr Wyn Jones: In a sense, although I understand the concerns, these are matters which then would have to be dealt with through the Measure rather than through the LCO and therefore what the LCO does is it allows us to do a range of these things. Some of them explain the kind of things we might want to look at but the actual detail then is obviously for the Measure.

Q28 Dr Francis: This is rather a negative question and I am totally unsympathetic to it, but I would still like to pose the question really to evoke your response. Is there a risk that increased safety standards could “fragment” the existing services, suggesting to parents for example that general service buses are unsafe and so undermining the viability of local bus services and increasing the revenue support needed to maintain the services?

Mr Wyn Jones: Personally I would not think so. There is a policy imperative in relation to responding to concerns about the safety of school transport but there is also another imperative which is to try to

persuade more and more young people to use public transport, and the safer we can make it then I think that is suitable. The concern that has been expressed to us has primarily been around the transport of children and young people to school. Therefore I think there is a general acceptance that that form of transport should be made as safe as possible. That is why of course we have also introduced behavioural codes for example on school transport because of these general concerns. My own view is that would not mean that that would lead people to conclude that general bus services of themselves were necessarily unsafe.

Q29 Dr Francis: So I take it from that answer that you have made an assessment of the potential impact of the proposed introduction of safety standards for contracted bus services on public bus services?

Mr Wyn Jones: The truth of it is that even if we had wanted to extend it beyond contracted services we could not. I made the point earlier on. It may well be of course that if we had had competence to go wider then we might have wanted to look at it, but it is the legislative barrier that prevents us from doing it. I am not sure whether I have answered the question fully so I wonder whether Bethan would like to pick up whether there has been an impact assessment made on general buses should we introduce safety features on contracted services.

Ms Bateman: We have not done an impact assessment as yet. As the Minister has said, the reason that we are looking at only contracted school transport services is that is the limit of the devolution settlement, but obviously where it has been possible the Learner Travel Measure went wider and looked at the behaviour of children on school transport. I think our overall policy position, notwithstanding what specific powers we had, was that we want to see a safe, secure and comfortable transport system particularly in public transport and contracted learner transport that would attract people from using the car as the means to get to school, so we have a range of measures across both public and private. Would specifically passing additional safety standards on private hire vehicles make people think that public buses were unsafe? I do not think so because a number of the things we are talking about legislating for are happening through best practice in terms of public transport anyway—more modern vehicles, the fitting of seat belts and so on—so I do not see there being an undermining impact from that.

Q30 Dr Francis: Under the proposed Order you would be able to introduce a requirement to carry supervisory adults on learner transport. Given the cost of that do you think that power is likely to be used?

Mr Wyn Jones: I think it is a bit difficult to be prescriptive about that now because I think getting the competence would allow us to look at that in some detail. I think that it is the sort of thing we might want to consider in relation to the Measure but we have come to no final conclusion on it.

14 January 2010 Mr Ieuan Wyn Jones, Ms Lynsey Edwards, Ms Bethan Bateman and Mr Martin Stevenson

Dr Francis: I apologise for asking that question. Normally when I sit in that chair I rule questions like that out of order!

Chairman: I am being very generous to you! Mr Jones?

Q31 Mr David Jones: Just briefly, to what extent might the Measures contemplated by the proposed LCO interface with or possibly conflict with the Road Vehicles (Construction and Use) Regulations?
Mr Wyn Jones: I think that is a question for Lynsey.
Ms Edwards: They actually will not because general legislation in terms of construction of vehicles and the technical standards and safety of vehicles are within the Department for Transport's remit and they will remain within the Department for Transport's remit, so any legislation that we brought forward would be in line with that legislation. The majority of safety legislation UK-wide is governed by EU legislation in any event, so anything that we proposed to do could not go outside that anyway. Just to answer the question, we will not be legislating in terms of vehicle safety standards so there will be no impact on the Construction and Use Regulations.

Q32 Mr David Jones: What do the Construction and Use Regulations say about the fitting of seat belts on school buses?

Ms Edwards: The fitting of seat belts depends upon the type of vehicle and the purpose for which it is used. Let me just check, sorry.

Q33 Mr David Jones: You could let us have a note.
Mr Wyn Jones: We will let you have a note.¹ The difficulty I suppose in a sense in looking at the exceptions which are contained in Part 2 of Schedule 5 which say that we could not regulate the use of relevant vehicles on roads, construction and use, so what we have done is an amendment to that which obviously is the LCO, which is that we would be entitled as an amendment to that to regulate the description of the vehicle that is being used. It is a limited part of that, so the wider issue around use and construction, no.

Q34 Mr David Jones: If you could let us have a note on that I would be very grateful.

Mr Stevenson: I have found the reference so I could answer it now if that would help. I think it is the Road Vehicles (Construction and Use) (Amendment) (No 2) Regulations 2001. The requirement is that seat belts must be fitted on all mini-buses, and that is defined as motor vehicles constructed or adapted to carry nine to 16 seated passengers excluding the driver, and seat belts must be fitted in coaches, defined as a type of large bus constructed or adapted to carry more than 16 seated passengers in addition to the driver which has a gross weight of seven and a half tonnes and a maximum speed exceeding 60 miles per hour, first used after 1

October 1988. Buses that do not meet the weight or speed criteria of a coach are not required to be fitted with seat belts.

Q35 Mr David Jones: And taxis of course have to be fitted with seat belts already?

Mr Wyn Jones: Absolutely.

Q36 Mr David Jones: If you could let us have a note in any event for the Committee's file that would be extremely helpful.

Mr Wyn Jones: Yes.²

Q37 Mr David Jones: Could we turn now to cross-border issues. A lot of transport companies particularly in North Wales operate on both sides of the English/Welsh border. Do you anticipate that the powers contemplated by the proposed LCO would cause problems there? To what extent have you given consideration to that?

Mr Wyn Jones: In relation to concessionary fares—

Q38 Mr David Jones: Sorry, no, I am talking about the construction and use stuff?

Mr Wyn Jones: My understanding is that the LCO would only provide competence in relation to contracts from companies that contracted with Welsh local authorities, so if a company whether it is based, let us say, in Llandrindod or Hereford, if it wished to contract with Powys local authority it would have to comply with this legislation. However, if it was a Welsh company in Newtown that had a contract in Hereford then it would not.

Q39 Mr David Jones: So it is effectively the local authority contract that is the important aspect of the matter rather than the location of the bus company or whatever?

Mr Wyn Jones: Absolutely, yes.

Q40 Mr David Jones: Now getting on to the concessionary fare regime, you will be aware that we reported some time ago about the desirability of aligning the funding mechanisms on either side of the border. Does the proposed extension of legislative competence here bring that alignment any closer?

Mr Wyn Jones: No, that is not a legislative problem, that is a policy issue. We would have the legislative competence to do it; we currently would have it.

Q41 Mr David Jones: Are we getting any closer to that goal?

Mr Wyn Jones: Of itself no, I have to admit because the two considerations are obviously, as I made clear to this Committee and in the Assembly, that there are budgetary considerations. The second is that of course there are different eligibility criteria on both sides of the border, so you would have some local authorities in England who have different criteria and eligibility levels than we have in Wales. By and large, the concessionary fares eligibility is more generous in Wales than in most of England. There

¹ Ev 24

² Ev 24

14 January 2010 Mr Ieuan Wyn Jones, Ms Lynsey Edwards, Ms Bethan Bateman and Mr Martin Stevenson

are budgetary issues and eligibility conflict issues that would need to be addressed. Of itself the introduction of this LCO would not change that position.

Q42 Dr Francis: If we can now turn to consultation. The expectations of children may well be different from the expectations of parents or adults with regard to safety. Have you made any special effort to consult with children? I am particularly interested also in the extent to which you have thought about consulting with the Funky Dragon Welsh Children's Assembly and the Children's Commissioner as well in Wales?

Mr Wyn Jones: We would certainly want to consult on the precise terms of the Measure. I cannot give you a list today because I could not remember but I think there were a number of organisations that gave evidence to the Enterprise and Learning Committee that called for these powers, and certainly should we be granted these powers then obviously we will then consult with organisations such as the ones you have described to make sure that they comply as far as possible with their requirements.

Q43 Dr Francis: If we could move on to draft issues. This Order proposes an extension of competence over "regulation" of the description of the vehicle which may be used pursuant to learner transport arrangements. Will this definition allow you to resolve the full range of safety issues that have been identified?

Mr Wyn Jones: Yes it would. Lynsey, would you like to confirm that.

Ms Edwards: Yes, the term "description" has been used deliberately to enable the widest possible interpretation without actually going into vehicle safety standards and technical specifications, so under the term "description" we would be able to regulate the age, the size, the colour of the vehicle and the installation of seat belts and CCTV, so it covers the whole range of areas that we would potentially like to make Measures in.

Q44 Dr Francis: At the risk of wandering into a Measure I hope you will allow me to ask this question, Chairman. I do wonder and worry, reflecting on my own experience as a parent, about the issue of supervisory adults and their role between a school bus and safe delivery to the school itself having left the bus. Do these issues impinge on your thinking at all?

Ms Bateman: It is not covered in this Competence Order but the powers already exist for criminal records checks on supervising adults on buses and so on. If you are talking about the part of the journey when the child leaves the bus—

Q45 Dr Francis: That is right, the physical moment of leaving the bus and entering the school. Sometimes it is very busy traffic in towns or whatever, that kind of issue, but I suppose that does not relate specifically at all to this LCO?

