

**MEMORANDUM FROM THE MINISTER FOR THE ECONOMY AND  
TRANSPORT**

**CONSTITUTIONAL LAW: DEVOLUTION, WALES**

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

**Proposal for a Legislative Competence Order relating  
to learner transport and concessionary travel**

**Introduction**

1. This Memorandum has been prepared and laid in accordance with Standing Order (SO) 22.14. It 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.

## **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 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;
- 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;
- 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.
  - 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. Guidelines were issued by the Welsh Assembly Government 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, i.e. 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, 7:30am to 10:00am and 4:00pm 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).
- 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. 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 (e.g. 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 (W.207) 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 are 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  
Date