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DRAFT TRANSPORT (WALES) BILL

- 1 The opportunity to submit comments to the two committees for pre-legislative scrutiny is welcome. However the timing takes no account of the elections to all councils that were held on 10 June. The timetable of seeking written evidence by 15 June does not allow a group of bodies that is most affected by the Bill an adequate or realistic opportunity to reply.
- 2 While the need to proceed with evidence taking and a report before the summer recess is understood, the timetable that has been adopted does not allow political clearance of this response for the following reasons:
 - the draft Bill was published on 27 May with a deadline for comments of 5 August;
 - the press notice of 28 May announcing the joint scrutiny of the Bill was received here on 11 June, together with the second press notice of 10 June about the dates for hearings;
 - the first meeting of Denbighshire County Council following the elections is being held on 24 June.
- 3 These comments may therefore be supplemented or amended when we have the relevant political structures in place.

General comments

- 4 From a local government perspective, the Bill is generally disappointing. The principal rationale for creating the statutory duty to have a Wales Transport Strategy seems to be to enable the Assembly to exercise yet greater central control over local delivery of transport policy and to take functions away from local councils – which, as measured by turnout in last week's elections compared to the Assembly elections in 2003, have a greater democratic mandate than the Assembly itself.

- 5 The partial regulatory impact assessment acknowledges that councils are already working collaboratively in respect of public transport under existing legislation. In North Wales, this is through a formal joint committee under the Local Government Act 1972 called Taith. The consultation paper does not present evidence as to how the existing collaborative arrangements are failing to achieve the outcomes that the Welsh Assembly Government seeks, nor does it demonstrate satisfactorily that those outcomes could not be achieved by further collaboration within existing legislation (for example, by councils arranging for further functions to be exercised by Taith).
- 6 The analysis of the Assembly's powers with respect to local authorities and their transport functions is felt to be misleading in certain respects and to overstate the case for change.
- 7 There are serious questions to be asked, for example, about the proposed powers in **clauses 4 and 5** of the Bill. Are they needed when the Assembly has extensive powers of intervention and direction under section 15 of the Local Government Act 1999 (best value) or under other legislation? If a council was failing to "make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness" under section 3 of the 1999 Act, the Assembly could intervene under section 15. Subsection (3) of clause 4 uses almost identical wording to the 1999 Act in providing that the Assembly "must in particular have regard to the interest of economy, efficiency and effectiveness in the discharge of the functions".
- 8 A significant concern is that the Assembly is required only to have regard to these factors "in particular" which implies that the Assembly could issue a direction under clause 4 for other reasons that are not specified in the legislation. Such centralising powers need to be constrained to prevent their use as a result simply of whim or political considerations. The wording of paragraph 15 of the notes ("to ensure that a plan is prepared which is mutually acceptable to the authority and to the Assembly") might be characterised as misleading when the Assembly will direct the content of the plans and approve them – the Bill does not seek to establish local government and the Assembly as equal partners in this process.
- 9 Paragraphs 11.2.2 and 11.2.3 of the regulatory impact assessment let the cat out of the bag. The real intention of the Welsh Assembly Government is that the 22 councils should cease to produce local transport plans and that there should instead be "around four" plans. If this is the intention, the amendments to the planning framework in the Transport Act 2000 are somewhat misleading. If the intention is to have four or so plans, the responsibility for producing a local transport plan should be removed from each council, and instead the legislation should provide that such grouping of councils as the Assembly may specify should produce a regional transport plan. The concept of a local transport plan would have no place in this system.

- 10 In explaining provisions in the Bill, paragraph 8.6 of the regulatory impact assessment asserts that the powers enable groups of authorities to draw up a single plan for their areas. The author of this seems not to be familiar with existing legislation under the Local Government Act 1972, under which a council can arrange for another to discharge functions on its behalf or two or more councils can arrange to discharge functions through a joint committee. The 1972 Act enables a group of authorities to draw up a single plan for their areas.
- 11 The creation of the centralising powers in clauses 4 and 5 of the Bill is considered to contravene the Assembly's local government scheme under section 113 of the Government of Wales Act 1998. These powers are in conflict with the Assembly's duty to have a scheme that sets out how it "proposes, in the exercise of its functions, to sustain and promote local government in Wales".
- 12 The mere existence of a power for the Assembly to appoint members of a joint transport authority under clause 5(4)(a) would be a threat to local government. A similar power exists with respect to National Park authorities but dates from before the creation of the Assembly in 1999. Creating new powers to remove functions from local democratic control would potentially diminish local government accountability and autonomy and is, we submit, inconsistent with the Assembly's local government scheme. The drafting of this clause would also allow the Assembly to turn any joint transport authority, in effect, into an Assembly sponsored public body if the majority or all of its members were appointed by the Assembly.
- 13 We would therefore oppose the inclusion of these provisions in the Bill.