Ms Bateman: That does not relate to this LCO but I think that is part of having an overall approach to school transport policy which has already been taken forward in the Learner Travel Measure and in other ways, so the LCO is part of that process, but the overall process would look at issues about children crossing busy roads and safe routes to school and that is part of the overall consideration although not explicitly within the Order today.

Mr Stevenson: Our guidance does say it is good practice for children to be supervised from the point at which they leave the bus to the entry into the school. I think it probably would be difficult to legislate for that. I think it is essentially a matter of custom and practice.

Q46 Chairman: Before I draw this session to a close I have two questions that I would like to ask. It picks up on the regulations of supervisory adults. You have chosen to provide for the possibility of regulations for supervisory adults by proposing a new exception to an existing exception to the Assembly competence. Could the same results that are sought by Article (3)(1) and (2) of the proposed Order have been secured by the addition of further Matters in Field 5 or by the amendment of Matter 5.10? It seems very complex. I am really asking about the complexity of it.

Ms Edwards: I think first and foremost the drafting of the LCO has to be taken against the legislative background that we currently have. The exceptions to our competence include transport security which is reserved to the Department for Transport and the use and construction and equipment of vehicles. That is something I think the Deputy First Minister has explained. It is a legislative limit that has been placed on us. So this LCO is legislating in a subset area of the Department for Transport's competence. Unfortunately, the way that Schedule 5 is drafted and the way the exceptions to Matters are drafted, the only possible way of drafting this is to have an exception to the exception, if you understand what I am saying.

Mr Wyn Jones: It is an amendment to the exception.

Ms Edwards: Yes, so it is bringing competence back into us that was previously not there.

Q47 Chairman: That is also an addition but it also includes transport security. That is the bit I was particularly asking about?

Mr Wyn Jones: Yes, in other words, what we have done is the exception will remain except for the area which we are seeking the competence for.

Q48 Chairman: The Order states that the concessionary schemes covered by the Matter relate to "bus services". Can you clarify that "bus services" is intended to bear the same meaning as in other transport legislation? Should an appropriate definition be added to the Matter?

14 January 2010 Mr Ieuan Wyn Jones, Ms Lynsey Edwards, Ms Bethan Bateman and Mr Martin Stevenson

Mr Wyn Jones: Yes is the answer.

Ms Edwards: Yes it does.

Mr Wyn Jones: I am glad we are at one on that one.

Q49 Chairman: That is short and sweet, thank you. Before I draw this part of the session to a close is there anything else you would like to add at this point or any other information to submit?

Mr Wyn Jones: No, I do not think so. I think we have explored the issues.

Q50 Chairman: Thank you very much for your testament today. We have been very fluent and very fluid and we have remained in time, so thank you very much and thank you for your attendance and your evidence.

Mr Wyn Jones: Thank you.

Witnesses: **Mr Wayne David MP**, Parliamentary Under-Secretary of State, **Mr Chris Stevens**, Legislative Section, and **Ms Susan Olley**, Legal Adviser, Wales Office, gave evidence.

Q51 Chairman: Good morning and welcome once again to the Committee. Could you please for the record introduce yourselves.

Mr David: Thank you, Chairman. I am Wayne David, Parliamentary Under-Secretary of State for Wales. On my left is Chris Stevens from the Wales Office, Legislative Section, and Sue Olley also from the Wales Office, legal expert.

Q52 Chairman: What are the problems with the concessionary fares scheme that the existing limitations on competence prevent being addressed? Are some of those problems that need addressing specific to the Welsh context?

Mr David: The first point I would make is that the concessionary scheme is extremely popular and very successful. 600,000 people in Wales benefit from it. However, I think that one of the weaknesses as identified by the Welsh Assembly Government is the fact that under existing legislation the local authorities get paid by the Welsh Assembly to administer the scheme and the Welsh Assembly Government feels that the system would work better, there would be more incentive for local authorities to be cost-effective if there was a direct relationship between the Welsh Assembly Government and providers of the concessionary service.

Q53 Chairman: Are you content that the proposed Order would allow the National Assembly to remove concessionary travel from local authority control?

Mr David: This is very much a matter of policy for the Welsh Assembly Government, but they make clear to us that the policy intention is not to minimise or undermine the effective role which local authorities have in the administration of this scheme but to ensure they have a more direct relationship themselves. As the Welsh Assembly Government are the providers of the finance for the administration of the scheme, the Welsh Assembly Government would like to have a direct relationship in addition to the continuing role of local authorities.

Q54 Dr Francis: Good morning. The second purpose of this proposed Order is learner transport safety. Would primary legislation be required to change the safety requirements for learner travel in England?

Mr David: As far as England is concerned I would imagine that primary legislation would be required, but I would certainly check up on that.³

Q55 Dr Francis: Are you persuaded that a legislative approach is the better approach to ensuring the safety of the learner travellers? Could not the use of contractual terms achieve the same objective?

Mr David: Having a contractual approach would be an option but, as the Deputy First Minister previously made clear, there would have to be contractual arrangements with 22 local authorities in Wales and in the interests of uniformity as well as simplicity I think it would be more coherent for the Assembly to introduce its own statutory Measures which would apply right across Wales.

Q56 Mr David Jones: Is there evidence that the safety of children on school buses is a special cause for concern?

Mr David: I think there is a concern and I think that if we cast our minds back to 2002 when there was a fatal accident and a child lost his life as a result of an accident on a school bus in the Vale of Glamorgan, we saw a very public campaign, called Stuart's campaign, which did strike a resonance understandably with many people in Wales. This matter has been raised not only in Parliament but also in the Welsh Assembly as well. I think in many ways the genesis for this particular proposal that we have before us emanates from that campaign and also the discussion which took place at one of the committees of the Welsh Assembly.

Q57 Mr David Jones: I recall the accident and I recall the emotions that were stirred at that particular time, but the Committee has evidence that school transport in fact does have generally a very good safety record in this country and an improving record. We are told that across the country as a whole casualties have almost halved from 1997 to 2007, presumably as a result of the improving standards of vehicles generally.

Mr David: I think it is correct what you say. We have seen a consistent improvement in England and in Wales with regard to school transport safety and we obviously welcome that. However, I think there is room for further impetus to be given to that

³ Ev 24

14 January 2010 Mr Wayne David MP, Mr Chris Stevens and Ms Susan Olley

improvement and I think that the proposal that we have before us would provide that additional stimulus. That is not to say that the situation is a dire situation—far from it and I think you are right, there has been an improvement—but nevertheless I think if we had these statutory Measures introduced we would see an improvement on an already good situation.

Q58 Mr David Jones: That being the case is that not something that maybe should be introduced at a national level rather than just at a Welsh level? To what extent have you had discussions with the Department for Transport about this?

Mr David: Discussions have taken place with the Department for Transport and of course they are very concerned, as everybody is, to ensure that the momentum to improve school transport safety is maintained. It is the Welsh Assembly Government's view that there is a need to take the existing legislation and to make a relatively small change to the legislation as it applies to Wales to ensure that they have this competence so they can take the agenda that much further forward in Wales.

Q59 Mr David Jones: Which is rather worrying because surely this should be something that is uniform across the country as a whole?

Mr David: I certainly think there is a case for England to look at the very good example which Wales appears to be setting.

Q60 Mr David Jones: You have had no discussions with the DfT about this?

Mr David: Discussions have taken place between officials and ministers. I think it is true to say the Department for Transport is watching very carefully and will study very closely what happens in Wales as a consequence of this LCO and the Measure which will follow.

Q61 Mr David Jones: Does the Assembly have competence to address issues such as the safety of the learners going to school on foot or by bike?

Mr David: I think that is something beyond this LCO proposal and I am not aware of any legislation that currently exists with regard to that area.

Q62 Mr David Jones: Do you know why the proposal is limited to motor vehicles and does not extend for example to journeys by rail?

Mr David: I think the focus is on transport by road and buses in particular because the fact is the overwhelming majority of young people who travel to school use the bus as their mode of transport.

Q63 Mr David Jones: What percentage is that?

Mr David: I would have to come back to you on the precise figure but an overwhelming percentage I would imagine.⁴

Mr David Jones: Thank you.

Q64 Dr Francis: I am not aware of the proportion of learner travellers who local authorities arrange to travel by general bus services but I assume it is quite significant. Does this particular Order allow the National Assembly to legislate to consider the safety of the learners travelling on non-contracted services?

Mr David: I would refer to my colleague but my understanding is that it is specific to contractual services.

Ms Olley: It is arrangements made by local authorities with contractors providing learner travel.

Q65 Dr Francis: For the reasons which we have heard from the Minister earlier I guess. But it is anomalous, is it not, and there is a potential for division there because all learner travellers should be treated equally, should they not? It is a rhetorical question I know.

Mr David: In a sense I think that is true, but I think that we are talking about contracted services with local authorities and, as I explained earlier, I think part of the impetus for this is what happened in the Vale of Glamorgan regarding that tragedy. I think that although the situation has improved, nevertheless there are grounds to believe that there are certain circumstances in which sufficient care and attention is not given to safety by certain operators, and I think that although there has been an improvement nevertheless this piece of legislation will provide a significant improvement on the situation which we have.

Q66 Dr Francis: Following on that point is there a risk that increased safety standards will “fragment” the existing services, suggesting to parents that general bus services are unsafe and so undermining the viability of the local bus services and increasing the revenue support needed to maintain those services?

