

National Assembly for Wales
Constitutional Affairs Committee

Report on the Proposed Safety on Learner
Transport (Wales) Measure

December 2010



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Legislation Office
National Assembly for Wales
Cardiff Bay
CF99 1NA

Tel: 029 2089 8154
Fax: 029 2089 8021
Email: Legislationoffice@wales.gov.uk

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Constitutional Affairs Committee

The Constitutional Affairs Committee must consider and report on any of the matters set out in Standing Order 15.2 and may consider and report on any of the matters set out in Standing Orders 15.3, and 15.6.

Powers

The Constitutional Affairs Committee was established in June 2007 (as the Subordinate Legislation Committee). Its powers are set out in the National Assembly for Wales' Standing Orders, particularly SO 15. These are available at www.assemblywales.org

Committee membership

<i>Committee Member</i>	<i>Party</i>	<i>Constituency or Region</i>
Janet Ryder (Chair)	Plaid Cymru	North Wales
Alun Davies	Labour	Mid and West Wales
William Graham	Welsh Conservatives	South Wales East
Rhodri Morgan	Labour	Cardiff West
Kirsty Williams	Welsh Liberal Democrats	Brecon and Radnorshire

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The Committee's Recommendations

Recommendation 1. We recommend, subject to being able to meet EU requirements, that the proposed Measure should be amended to include the detailed seatbelt requirements on its face. **(page 11)**

The Committee's Role

Standing Orders

1. The Constitutional Affairs Committee may consider and report on the following matters under the National Assembly's Standing Orders:
 - Standing Order 15.6 (ii) states that the Constitutional Affairs Committee may consider and report on 'the appropriateness of provisions in proposed Assembly Measuresthat grant powers to make subordinate legislation to the Welsh Ministers'.
 - Whilst it is not part of the Committee's remit to comment in the merits of the proposal which the proposed Measure is intended to implement, Standing Order 15.6(v) states that the Committee may consider and report on 'any legislative matter of a general nature within or relating to the competence of the Assembly or Welsh Ministers'.
2. The purpose of this report is to inform the Assembly's Stage 1 debate on the general principles of the proposed Measure and subsequent legislative stages.

The Proposed Measure

3. The Proposed Safety on Learner Transport (Wales) Measure was introduced on 20 September 2010 by Ieuan Wyn Jones AM the Deputy First Minister and Minister for the Economy and Transport. This was followed by a legislative statement by the Minister in the National Assembly on 21 September. The proposed Measure was referred to Legislation Committee No. 4 for stage 1 (general principles) consideration. The stage 1 reporting deadline is 17 December 2010.

Policy Background

4. The Explanatory Memorandum summarises the main aim of the proposed Measure as follows¹:

"The proposed Safety on Learner Transport (Wales) Measure aims to improve the image and quality of dedicated learner transport and to ensure that safety standards are sufficiently

¹ CA-26-10(p2) - Explanatory Memorandum para 1.1

high for the public and parents to have confidence in dedicated learner transport.”

Legislative Competence

5. This Measure addresses issues relating to safety on school buses that could not be dealt with in the Learner Travel (Wales) Measure 2008 due to a lack of legislative competence. The legislative competence for the 2008 Measure was based on Matter 5.10 in Schedule 5 to the Government of Wales Act 2006, which is also the legislative competence for the proposed Measure.

6. However, due to some of the exceptions in Schedule 5 it was apparent that this was not broad enough to implement fully the Minister’s policy aims in relation to safety on school transport. As a result further competence was sought and the relevant exceptions were amended by the National Assembly for Wales (Legislative Competence) (Transport) Order 2010.

Powers to make Subordinate Legislation

7. Powers to make subordinate legislation and the procedures for doing so are summarised below. The broad purpose of the Proposed Measure is to address issues of safety on school buses that could not be addressed in the Learner Travel (Wales) Measure 2008 (“the principal Measure”). As a result, sections 1-12 of the proposed Measure will insert new sections 14A-14L into the principal Measure.