Detailed comments

- 14 If the centralising features of the Bill were removed, there would be no need for **clause 2**. The Assembly can prepare such strategies as it wishes under its existing powers under the Government of Wales Act 1998 and require councils to have regard to them in preparing their local transport plans by using the Assembly's powers to give guidance under section 112 of the Transport Act 2000.
- 15 The provision made by the new section 109A of the Transport Act, inserted by **Schedule 1**, is noted. Improvement often depends on allocation of additional resources. The drafting of the new section seems to be oblivious to the possibility that a council might legitimately seek not to produce adequate plans for the implementation of the Wales Transport Strategy because such plans would be deliverable only if more resources were allocated by the Assembly. We hope that the Assembly will not use these powers to dictate councils' spending priorities and that the Assembly will adequately fund the aspirations that it sets in the Strategy.

- 16 The new section 113A inserted by Schedule 1 seems unnecessary. Councils can use existing powers under the 1972 Act to collaborate in the way indicated.
- 17 Denbighshire is concerned at the absence of a mandatory consultation requirement, and a power for the Assembly to cause an inquiry to be held, prior to the issue of a direction under **clause 4**. The powers in clause 4, which can be used to require councils to work together, are similar to those in clauses 14 and 16 of the Fire and Rescue Services Bill and to the intervention powers in section 15 of the Local Government Act 1999. If there is a consultation requirement and a power to cause an inquiry to be held under similar provisions in other legislation, why are they absent from this Bill?
- 18 The creation of a joint transport authority under **clause 5** would remove functions from councils. While the requirement for consultation in subsection (2) is supported, there should be a requirement for an inquiry to be held in line with the provision made by clause 2(8) of the Fire and Rescue Services Bill where a combined fire authority is created other than at the initiative of the councils concerned.
- 19 If joint transport authorities were to be created, they should not be capable of being designated as levying bodies. We therefore object to the inclusion of **subsection (8) of clause 5**. The reason that joint transport authorities should not be levying bodies is that councils have to pay levies issued to them and this can affect the level of council tax. If it is possible that none or a minority of members of joint transport authorities would be councillors, there would be an absence of democratic accountability for decisions taken on levies. Therefore the Bill as drafted could allow appointees of the Welsh Assembly Government to affect the level of council tax in Wales. The proper funding arrangement for any joint transport authority which is not made up wholly of councillors is for the funding to be provided entirely by the National Assembly, in line with arrangements for other Assembly sponsored public bodies such as the Welsh Development Agency. It is accepted that this would involve an adjustment to the level of the local government revenue settlement.
- 20 Generally, **clause 6** is not required. It ignores the existence of section 31 of the Local Government Act 2003, which provides that the Assembly may pay a grant to a local authority in Wales towards expenditure incurred or to be incurred by it, the amount, manner of payment and conditions being matters for the Assembly to decide. Since a joint transport authority would not seem to fall within the definition of "local authority" that applies for the purposes of section 31 of the 2003 Act, the only provision necessary in this Bill is something to ensure that a joint transport authority is a local authority for the purposes of that section.
- 21 Turning to **clauses 9 and 10**, recent reports suggest that the UK Government may be considering abolishing the Strategic Rail Authority. If these reports are

true, we look forward to seeing provisions in the Bill that enable the Assembly to direct the Secretary of State about rail services that affect Wales.

- 22 A potential **omission from the Bill** is its failure to give any functions to the Assembly in respect of the Secretary of State's powers under the Severn Bridges Act 1992 and the Transport Act 2000 in respect of the Severn Bridges. Such provision could be made under powers in the Government of Wales Act. The principal concern is that the Secretary of State's decisions about tolling on the bridges under the 1992 Act and whether to introduce road user charges on the bridges under section 167 of the Transport Act 2000 are not subject to any consultation with, or consent by, the Assembly. If the desire is to give the Assembly "a coherent set of transport powers", the absence of powers in respect of one of the key transit points at the Welsh border is surprising.
- 23 The presumption that existing council staff would transfer to joint transport authorities (paragraph 41 of the notes) takes no account of the integrated way in which many councils approach their transport responsibilities. For example, in Denbighshire, the same staff deal with contracts for public bus services and contracts for school transport. Therefore the assessment that staff may transfer to joint transport authorities, and that there might be no net increase in manpower requirements, may be incorrect.
- 24 We would urge significant caution about the idea that joint transport authorities should make traffic regulation orders for bus priority measures (paragraph 8.6 of the regulatory impact assessment). This would introduce complexity and confusion where none exists presently. The Assembly issues all traffic regulation orders for trunk roads, and councils have similar responsibilities in respect of other highways. Giving two sets of bodies the power to make traffic regulation orders for the same road is a recipe for potential conflict and confusion – which orders would have priority? Those designating bus lanes, or those restricting parking etc?

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