Mr David: That is a very much broader issue I suppose. I think that this Measure is very much focused on a very precise improvement of the law as it currently exists dealing with the exception which is in the legislation, but I think it will be generally welcomed by parents and they will have peace of mind that their children will be that much safer travelling on buses to school.

Q67 Dr Francis: Have you made an assessment of the potential impact of the introduction of the proposed safety standards for contracted bus services on public bus services on either side of the border?

Mr David: It would not be the role of the Wales Office to undertake such an assessment. My understanding is that consultation has taken place in Wales between the Welsh Assembly Government and various stakeholders. Evidence for example was given yesterday, as has been said, to the Welsh Assembly Committee scrutinising that, but I think the detailed consultation will quite rightly take place once the Measure which has been brought forward as a consequence of this has been framed. There will be a statutory Regulatory Impact Assessment and

⁴ Ev 24

14 January 2010 Mr Wayne David MP, Mr Chris Stevens and Ms Susan Olley

hopefully there will be a consensus established about what are precisely the most appropriate stipulations to include in the Measure. If I could just add with regard to the cross-border issues there are some (albeit a minority) companies who provide services who have contractual arrangements with local authorities who are based in England and they will be consulted as well.

Chairman: I think, Mr Jones, you wanted to ask some questions on cross-border services with England?

Q68 Mr David Jones: Are you concerned that in the cross-border areas these proposals might have an impact upon competition specifically in terms of the increase in cost for Welsh companies as opposed to English companies?

Mr David: I think any cost burden will depend very much on the precise safety improvements which are actually expressed in the Measures which will be coming forward, so it is very difficult.

Q69 Mr David Jones: We have an idea as to what is proposed, we heard from Mr Wyn Jones, as you know, a few moments ago.

Mr David: Yes, but the only point I would make is that it is very difficult to indicate at this stage what the costs would be because it would depend on what will be in the Measure. Albeit the area we know is very limited we have an idea of what may happen. Nevertheless cost implications will depend on the specificity which is included in the Measure. Obviously cost will be a factor but I would very much hope that bus contractors would be very concerned about the safety of the children they are transporting and that factor would be foremost in their minds rather than simply pounds, shillings and pence.

Q70 Mr David Jones: I suppose to a large extent local authorities would be bearing the additional costs because presumably increased fares would be levied by the transport companies, so there will a cost implication not only to the bus operator but also the local authority who is commissioning services of the bus operator?

Mr David: I suppose in certain circumstances that may happen, but I understand there has been consultation with the Welsh Local Government Association, and certainly in principle—we are talking about principles here—local authorities would be happy to bear any slight increase in cost there may be because of the safety of the pupils whose care they have responsibility for in large part is foremost in their minds.

Q71 Mr David Jones: I am sure that is correct and in fact you make a point that you will recall I touched on when I questioned the previous witness. I am sure that Welsh local authorities would want to ensure the safety of children who are travelling to schools in their areas, and I am wondering whether a contractual approach would have been the right one and whether given that there have already been

consultations with local authorities it might not have been simply an easier option to put forward a code of practice for adoption by local authorities?

Mr David: A code of practice and a contractual approach, as you say, would have been one option. There is no doubt about that. However, I think that there is a lot to be said for having a uniform approach, a simpler and more straightforward and easily understood approach where there was uniformity right across Wales for all local authorities. I think local authorities in a sense would welcome that certainty and knowing quite clearly what standards were expected of the contractors they engaged.

Q72 Mr David Jones: I am personally unconvinced, I have to say, that the voluntary approach has been adequately explored by the Assembly Government. I do not believe it has and I am not sure that you believe that either.

Mr David: Obviously it has been examined and, objectively, in terms of studying both approaches I think that the approach outlined by the Deputy First Minister is a better approach than relying on voluntarism, I have to say. It is a question of balance but in my mind I think having a legislative approach uniform across Wales is the better of the two.

Q73 Mr David Jones: Again on cross-border issues, has any consideration been given to the potential impact on English-based contractors who might seek to offer learner transport in Wales?

Mr David: Again it comes very much at the Measure stage. The Deputy First Minister again made it very clear that the emphasis would be on the contracts rather than the location of the companies as such, and I think that when there is full consultation, as there will be with the Measure, the views of English-based contractors will be taken into account.

Mr David Jones: Thank you.

Q74 Dr Francis: On this question of cross-border issues, in our recent report on cross-border transport we recommended as a medium-term goal that there should be an effort made to align the concessionary fare schemes on either side of the border. Do you think this proposed Order brings this objective nearer or further away?

Mr David: Firstly, could I say I agree very much with the sentiments expressed in the Committee's report and I know from being a constituency Member of Parliament often I have representations from constituents who travel back and forth across the English/Wales border who would like to see that uniformity. There is a great deal to be said for having that compatibility between the Welsh scheme and the scheme which operates in England. However, there are differences, there are cost implications, and I would like to see those matters addressed. New legislation is not needed to have that co-operation. To be honest with you, I think the legislation we have before us will not make that much difference as to whether or not we have that greater symmetry. As a matter of policy I would like to see it happening sooner rather than later.

14 January 2010 Mr Wayne David MP, Mr Chris Stevens and Ms Susan Olley

Q75 Dr Francis: If we could move on to consultation. Many operators bidding for the school transport work are small businesses, as you know, and it is quite likely that the increased costs as a result of introducing these safety measures will be passed on to local government. Are you satisfied that there has been adequate consultation by the Welsh Assembly Government and yourself I suppose with the key stakeholders in this?

Mr David: It would not be for the Wales Office to hold that kind of consultation at all really. It is up to the Welsh Assembly Government to have consultation. I think that at its formulation stage the Welsh Assembly Government has consulted generally with some of the main stakeholders like the Welsh Local Government Association, and they are certainly on board with the direction of travel, if I can put it that way. I think the detailed negotiations will take place once the Measures have been formulated. I come back to the point I made to Mr Jones really that it is only when we know precisely which improvements the Welsh Assembly Government want to include in the Measure will we have a very clear and precise idea of any additional cost there may be. I think that a Regulatory Impact Assessment is an obligation to take place once we have the Measures drawn up and I think the cost element will be a key part of the consultations.

Q76 Dr Francis: Following up on this question of consultation, it appears to be a compressed timetable for consultation on this proposal. Is this as a consequence of the time taken by Whitehall? How long is Whitehall clearance taking?

Mr David: The timescale for consultation is something which is very much in the Welsh Assembly Government's hands. Our concern is that there is always full and comprehensive consultation rather than the time it may or may not take. In terms of the time it has taken for us to be where we are at, I am very satisfied that there has been very effective co-ordination and co-operation and dialogue which has enabled speedy progress to be made. I think we are talking about a period of three months in total.

Q77 Dr Francis: It took three months to clear?

Mr David: It took three months for the Department for Transport to be fully engaged, ourselves to be fully engaged and the Welsh Assembly Government to be fully engaged and to come to a consensus. In the order of things that is a relatively short period of time and I think there has been very good co-operation between officials and there has been good political co-operation between ministers, it has to be said, because we have been involved as well. Certainly if you compare the progress on this LCO with the progress on previous LCOs, the speed of travel here has been very good.

Q78 Dr Francis: I take it then that irrespective of the fact that this perhaps is a simpler, more straightforward LCO that we are all getting a little more efficient in the way we are doing it?

Mr David: I think it is the case that with a new system having been introduced as a consequence of the Government of Wales Act, we are getting used to the processes which have been established. As we have become more used to them we have become more efficient, relationships have been established and working practices have developed and, yes, I think we are dealing far more speedily than was the case right at the start of the process.

Q79 Dr Francis: To put it more bluntly, I guess that efficiency may well also be a symptom of the fact that we are all, including yourselves, a lot more impatient and you are prepared perhaps now more frequently to just pick up the phone and tell the appropriate department to hurry up?

Mr David: I suppose it is the case that as I am in post longer I gain in confidence and perhaps become slightly more impatient, but it is true as far as we all are concerned who are involved in different ways in this legislative process that we are all learning as we go along. I would like to make the point really that there has been some criticism in some quarters about the alleged complexity of the process, but if you compare the process that we are engaged in with other processes in this place and in other legislatures it compares very favourably indeed. I would emphasise the point that I think it is vitally important to have detailed pre-legislative scrutiny in order to make sure that when we get to the point of actually producing the legislation we have a coherent piece of legislation before us which not only makes sense in itself but actually achieves what it is intended to achieve. I think that, yes, in summation we are learning as we go along but we are in a far stronger position now than we were perhaps 12 months ago, and I think that is eloquent testimony really to how this process is stimulating effectively democracy for the people of Wales.

Q80 Mr David Jones: Could I turn please to some of the technical aspects of the proposed LCO draftsmanship in particular. The proposed Order suggests an extension of competence over the "regulation of the description of the vehicle". Are you satisfied that "description" is sufficiently precise to enable the Welsh Assembly to do what it wants with the powers that are proposed? It is really a legal question.

Mr David: I am not a lawyer.

Q81 Mr David Jones: I was just looking at the lady sitting next to you.

Ms Olley: We are satisfied that it enables the Welsh Assembly Government to do what it wants, including refer to technical standards as part of that description, but not to in any way change those technical standards which are set at either an EU or a GB level so, yes, we are content that the description fits the bill.