8. The proposed Measure amends the principal Measure to make the following provisions:

9. **Section 1** gives Welsh Ministers regulation making powers to determine the descriptions of vehicles that may be used for learner transport. It should be noted it will impose duties on relevant bodies (which are defined in section 13 as local authorities and governing bodies of maintained schools) and the providers of learner transport (bus and taxi businesses). It should also be noted that the regulations will apply only to learner transport that the relevant body ‘provides or otherwise secures’, so the requirements will not apply to service buses. The Minister refers in his letter to the Chair to the requirement to comply with the Technical Standards Directive.

10. **Section 2** gives Welsh Ministers the power to make regulations to require prescribed arrangements to be made for recording visual images or sound of events occurring on learner transport.

11. **Section 3** permits Welsh Ministers to make regulations to require relevant bodies to carry out safety risk assessments of learner transport.

12. **Section 4** contains the power to make regulations to require that safety training about learner transport and working with children is provided.

13. **Section 5** contains the power to make regulations in relation to supervisors on learner transport. It should be noted that this refers to 'a member of staff of a relevant body' (local authorities and schools) and not to staff of the bus companies.

14. **Section 6** gives effect to the Schedule, which contains detailed provisions relating to civil sanctions for breaches of safety regulations made under sections 1 and 2 of this Measure (which will be sections 14A and 14B of the principal Measure). The Schedule appears to contain fairly standard provisions relating to civil sanctions, but in paragraph 1(1) of the Schedule there is a general power to make regulations that make further provisions about civil sanctions..

15. **Section 7** permits Welsh Ministers to appoint an enforcement authority through regulations. This includes the power to make modifications to "any enactment applying to the enforcement authority".

16. **Section 8, 9 and 10** contain enforcement provisions – power of entry (s8), power of inspection (s9) and power to require provision of information (s10). There are no delegated powers in those sections.

17. **Section 11** would enable Ministers to make regulations regarding the liability of the officers of a body corporate and partners in a business partnership.

18. **Section 12** contains a requirement to consult with local authorities and "and such other persons as they [Welsh Ministers] consider appropriate".

19. **Section 13** contains interpretation provisions.

20. **Section 14** contains amendments to section 27 of the principal Measure.

21. **Section 15** is the commencement provision. The Measure will come into force two months after receiving Royal approval rather than through a Welsh Ministers commencement Order.

Procedures for Making Subordinate Legislation

22. Section 14(5) of the proposed Measure provides that all the new regulation making powers granted by the proposed Measure are subject to the **affirmative procedure** in the National Assembly.

Committee Consideration

23. We considered the Proposed Measure on 10 November 2010 and received written² and oral evidence³ from the Deputy First Minister and Minister for the Economy and Transport, Ieuan Wyn Jones AM and his officials.

24. We also asked for and received additional written evidence from the Minister, which we considered on 8 December 2010.

Issues arising from evidence and recommendations of the Committee

General

25. We are satisfied that the proposed Measure generally achieves the correct balance between powers on its face and the subordinate legislation powers given to Welsh Ministers. We also welcome the fact that the affirmative procedure is to be used for all the subordinate legislation provisions in the proposed Measure.

26. From the perspective of the subordinate legislation provisions it contains, we see no reason why the National Assembly should not agree to the general principles of the Proposed Measure.

Balance between subordinate legislation and provisions on the face of the Measure

27. We were made aware of some concerns, particularly from SNAP Cymru⁴ and Stuart's Campaign⁵ that more detail should be included on the face of the proposed Measure. We note that all regulations that will be made under this Measure will use the affirmative procedure

28. We noted the Deputy First Minister's willingness⁶ to include as much detail as possible on the face of the proposed Measure. In particular, whether provisions in relation to seatbelts should be included directly in the Measure. However, we also noted the constraints faced by the Welsh Government in relation to consulting

² CA(3)-26-10(p5)

³ Record of Proceedings – Constitutional Affairs Committee - 10 November 2010

⁴ SNAP Cymru – Response to Legislation Committee 4 Consultation

⁵ Record of Proceedings – Legislation Committee 4 – 14 October 2010

⁶ Record of Proceedings – Constitutional Affairs Committee - 10 November 2010 – para 24

the European Union (EU) on technical standards for seatbelts and in other areas, and the need for the proposed Measure to be approved before the dissolution of the Assembly.

29. Following his oral evidence, the Committee Chair wrote to the Deputy First Minister to try to get a better understanding of the EU requirements. A copy of the Chair's letter and the Deputy First Minister's response are attached as an annexe to this report.