Q82 Mr David Jones: It seems rather a vague expression to me. I have to say that when I first read this paragraph I found it quite difficult to

14 January 2010 Mr Wayne David MP, Mr Chris Stevens and Ms Susan Olley

understand because it seemed to me that if it did not include the setting of technical standards for construction or equipment what did it include?

Ms Olley: It includes making reference to those technical standards as part of the description, as in two-point attachment seat belts but not specifying how they may be attached, or three-point attachment seat belts, but not going behind that to talk about the materials used in constructing that equipment.

Mr David: As a lay person it would seem to me to make sense to have a description as wide as possible so that it can encompass a whole range of different things, including for example the size and the age of the vehicle as well as various kinds of equipment which may be employed within it.

Q83 Mr David Jones: Do you think more accurate and precise terminology could have been adopted rather than the word “description” which as I say again I find rather vague, not in terms of breadth but in terms of vagueness.

Ms Olley: We spent a very long time discussing this.

Q84 Mr David Jones: I bet you did!

Ms Olley: And we all felt that this was really the best that we could do that matched the need for broad aims (because of course we cannot pre-empt what the Measure is going to say) but also kept the competence of the UK Government intact and did not allow any impingement on that. This was not something used lightly. Neither do we think it is something that needs a further definition in Schedule 5.

Q85 Mr David Jones: And you are entirely satisfied that it would not conflict in any respect with the Road Vehicles (Construction and Use) Regulations?

Ms Olley: We are absolutely satisfied. That was our starting point.

Q86 Mr David Jones: I bet it was. Again this is a carve-out, if you like, rather than an addition. Could the same result have been secured by the addition of further Matters in Field 5 or by the amendment of Matter 5.10?

Ms Olley: You will recall that all Matters are subject now to the exceptions in Part 2 because of the changes that have taken place in previous LCOs, so even had we inserted new Matters we would have had to make carve-outs from the existing exceptions. We avoid duplicating text in any legislation because

of the interpretation possibilities that it might give rise to, so we thought the most economical way, certainly for the lawyers, was to just have the carve-out from an existing exception in a sense to reclaim that competence back to the Welsh Assembly Government rather than put in a new Matter because they already have the competence over learner transport by virtue of Matter 5.10.

Q87 Mr David Jones: I agree with that. Finally, do you consider that the expression “bus services” needs to be defined in the proposed LCO?

Ms Olley: It was not something that DfT were concerned about. What I do not know is whether the Local Travel Act contains a definition or whether it is just something that is a commonsense understanding. Certainly (b) is much more technical and clearly just relates to railways, but there was no issue about the understanding of what a bus service would cover. If you wanted a little further elaboration we certainly could offer that in terms of if there is a statutory definition.⁵

Mr David Jones: I think that would be helpful.

Q88 Chairman: A concluding question from myself. Would you characterise the proposed LCO as a tidying-up measure or a significant devolutionary step?

Ms Olley: Somewhere in between. I do not think it is tidying up. Clearly during the passage of the Learner Travel Measure passed by the Assembly issues came to the fore that needed to be dealt with by a refinement of the existing exception, so to that extent it is a development, it is a dynamic process, the devolution settlement.

Mr David: Could I say I think it is both in that it is a relatively small, as Sue has explained, measure. It adds to a large body of competence which the Assembly already has, so in a sense it is a tidying-up measure, but I think it is important nevertheless because we are talking about, understandably, a very important and emotive issue. I think many parents in Wales would be pleased and reassured if this LCO sees the light of day and we see positive Measures emanating as a consequence of it.

Q89 Chairman: Is there anything else that you would like to add at this point?

Mr David: No.

Chairman: Thank you very much. Thank you very much for being so succinct.

⁵ Ev 24

Written evidence

Letter from Rt Hon Peter Hain MP, Secretary of State, Wales Office

PRE-LEGISLATIVE SCRUTINY OF THE PROPOSED NATIONAL ASSEMBLY FOR WALES (LEGISLATIVE COMPETENCE) (TRANSPORT) ORDER 2010

I am writing to invite you and your committee to undertake pre-legislative scrutiny of the proposed Learner Transport and Concessionary Travel Legislative Competence Order. I am pleased to inform you that the UK Government has given its consent to this LCO being submitted to Parliament for pre-legislative scrutiny and I would be grateful if you could make the necessary arrangements for this to happen.

This proposed LCO would allow the National Assembly to legislate in relation to concessionary travel on bus services and rail services provided under a franchise agreement to which the Welsh Ministers are a party. It also enables the National Assembly to legislate on the types of vehicle which may be used to transport learners to and from the places where they receive education or training.

I have today laid the Order along with the accompanying Explanatory Memorandum before Parliament in the form of a Command Paper (Cm 7777) and I have issued a written ministerial statement drawing the Command Paper to the attention of Members. I have also written specifically to Welsh Members and Members who speak regularly on Welsh matters.

I look forward to your Committee's views on this Order.

14 December 2009

Welsh Affairs Committee Press Notice

PRE-LEGISLATIVE SCRUTINY OF THE PROPOSED LEGISLATIVE COMPETENCE ORDER IN COUNCIL ON TRANSPORT, RELATING TO LEARNER TRANSPORT AND CONCESSIONARY TRAVEL

CALL FOR WRITTEN SUBMISSIONS

The Government of Wales Act 2006 introduced a process enabling the National Assembly for Wales further to enhance its law-making powers by a new procedure known as Legislative Competence Orders in Council (LCO).

At its meeting on 15 December, the Welsh Affairs Committee decided formally to accept the Secretary of State's invitation to the Committee to conduct pre-legislative scrutiny of the proposed National Assembly for Wales (Legislative Competence) (Transport) Order 2010. The proposed Order, together with an explanatory memorandum by the Welsh Assembly Government, was published as a Command Paper by the Wales Office on 14 December (Cm 7777) and can be found on the internet at:
<http://www.official-documents.gov.uk/document/cm77/7777/7777.pdf>

The Committee asks for written submissions in accordance with the guidelines stated below by 8 January 2010.

The Committee would particularly welcome comments on the following aspects of the proposed Order:

1. Is the LCO request in the spirit and scope of the devolution settlement?
2. Is the use of the LCO mechanism in accordance with the Government of Wales Act 2006?
3. To what extent is there a demand for legislation on the matter(s) in question?
4. Are there any cross-border issues relating to the LCO? (eg financial or policy issues)
5. Are the purpose and scope of the LCO clearly defined, including the terms and definitions used?
6. Does the LCO have the potential to increase the regulatory burden on the private or public sector?
7. Would the proposed LCO necessitate the formation or abolition of Welsh institutions and structures? If so, where does the legislative competence to exercise such changes lie?
8. Is the use of an LCO more appropriate than, for example, the use of framework powers in a Westminster Bill to confer competence on the Assembly?
9. Has full use been made of any existing powers to issue statutory guidance and/or secondary legislation in relation to this Matter?

Concurrent to the work of the Welsh Affairs Select Committee, a detailed legal examination of the proposed Order will be conducted by the Constitution Committee, House of Lords.

15 December 2009

Proposed Order for pre-legislative scrutiny

DRAFT STATUTORY INSTRUMENTS

2010 No.

CONSTITUTIONAL LAW

DEVOLUTION, WALES

**The National Assembly for Wales (Legislative
Competence) (Transport) Order 2010**

Made - - - - - ***

Laid before Parliament ***

Coming into force - - - ***

At the Court at Buckingham Palace, the *** day of *** 2010

Present,

The Queen's Most Excellent Majesty in Council

In accordance with section 95(5) of the Government of Wales Act 2006(a), a draft of this Order has been laid before, and approved by resolution of, the National Assembly for Wales and each House of Parliament.

Accordingly, Her Majesty, in pursuance of sections 95(1) of the Government of Wales Act 2006, is pleased, by and with the advice of Her Privy Council, to order as follows:-

Citation and commencement

1.—(a) This Order may be cited as the National Assembly for Wales (Legislative Competence) (Transport) Order 2010.

- (1) This Order shall come into force on the day after the day on which it is made.
- (2) In this Order “Schedule 5” means Schedule 5 to the Government of Wales Act 2006.

Concessionary travel

2.—(b) Park 1 of Schedule 5 is amended as follows.

- (1) In Field 10 (highways and transport), after matter 10.1(b) insert—

(a) 2006 c.32.

(b) Matter 10.1 was inserted by section 122 of the Local Transport Act 2008 (c.26).

“Matter 10.2

Concessionary travel on the following services—

- (a) bus services;
- (b) Welsh services provided under a franchise agreement to which the Welsh Ministers are a party.

Any expression which is used in paragraph (b) and the Railways Act 2005 has the meaning given in that Act.”.

Amendments to general exceptions to matters

3.—(c) In Part 2 of Schedule 5, paragraph A1 (exceptions to matters)(c) is amended as follows.

(1) In paragraph (2) under the heading “*Highways and transport*”—

- (a) omit “and” after sub-paragraph (a), and
- (b) after sub-paragraph (b) insert “, and
- (c) regulation of the description of vehicle which may be used pursuant to learner transport arrangements (including description by reference to a vehicle’s construction or equipment), but not including the setting of technical standards for construction or equipment which differ from the standards that would or might otherwise apply to that vehicle.”.

(2) In paragraph (14) under that heading, insert at the end “(apart from regulation relating to the carriage of supervising adults on vehicles used pursuant to learner transport arrangements)”.

(3) After paragraph (19) under that heading insert—

“In paragraphs (2) and (14) “learner transport arrangements” means arrangements of the kind described in matter 5.10 which consist of the provision of motor vehicles and are made by—

- (a) public authorities (within the meaning of field 15) exercising functions relating to education or training, or
- (b) institutions or other bodies concerned with the provision of education or training.”.

Name

Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Government of Wales Act 2006 (“the 2006 Act”). The Order extends the legislative competence of the National Assembly for Wales to make laws known as Measures of the National Assembly for Wales (referred to in the 2006 Act as “Assembly Measures”). The legislative competence conferred by this Order is subject to general limitations on the exercise of that legislative competence, which apply by virtue of section 94 of, and Schedule 5 to, the 2006 Act.

Article 2 inserts matter 10.2 into field 10 (highways and transport) of Part 1 of Schedule 5 to the 2006 Act. Matter 10.2 is about concessionary travel.

Article 3 amends exception (2) under the heading “Highways and transport” in paragraph A1 of Part 2 of Schedule 5. The exception is for the regulation of the use of motor vehicles on roads, their construction and equipment and conditions under which they may be so used, apart from specified types of regulation. It applies to all matters in Part 1 of Schedule 5.

(c) Paragraph A1 was inserted by article 2(9) of the National Assembly for Wales (Exceptions to Matters) Order 2009 (SI 2009/3006). Paragraph 2 under the heading “highways and transport” was further amended by the National Assembly for Wales (Legislative Competence) (Environment) Order 2010 (SI 2010/).

The amendments made by article 3(2) allows the Assembly to make provision by Measure to regulate the description of vehicle which may be used pursuant to learner transport arrangements of the kind described in matter 5.10 (including description by reference to construction and equipment).

Article 3(4) allows the Assembly to make provision by Measure to regulate the carriage of supervising adults on vehicles used pursuant to learner transport arrangements.

The provision allowed by the amendments in articles 3(2) and (4) may only be made in respect of learner transport arrangements made by public authorities having education and training functions or by institutions or other bodies concerned with the provision of education or training.

A full regulatory impact assessment has not been prepared for this Order since the effect of this Order is only to confer competence on the National Assembly for Wales to legislate.

Welsh Assembly Government Explanatory Memorandum

PROPOSAL FOR A LEGISLATIVE COMPETENCE ORDER RELATING TO LEARNER TRANSPORT AND CONCESSIONARY TRAVEL

INTRODUCTION

1. This Memorandum sets out the background to the provisions in the attached Welsh Assembly Government proposed Legislative Competence Order which would confer additional legislative competence upon the National Assembly for Wales and explains the scope of the power requested.

2. The constitutional context to this request is set out by the Government of Wales Act 2006 (the 2006 Act) and the UK Government's policy contained in the White Paper "Better Governance for Wales". Section 95 of the 2006 Act empowers Her Majesty, by Order in Council, to confer competence on the National Assembly for Wales to legislate by Assembly Measure on specified Matters. Matters may be added to fields within Schedule 5 to the 2006 Act. Assembly Measures may make any provision which could be made by Act of Parliament, in relation to Matters, subject to the limitations provided for by the 2006 Act.

3. The proposed Order would confer further legislative competence on the National Assembly for Wales, by inserting a Matter in the field of highways and transport (Field 10 within Schedule 5 to the 2006 Act) and by amending two exceptions relating to highways and transport in Part 2 (Exceptions to Matters) of Schedule 5, paragraph A1 to carve out additional areas of competence. These new legislative powers in respect of the specified Matters will enable the Welsh Assembly Government, Assembly Members or Assembly Committees to bring forward proposals for legislation, in the form of Measures. These Measures will be subject to thorough scrutiny and approval by the National Assembly. Attached at Annex A is a copy of Schedule 5 showing the legislative competence that the National Assembly has acquired to date.¹

CONTEXT

4. The National Assembly acquired a range of executive functions over highways and transport under the Government of Wales Act 1998. These functions were transferred to the Welsh Ministers by the 2006 Act.

5. Further executive powers have since been devolved to the Welsh Ministers in various Acts, including the Transport Act 2000, the Railways Act 2005, the Transport (Wales) Act 2006 and the Local Transport Act 2008. In addition, legislative competence has been conferred on the National Assembly in the related area of learner travel (Matter 5.10 in the field of education and training), which was used by the National Assembly to pass the Learner Travel (Wales) Measure 2008.

6. The Welsh Assembly Government is working to develop a safe and efficient transport network to support economic development and promote social cohesion. A cornerstone of this is the commitment in *One Wales* to bring forward legislation on learner transport, thereby improving safety for learners on the journey to and from school or the place where they receive education or training. This supports the Assembly Government's policy to reduce car use by making it possible for students to walk, cycle or take the bus safely, thus reducing road congestion and improving environmental, health, social and economic outcomes.

7. The concessionary travel scheme in Wales provides free travel on local bus services for the disabled, their companions, and those aged over 60. A rail pilot scheme is also in operation, providing free travel for eligible pass holders, on the Borderlands and Conwy Valley Lines until the end of September 2010, and on the Heart of Wales and Cambrian Coast Lines until 26 March 2010.

CURRENT LEGISLATIVE FRAMEWORK

8. The National Assembly for Wales has legislative competence in relation to learner travel, covering "arrangements for persons to travel to and from the places where they receive education or training". This competence was conferred by The National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007, as amended by The National Assembly for Wales (Legislative

¹ Not printed.

Competence) (Education and Training) Order 2008, and The National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009. This definition includes persons receiving nursery, primary, secondary or further education or training.

9. There are, however, exceptions to the competence, which are listed in paragraph A1 of Part 2 of Schedule 5 to the Government of Wales Act 2006. These include:

- regulation of the use of motor vehicles on roads, their construction and equipment and conditions under which they may be so used (apart from regulation relating to Matter 10.1);
- road traffic offences;
- driver licensing;
- driving instruction;
- insurance of motor vehicles;
- drivers' hours;
- traffic regulation on special roads;
- pedestrian crossings;
- traffic signs;
- public service vehicle operator licensing;
- transport security; and
- registration of local bus services, and the application and enforcement of traffic regulation conditions in relation to those services.

10. The National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009 (SI 2009 No 3006) amended the list of exceptions by providing for a carve out from the exceptions within paragraph A1, in relation to Matter 10.1 (road user charging), as this is already within the National Assembly's competence. The National Assembly for Wales (Legislative Competence) (Environment) Order 2010, if approved by Her Majesty in Council, will introduce a further carve out to the exception relating to "regulation of the use of relevant vehicles carrying animals for the purposes of protecting human, animal, fish or plant health or the environment".

11. The Learner Travel (Wales) Measure was introduced on 15 April 2008 by the Minister for the Economy and Transport. It was approved by Her Majesty in Council on 10 December 2008. This Measure aims to strengthen protocols for good behaviour and discipline on school buses and provide free transport for more primary school children in Wales. The main elements of the Measure are:

- Increased safety;
- A common policy and legal framework across Wales;
- Clarity regarding the eligibility of free or assisted school transport; and
- Environmental sustainability in transport arrangements.

12. The Welsh Ministers' powers in relation to concessionary travel are contained in Sections 145B to 152 of the Transport Act 2000. Section 145B of the Act, as amended by the Concessionary Bus Travel Act 2007, provides for mandatory travel concessions to be provided by operators of eligible services (at present local bus services) to certain classes of passenger, including those who are elderly or disabled.

13. Section 149 of the Act requires travel concession authorities (county and county borough councils) to reimburse operators for providing the concessions in accordance with arrangements agreed with the operators or determined by the authorities. According to Section 149(3), the Welsh Ministers may by regulation make provision:

- with respect to the determination by travel concession authorities of the amounts to be paid to individual operators, or to any class of operators, by way of reimbursement;
- as to the manner of making any payments due to operators by way of reimbursement; and
- about the terms on which, and the extent to which, travel concession authorities may employ any person as their agent for the purpose of making payments due to operators by way of reimbursement and the descriptions of persons who may be so employed.

14. The current regulations in Wales are the Mandatory Travel Concessions (Reimbursement Arrangements) (Wales) Regulations 2001:

- Regulation 3 sets the overall objective for reimbursement arrangements, namely that operators should not be financially better off or worse off as a result of providing mandatory travel concessions;
- Regulation 4 requires that reimbursement payments must meet the costs incurred by operators in providing mandatory travel concessions and defines those costs;
- Regulation 5 makes provision for the periods in respect of which payments are to be calculated and the dates when they must be made;

- Regulation 6 requires authorities to adopt a standard method for determining the total number of journeys made by those entitled to the concessions and the fares values to be attributed to those journeys;
- Regulation 7 requires authorities to review the calculations made in accordance with the standard method at least once every three years; and
- Regulation 8 requires authorities, when adopting the standard method and when calculating reimbursement payments in accordance with that method, to have regard to guidance given by the Welsh Ministers.

15. The Welsh Assembly Government issued guidelines in November 2001. Revised guidelines may be issued under Section 145B(6) of the Transport Act 2000.