30. We are content with the Deputy First Minister's explanation of the constraints he faces. We also accept his good intentions in this regard. We also believe that the fact that all regulations made under this Measure will use the affirmative procedure offers further reassurance.

31. Nevertheless, we believe it would be better if the provisions concerned with seatbelts were set out on the face of the proposed Measure rather than in regulations and we recommend that this is done if at all possible.

Recommendation 1. We recommend, subject to being able to meet EU requirements, that the proposed Measure should be amended to include the detailed seatbelt requirements on its face.

32. However, we are also mindful of the Deputy First Minister's view that:

“...I have sympathy with the idea that we should include as much as possible on the face of the proposed Measure.”;

33. He went on to say:

“The question that then arises is why the other things that we are proposing through regulations are not on the face of the proposed Measure. That is because of a lack of time, really. I made a commitment in 2007 or 2008 to the Enterprise and Learning Committee, which was the scrutiny committee at the time, that I would want to add to the powers in the proposed Measure as it was to specify some things in relation to buses. To do that, we obtained the powers from the Department for Transport, and we are now introducing the proposed Measure. If we want to complete the process by the Assembly election,

the only way to do that is the way in which I have introduced it..”⁷

34. We accept the time constraints that the Deputy First Minister, and the Assembly, is facing. We also accept that these are not of his making bearing in mind the time-consuming process for obtaining legislative competence.

35. As noted earlier, we are generally reassured that all regulations made under this Measure will use the affirmative procedure. We believe this to be the appropriate procedure in most cases (bearing in mind our recommendation above).

36. Nevertheless, we do not believe that time constraints should compel the making of laws in one way that would be made differently if more time was available. We call on the Deputy First Minister, therefore, to do all that he can to bring forward amendments at stage 2 that put detail on the face of the Measure where appropriate.

Powers of Entry

37. Sections 8 and 9 of the proposed Measure provide powers of entry and inspection. These will operate without the requirement for a warrant to be sought in advance. However, as the powers do not extend to premises used wholly or mainly as a private dwelling we are satisfied that the Measure is proportionate in this respect.

38. We did have a degree of concern about whether private dwelling houses, that are used as premises within the meaning of Section 8(2)(a) of the Measure, might fall within the power in section 8(3)(b) but were satisfied by the Minister’s assurance that this would not be the case because of the clear restriction in section 8(4).

39. We were also satisfied with the Minister’s assurance that the powers in Section 10, requiring provision of information, would be sufficient where a business is being run from a private dwelling.

40. The Committee is content with the Minister’s clarification that local authorities will be a ‘relevant body’ specified in section 3 of the proposed Measure to carry out the risk assessments: the Committee agreed that local authorities (as opposed to the bus operators) are the appropriate bodies to take primary responsibility for risk assessments.

⁷ *ibid*

41. The Committee is content that before making the risk assessments statutory there should be a consultation with the appropriate bodies on what should be included in such assessments.

Witnesses

42. The following witnesses provided oral evidence to the Committee on 10 November 2010. A transcript of the session can be viewed in full at www.assemblywales.org

10 November 2010

Ieuan Wyn Jones AM Deputy First Minister and Minister for
Economy and Transport, Welsh
Government

Bethan Bateman Principal Policy Analyst, Transport,
Welsh Government

Lynsey Edwards Legal Services Department, Welsh
Government

List of written evidence

43. The Committee considered the following written evidence. All written evidence can be viewed in full at www.assemblywales.org

<i>Document</i>	<i>Reference</i>
Proposed Safety on Learner Transport (Wales) Measure	CA(3)-26-10(p1)
Explanatory Memorandum	CA(3)-26-10(p2)
Legal Advisers' Report	CA(3)-26-10(p3)
14 October - Invitation to provide evidence from the Committee Chair to the Deputy First Minister and Minister for Economy and Transport	CA(3)-26-10(p4)
21 October - The Deputy First Minister's response.	CA(3)-26-10(p5)
17 November - Letter from the Chair to the Deputy First Minister requesting additional information	CA(3)-30-10(p7)
2 December - Response from the Deputy First Minister	CA(3)-30-10(p8)