16. The Welsh Ministers' powers of variation under Section 147 of the Transport Act 2000 include power to make any amendment of that Act that could have been made by amending or revoking any provision of the Travel Concessions (Extension of Entitlement) (Wales) Order 2001 (which was revoked by the 2007 Act). The following variations to the statutory concession could be made by way of statutory instrument in order to reduce the financial burden:

- Limit journeys to within a Welsh travel concession authority, ie local authority, or between a place in the authority's area and a place outside, but in the vicinity of that area, for example between Cardiff and Newport, but not Cardiff and Swansea;
- Imposing times during which the concession applies by limiting travel to off-peak; that is, no free travel between, for example, 7.30 am to 10.00 am and 4.00 pm to 6.00 pm;
- Introduce a nominal fare. We are however obliged under the Transport Act 2000 to provide a waiver ensuring at least a half-price concession;
- Limiting the class of service to which the mandatory concession applies—for example, not reimbursing concessionary journeys on the coach network (such as the TrawsCambria service); and
- Limiting or removing the concession of a companion to a disabled person as set out above.

RATIONALE

17. The aim of the proposed Order is to confer legislative competence on the National Assembly in relation to learner transport and concessionary travel, which will enable the National Assembly to legislate for Wales in these areas.

18. Although legislative competence has already been devolved to the National Assembly for Wales in relation to arrangements for persons to travel to and from the places where they receive education or training, it does not cover the use, construction and equipment of vehicles used for learner transport.

19. The current powers enabled the National Assembly to pass the Learner Travel (Wales) Measure 2008, which, amongst other things, increased the entitlement to free transport for some primary school children and required the Welsh Ministers to make a code of conduct in relation to the behaviour of those travelling to and from their places of learning. However, the consultation and scrutiny of the Learner Travel Measure highlighted widespread concern regarding related transport regulation and safety issues. However, the National Assembly was unable to legislate in relation to the kinds of vehicles used to provide learner transport and the safety features they should have because it did not have the competence. This led to a cross-party call by Assembly Members to seek powers in this area, so that the National Assembly could define the arrangements for learner transport where it is currently unable to do so.

20. A number of exceptions apply to the National Assembly's competence in relation to learner transport, which limit the National Assembly's ability to legislate in relation to the use, construction and equipment of vehicles used for learner transport and in relation to transport security. This LCO proposes carve outs to those exceptions limited to learner transport arrangements, to enable the National Assembly to consider legislating in relation to the safety of the vehicles used. This could, for instance, enable the National Assembly to legislate to require local authorities only to use vehicles for learner transport which conform to the highest safety standards and/or have certain characteristics (eg single deck vehicles, fitted with seatbelts and CCTV). Conferring competence by redefining this exception would enable the National Assembly to address particular concerns in Wales.

21. To safeguard the long term sustainability of the concessionary travel scheme, the Welsh Assembly Government is also seeking competence for the National Assembly over concessionary travel. This would enable the National Assembly to consider legislating to exercise more rigorous control over the scheme. For example, the National Assembly could legislate, to allow the Assembly Government to directly negotiate reimbursement of operating costs with the operators and/or administer the scheme directly. The current mechanism of reimbursing operators via local authorities fails to build in sufficient incentives to control costs since local authorities are reimbursed by the Assembly Government for the full costs incurred.

22. The competence provided by this LCO would also enable the National Assembly to consider amending the legislative framework of the scheme. Under the current range of executive powers, the Welsh Ministers may directly negotiate reimbursement with the local bus operators (acting as the agents of the local authorities). But this may introduce potential conflicts of interest, since the legislation permits the

determination of appeals by the Welsh Ministers themselves. Currently the Welsh Ministers have the power to regulate the process once an application has been made to them under Section 150(6)(c) of the Transport Act 2000. However, the basic mechanisms that precede the consideration of an appeal are set out in the Transport Act 2000 and the Welsh Ministers have no powers to change these. A future Measure proposed by the National Assembly could, for instance, describe the appeals process in full.

SCOPE

23. It is proposed that a Matter be inserted under Field 10: highways and transport of Part 1 of Schedule 5 to the Government of Wales Act 2006, to enable the National Assembly to legislate over concessionary travel by way of Assembly Measure. This includes, but is not limited to, powers to directly administer the scheme and to determine agreements with Participating Operators (Participating Operators of Eligible Services are defined by the Travel Concessions (Eligible Services) Order 2002 (SI 2002 No 2023 (W207) under the Transport Acts 1985 and 2000). The legislative competence of the National Assembly will be limited (in relation to concessionary travel) by restricting competence over rail travel to Welsh services provided under a franchise agreement to which the Welsh Ministers are a party—meaning local and regional services currently provided under the Arriva Trains Wales franchise, but excluding services which operate under that franchise entirely in England. This also excludes the services which operate in Wales provided by First Great Western, Virgin and Cross-Country.

24. In relation to learner transport, competence will be conferred not by inserting a new Matter, but by amending Part 2 (Exceptions to Matters) of Schedule 5, paragraph A1(2) and (14). The scope of the revisions to the exception will be limited to learner transport as defined in Matter 5.10 of Schedule 5 to the Government of Wales Act 2006. This includes taxis and other private hire vehicles (insofar as additional safety measures in respect of local authority contracted taxis used for school transport can be included in the licensing conditions). The power to regulate *learner transport* is limited to public authorities and institutions or other bodies concerned with the provision of education and training. This would include local education authorities, school governing bodies and independent schools. It would however exclude travel arrangements made by parents or the students themselves, and would also exclude visiting vehicles.

25. This Order does not seek to devolve legislative competence in relation to the technical standards of vehicles which apply throughout Great Britain. These areas which will continue to be determined by the UK Government, increasingly working within the framework of European law. Any future legislation brought forward by the National Assembly for Wales in this area would have to be compatible with the regulatory regime for vehicle safety under UK law, and the overarching requirement within the 2006 Act to be compliant with EU law, as well as the general Treaty principles pertaining to operation of the internal market.

26. The legislative competence in relation to *transport security* is limited to the carriage of supervising adults on vehicles used pursuant to learner transport arrangements. This excludes competence in relation to all other aspects of transport security including terrorism.

GEOGRAPHICAL LIMITS OF ANY ASSEMBLY MEASURE

27. Section 94 of the Government of Wales Act 2006 imposes a prohibition upon Assembly Measures having effect other than in relation to Wales. This means that the National Assembly is not able, by Measure, to confer on the Welsh Ministers, Welsh local authorities or any other public authority, functions which do not relate to Wales. A provision of an Assembly Measure is not law if it is outside the Assembly's legislative competence.

28. Any provision of a Measure which makes the provisions of that or any other Measure effective, enables the provisions of that or any other Measure to be enforced or is otherwise incidental to or consequential on such a provision of a Measure, is also within the Assembly's legislative competence.

MINISTER OF THE CROWN FUNCTIONS

29. This proposed Order in itself does not modify or remove any functions of a Minister of the Crown. By virtue of Part 2 of Schedule 5 to the 2006 Act, the Assembly may not by Measure alter the functions of a Minister of the Crown without the consent of the Secretary of State. In relation to any future proposals that may impact on Minister of the Crown functions, the appropriate UK Government Department will be consulted and agreement sought to any proposals to remove or modify these functions.

CONCLUSION

30. For the reasons outlined above, the Welsh Assembly Government proposes that legislative competence should be conferred on the National Assembly for Wales in relation to learner transport and concessionary travel, in the terms of the proposed draft Order attached.

Ieuan Wyn Jones

Deputy First Minister and Minister for the Economy and Transport

Written evidence received from The Community Transport Association (CTA Cymru)

The Community Transport Association (CTA Cymru) is part of a rapidly growing UK-wide charity, giving voice and providing leadership, learning and enterprise support to our member organisations who are delivering innovative transport solutions to achieve social change. Our vision is of “*a society free of social exclusion and injustice where everyone has mobility and access to the services they require.*”

We promote excellence through the provision of a range of direct support services to our members and we are recognised by the Welsh Assembly Government as “the voice of community transport”. Our services include development support, training, publications, advice and events for Wales based voluntary and community transport operators from our offices in Clydach and Rhyl. Our members also include other third sector organisations with an involvement or interest in transport, Local Authorities, schools and colleges.

Community transport exists to meet the travel and social needs of people to whom these would otherwise be denied because of their home location, age, disability and/or poverty, providing accessible and affordable transport to achieve social inclusion. Our priority is to ensure that community transport is recognised and included as a valid part of a fully integrated public transport system in Wales.

1. GENERAL COMMENTS

1.1 We understand that the proposed LCO would give the National Assembly for Wales legislative competence in the area of concessionary travel, and extend its existing competence in the area of learner travel.

1.2 We have restricted our comments to the scope of the LCO and will respond in detail to any future consultations on proposed Measures coming forward in these areas.

2. CONCESSIONARY TRAVEL

2.1 CTA Cymru is supportive of additional powers being conferred on the National Assembly for Wales in the area of concessionary travel.

2.2 The All Wales Concessionary Travel scheme has undoubtedly provided significant benefit to many elderly and disabled people and it is important that the Measures to ensure the long term sustainability of the scheme and improve its management can be enacted promptly, without the need to refer to Westminster for approval. However, CTA Cymru is disappointed that the Order is limited to bus and (certain) rail services and makes no specific mention of community transport.

2.3 The explanatory memorandum to the LCO notes that a pilot project is underway offering concessionary travel on certain local rail services. The proposed LCO would give the Assembly powers to legislate for concessionary fares on rail services within Wales in the future (where covered by franchise agreements to which Welsh Ministers are party), enabling the assimilation of the pilot project into mainstream policy.

2.4 However, no mention is made of another major pilot initiative which extends concessionary fares to certain community transport services in Wales, namely the Community Transport Concessionary Fares Initiative (CTCFI). This provides concessionary travel for very elderly and severely disabled people unable to access conventional bus services. Under CTCFI, 15 pilot projects have been underway across Wales since 2005, which CTA Cymru manages on behalf of the Welsh Assembly Government. The scheme was extended in 2008 for a year to allow for an independent evaluation by Capita Symonds, and following this positive report, the Deputy First Minister announced a further three years' extension to 2012 in order to:

“develop a model that provides an acceptable level of concessionary travel; supports the broader development of the community transport sector and is more sustainable in the longer term” (Written Statement from Ieuan Wyn Jones, Deputy First Minister and Minister for the Economy and Transport, 10/03/09).

2.5 However, this extension encompasses only the existing pilots, and CTA Cymru is concerned that whilst the CTCFI's aim is to address inequality in the current concessionary fares scheme, this cannot be achieved unless the scheme is rolled out to all community transport in Wales. Without this, many vulnerable and isolated elderly and disabled people will be unable to use the All Wales Concessionary Travel Pass to which they are entitled, because their mobility impairments make it difficult or impossible for them to access conventional bus services.

2.6 CTA Cymru strongly believes that any future amendments to the concessionary travel scheme in Wales must be developed according to the principles of disability equality. Therefore, it is important that the National Assembly's legislative competence should include Community Transport services as well as conventional bus services. It may be possible to achieve this by including Community Transport services within a definition of “Bus Services” under Matter 10.2 (a) or a separate category (c) may be required.

3. LEARNER TRAVEL

3.1 CTA is broadly supportive of the proposal to confer additional powers on the National Assembly for Wales regarding the kinds of vehicles used for Learner Travel services and safety features on these vehicles.

3.2 However, we would like clarification as to whether any Measures coming forward as a result of the LCO would apply only to vehicles used for home-to-school transport or also to those vehicles owned and operated by educational establishments themselves (eg school minibuses) and/or hired in for extra-curricular trips and/or after-school activities. This could also include community transport vehicles operating under a S19 permit.

3.3 We would note that the costs of complying with any Measures which may be introduced will need to be evaluated to ensure that the costs of compliance are proportionate to the benefit which will be gained—eg the introduction of CCTV may be appropriate for larger buses on home-to-school runs but may not be appropriate for school minibuses and community transport vehicles.

January 2010

Written evidence from the Guide Dogs for the Blind Association

INTRODUCTION

The Guide Dogs for the Blind Association (Guide Dogs) welcomes the opportunity to respond to this consultation. Our vision is for a society in which blind and partially-sighted people enjoy the same freedom of movement as everyone else, and our purpose is to deliver the guide dog service and other mobility services, as well as breaking down barriers—both physical and legal—to enable blind and partially-sighted people to get around on their own. This response is confined to the provision of concessionary fares in Wales.

1. *What are your views on the general principle that legislative competence in the areas identified in Matter 10.2 be conferred on the National Assembly?*

We would support the conferring of legislative competence on the basis that the development of Measures would be subject to appropriate scrutiny, and that the concerns of blind and partially sighted people, and other vulnerable pedestrians would be taken into account. The impact of an increase in the cost of travel, when buses are often an essential link to shops, doctor's appointments, family and friends cannot be underestimated, and many blind and partially sighted people would have to restrict the number of journeys they make because of a cost they have not budgeted for in the past.

However, we would also seek reassurance that, as stated, the aim would be to safeguard and hopefully improve the long term sustainability of the concessionary travel scheme. There is much in this proposed Order which points to a reduction in the flexibility and availability of the concessionary pass, which is disappointing in view of the commitment to its continuation reflected in the National Transport Plan for Wales. Restricting its use to off peak times penalises blind and partially sighted people who catch the bus to work and is inconsistent with the UK Government's welfare reform programme designed to get more disabled people into work. It will also impact on those travelling for education, health or leisure activities which have an early start. Requiring disabled people to pay for a companion whose help might be essential seems to contradict the Welsh Assembly Government's commitment to social inclusion as well as the "Climbing Higher" strategy which encourages physical exercise and outdoor activity.

With regard to the direct administration of the scheme by the Welsh Assembly Government, it is not clear as to how this would significantly impact on blind and partially sighted people as long as it is enhanced, or at least maintained in its present form. We would not wish to see the process for obtaining a concessionary pass become more complex, or less accessible to blind and partially sighted people, through the introduction of application forms or processes that are in any way inaccessible to them.

2. *What are your views on the terms of the proposed Order? For example, are they too narrowly or too broadly drawn?*

We believe that concessionary fares are essential for blind and partially sighted people and other vulnerable pedestrians for several reasons. It is often necessary, even on short routes, to use a bus either because the distance involved is too far to walk, the pedestrian environment is inaccessible to them or there is simply no other means of making the journey. They do not have independent access to their own vehicles and taxis are prohibitively expensive. In many areas of rural Wales the local bus is the only way to travel, and a once a week shopping trip may be the only link between a blind or partially sighted person and the community in which they live. Faced with so few options, blind and partially sighted people depend on buses much more than most, and so the proposed restriction to limit use of the pass within their own travel authority, or to areas very close by is concerning. With the closure of many local hospitals, and the fact that most people are employed in larger conurbations blind and partially sighted people who need to make essential journeys further afield will have to pay much more. It would be particularly disappointing for this

restriction to the scheme to be introduced at this time; given that the UK Government extended the English minimum concessionary fares scheme to match the existing cross local authority boundary provision which the Welsh scheme has had since 2002.

For blind and partially sighted people, bus journeys require complex planning, particularly if alighting at one stop, locating and getting safely aboard another vehicle and being sure that it is stopping at the destination of choice. Currently, a proportion of buses in Swansea and Cardiff have the capacity to provide audio-visual information to passengers, but it is not consistently available and is not even an option outside of these major cities. Add to this the confidence required to maintain independence, negotiate the difficult pedestrian environment to and from the bus stop, and the threat, in these proposals, to remove free companion travel and the negative impact on blind and partially sighted people becomes very significant.

We are concerned to note the proposed limiting of the pass to off peak travel times, and making a charge for a carer or companion. It is clear from the changing demographics of Wales that this will affect a significant number of people who currently make good use of bus services, and who may rely on the help of a friend, family member or personal assistant to do so.

According to the local authority statistical returns for Wales on 31 March 2006, there were 9,677 people registered as blind and 10,284 registered as partially sighted, making a total of 19,964.

The Wales Council for the Blind makes several supplementary comments of significance:

- As many as 60,000 persons or more who are eligible for registration do not appear on these records.
- 90% of the visually impaired population are over 65 and 75% are over 75.
- With 47% of blind and partially sighted people in Wales living alone, and a high proportion of that group being over 65, the value of the concessionary pass is easy to see. Reducing its scope or flexibility would significantly limit the independent safe mobility of blind and partially sighted people in Wales, and in terms of travel across authority borders disadvantage them in comparison with the rest of the UK.

The current pilots of free rail travel on the Border Lands, Conwy Valley, Cambrian Coast and Heart of Wales lines, along with the Traws-Cambria long distance coach service allows blind and partially sighted people to reach destinations which would otherwise be costly and very challenging. We would hope that in changing the way in which this scheme is administered, the Welsh Assembly Government would appreciate the value of this to blind and partially sighted people who wish to have the same safe independent access to destinations outside of their locality as anyone else.

Using trains obviously poses different challenges to buses, the particular dangers of stations (of which 194 are unmanned in Wales) means that taking a companion is sometimes essential to assist with finding the way from the bus to the train and *vice versa*. The National Transport Plan is committed to achieving sustainability and the integration of transport modes in Wales. For blind and partially sighted travellers, however, the complexity or unfamiliarity of the route can make the transition from one mode to the next impossible to accomplish independently. The transition between the bus and the train cannot be supported by the bus driver, or *vice versa*, and so the help of a companion becomes essential. Access to platforms, using ticket machines and the fear of being lost and unable to find help is a very real barrier, and the Advanced Passenger Reservation Service can only operate on manned stations. For all of these reasons being required to pay for a companion to facilitate safe travel would unfairly penalise blind and partially sighted people. Free rail travel on some journeys is a valuable asset in a rural environment where it may be impossible to make a longer journey by bus, and we would ask that the pilots are extended in line with the Welsh Assembly's commitment to improving the quality of life for all its citizens.

3. *Do you have any additional comments relating to the proposed Order?*

No further comment.

4. *Do you consider that the amendments to general exceptions to Matters, referred to on page 2 of the proposed Order and relating to field 10, would have implications for the effectiveness of any future proposed Measures brought forward under Matter 10.2? If so, please explain why.*

No further comment

January 2010

Written evidence from SWWITCH

The South West Wales Integrated Transport Consortium (SWWITCH) supports the principle of conferring the legislative competence in the areas under consideration to the National Assembly.

SWWITCH does however, have concerns about the subsequent application and the impact on costs and capacity to the public and private sector. SWWITCH is keen that the application of the LCO is worked through with Local Authorities in Wales to ensure consistency and the realisation of intentions behind the Order.

1. BACKGROUND

1.1 The South West Wales Integrated Transport Consortium (SWWITCH) was formed in 1988 and comprises the four south west Wales authorities:

- Carmarthenshire County Council;
- Neath Port Talbot County Borough Council;
- Pembrokeshire County Council; and
- City and County of Swansea.

SWWITCH is formally established as a Joint Committee of the four local authorities and meets quarterly.

1.2 The SWWITCH remit includes all forms of transport and wider access issues including land use planning integration, sustainable transport and behavioural change.

1.3 SWWITCH is one of four transport consortia in Wales supported by the Welsh Assembly Government and working closely with the Assembly on the planning and delivery of improved access to residents, visitors and businesses in and beyond Wales.

2. INTRODUCTION

2.1 SWWITCH is pleased to respond to the invitation from the Welsh Affairs Committee to provide a written submission on the Committee's pre-legislative scrutiny of the proposed Legislative Competence Order on Transport. SWWITCH has already responded to the National Assembly for Wales' legislative committee and a copy of that response is attached as Appendix A.

2.2 The SWWITCH response does not attempt to provide comment or responses to all the specific issues raised by the Welsh Affairs Committee, but rather to focus on the issues which are within the SWWITCH Local Authorities' area of responsibility and expertise.

3. SWWITCH COMMENTS ON THE PROPOSED LCO ON TRANSPORT

3.1 SWWITCH supports the general principle that the legislative competence in the areas identified in Matter 10.2 of the proposed Order be conferred on the National Assembly. This would be in the spirit and scope of the devolution settlement.

3.2 There are certainly strong demands from parents and representative groups for action following a high profile fatality some years ago on a bus carrying school children. The demand for the concessionary fares element of the proposed Order is directly related to the needs of the Welsh Assembly Government and how they manage the concessionary fares system.

3.3 In terms of cross border issues, changes which improve safety standards of vehicles used for learner travel in Wales which are not implemented in England may well lead to extra capacity/cost requirements on local providers of transport and may raise parental expectations in an area where students attend schools on both sides of the border.

3.4 SWWITCH believes the purpose and scope of the LCO are properly defined and supports the Order in principle. However, it wishes to offer comments on the practical application as detailed in Appendix A in paragraphs 1 and 2.

3.5 As referred to in 3.3 above where changes to vehicle standards are required in Wales, for use on learner travel contracts, which are over and above those required in England, private operators may have to provide additional vehicles with associated capital, staffing and maintenance costs.

3.6 The proposed LCO would not necessitate the abolition of any Welsh institution, but the concessionary fare element may require the establishment of an independent appeals mechanism.

January 2010

APPENDIX A

SUBMISSION TO THE NATIONAL ASSEMBLY FOR WALES' LEGISLATION COMMITTEE

The South West Wales Integrated Transport Consortium (SWITCH) is pleased to respond to the request for evidence to the Legislation Committee.

SWITCH supports the general principle that legislative competence in the areas identified in Matter 10.2 be conferred on the National Assembly.

SWITCH also supports the terms of the Order in principle but wishes to offer the following comments in relation to the concessionary fares scheme and learner transport covering questions 3 and 4 of the consultation document.

1. CONCESSIONARY FARES

1.1 Local authorities currently administer the All Wales Concessionary fares scheme devised by the Welsh Assembly Government which determines the methodology and rate to be applied for the reimbursement of operators. Local Authorities have worked closely with Welsh Assembly Government Officials to develop and amend the existing scheme.

1.2 In terms of the powers, the fundamental determinant of cost is the level of patronage of local bus services by concessionary pass holders and whilst the changes to the reimbursement formula will control cost in the short term, cost will continue to increase in the long term as the population ages and people live longer.

1.3 The concessionary fares scheme supports social, economic and environmental objectives and aspirations which are consistent with the SWITCH Regional Transport Plan. The concessionary fares scheme is intrinsically linked to other support mechanisms for local bus services such as Local Transport Services Grant and Bus Services Operator Grant. All are critical to the support of socially necessary services for communities, particularly in rural areas, where in south west Wales up to 80 % of the local bus network is subsidised. It is therefore essential that future work on the development of a more specific measure should take a more holistic account of:

- The strategic role of the concessionary fares scheme in safeguarding the long term sustainability of local public transport networks; and
- The social, environmental and economic implications for any changes to the scheme.

1.4 SWITCH wishes to emphasise the importance of partnership with local authorities and operators in the development of the specific Measure in relation to concessionary fares and that any proposals are thoroughly evaluated and resourced before a Measure is passed.

2. LEARNER TRANSPORT

2.1 The proposals to introduce an Order covering the description of vehicles to be used on contracted transport will support aspirations on improving the safety of school transport contracted vehicles and are generally supported. The better the transport experience at a young age the easier it will be to persuade people to use more sustainable forms of transport in the future.

2.2 However there is a concern that the proposals will raise the expectations of the public as there will be no powers over the type of vehicles used on scheduled public transport services that a large number of school children use each day to access education and training. It may also limit opportunities for the integration of services and networks, particularly in urban areas, due to the different vehicle descriptions specified for each particular service area. This could result in pressure for more capacity. It is a complex service area with significant financial and capacity implications.

2.3 SWITCH would again wish to emphasise the importance of partnership with local authorities and operators in the development of the specific Measure in relation to Learner Transport and that any proposals are thoroughly evaluated and resourced before a Measure is passed.

Supplementary evidence from Wayne David MP, Parliamentary Under-Secretary, Wales Office

LEARNER TRANSPORT AND CONCESSIONARY TRAVEL LCO

Thank you once again for inviting me to give evidence to the Welsh Affairs Committee on the proposed Learner Transport and Concessionary Travel LCO. At last week's session, my officials and I undertook to write to the Committee on a few points.

Would primary legislation be required to change the safety requirements for learner travel in England?

Schools and local authorities in England, as in Wales, may currently specify within their contracts with school transport providers that they will only accept vehicles with specific features, such as seat belts or a single deck. Primary legislation would be needed to place duties on local authorities in England requiring them only to enter into contracts with school transport providers which include specific safety features. All buses and coaches used for school transport, in common with other similar vehicles, must meet minimum regulatory standards to ensure that the vehicles can operate safely to carry passengers on the public highway.

What percentage of young people who travel to school use the bus as their mode of transport?

Living in Wales is a survey carried out by Ipsos MORI for the Welsh Assembly Government. It is the main source of information on households and the condition of homes in Wales. According to the most recent survey in 2005, of the 281,994 primary and secondary school children sampled 23% used the school bus as their main transport to school. The survey also found 4% used other bus services, 32% travelled by car, 37% walked and none used the train.

Do you consider that the expression of "bus service" needs to be defined in the proposed LCO?

No. The Local Transport Act 2008 amends the Transport Act 2000 (the Act which initiated Concessionary Travel) to define "bus services" in section 10 as meaning "services using public service vehicles". A future Measure using the competence devolved via this LCO would include a definition of "bus services" compatible with this definition.

I trust this answers the points raised. Please do not hesitate to contact me if I can be of any further assistance in helping your scrutiny of this Order.

22 January 2010

Supplementary evidence from the Welsh Assembly Government

NOTE ON THE ROAD VEHICLES (CONSTRUCTION AND USE) REGULATIONS 1986 (SI 1986/1078)

1. The main regulations in relation to seatbelts are regulations 46 to 48A of the Road Vehicles (Construction and Use) Regulations 1986 (as amended by the Road Vehicles (Construction and Use) (Amendment) (No. 2) Regulations 2001). The regulations specify which vehicles need to be fitted with seatbelts, which seatbelts should be fitted and the technical specifications of those seatbelts. The enabling power for the regulations is section 41 of the Road Traffic Act 1988 which enables the Secretary of State to make regulations concerning the construction, weight, equipment and use of vehicles.

2. Minibuses, coaches and buses (apart from those designed for urban use with standing passengers—see regulation 46(7)(e)) first used on or after 1 October 2001 must have seatbelts fitted by the manufacturer. The seatbelts must be fitted to all forward facing and rearward facing seats. The seatbelt may be either an inertia reel belt, a retractable lap belt, a disabled person's belt or a child restraint.

3. Minibuses and coaches registered before 1 October 2001 must have a forward facing seat for each passenger, fitted with either a three point seat belt, a disabled person's belt or a lap belt.

4. A seatbelt may consist of:

- *An inertia reel belt*—a three point belt which restrains the upper and lower torso and includes a lap belt (designed for use by an adult);
- *A retractable lap belt*—a belt which passes across the front of the wearer's pelvic region (designed for use by an adult);
- *A disabled person's belt*—a belt specially designed or adapted for use by an adult or young person suffering from some physical defect or disability and which is intended solely for the use of such person; or

— *A child restraint*—a seatbelt for the use of a young person which is designed to be fitted directly to a suitable anchorage or be used in conjunction with an adult seat belt and held in place by the restraining action of that belt.

5. A bus is defined in the 1986 Regulations as a motor vehicle constructed or adapted to carry more than 8 passengers in addition to the driver. A minibus is defined as a motor vehicle constructed or adapted to carry more than 8, but not more than 16 seated passengers in addition to the driver. A coach is defined as a vehicle constructed or adapted to carry more than 16 seated passengers in addition to the driver which has a gross weight of more than 7.5 tonnes and a maximum speed exceeding 60mph.

6. Regulation 48A makes specific provision for seatbelts to be fitted to all coaches and minibuses which carry children between the ages of 3 and 15 on organised trips to and from school or from one part of their school premises to another. This includes home to school transport.

January 2010
