

# Proposed Provision of Bus and Coach Services Legislative Competence Order (LCO)

## Consultation Paper

### Contents

1. [Introduction](#)
2. [Why devolve powers on buses and coaches?](#)
3. [Legislative Background](#)
4. [Policy background](#)
5. [Safety on school transport](#)
6. [Consultation questions](#)

### 1. Introduction

On 20 February 2008, Huw Lewis, Labour Assembly Member for Merthyr Tydfil and Rhymney was successful in a ballot held in the National Assembly for Wales for the right to seek agreement to introduce a Member Proposed Legislative Competence Order (LCO) to enable the devolution of further powers to the Assembly.

On 30 April 2008 the Assembly agreed, without opposition, that a Proposed LCO relating to the provision of bus and coach services in Wales could be introduced for consideration by the Assembly.

Huw Lewis has decided that before he introduces his proposed LCO, he will carry out a consultation exercise on the legislative competence that is sought. The responses to the consultation will inform the drafting of the proposed LCO and the Explanatory Memorandum that will accompany it in the Autumn of 2008.

**You are invited to comment on the proposal by responding to the specific questions set out in Section 6 of this document.**

[Top](#)

### 2. Why devolve powers on buses and coaches?

It is the aim of the One Wales Government to create a fully integrated public transport system and this requires additional powers over buses and coaches.

The current deregulated system does not protect the interests of local people and local government does not have sufficient tools to ensure bus companies are providing the safe, clean, modern and regular services required. The proposed LCO will reintroduce a public service ethos, making it possible to bring forward an Assembly Measure that would give London-style franchising powers to Wales. The Welsh Assembly Government and local authorities at present only have limited powers over the provision of bus and coach services in Wales. The *Local Transport Bill* currently before Parliament will increase the powers of a local authority to enter into various types of schemes or contracts with bus companies but will not require them to do so.

The proposed LCO could also provide the Assembly with the necessary powers to improve school transport safety including the use of seatbelts on school buses and assessments of school buses

and bus drivers. Obtaining these further powers has been identified as an objective of the Welsh Assembly Government.

If the LCO were successful it would make it possible for the Assembly to bring forward Assembly Measures to introduce bus franchising in Wales, similar to the London model. This would place more power in the hands of Local Government and the Welsh Assembly Government in relation to the level of service required from successful bus franchise operators, including the “bundling” of commercial and non-commercial routes. These arrangements would allow for an element of cross-subsidy of routes. It could also make it possible for co-operative and mutual models for the provision of bus services to be given more support in Wales. A Measure to improve school transport safety would also be possible. It would also make it possible to bring forward other Measures within the competence sought.

[Top](#)

### 3. Legislative Background

The *Government of Wales Act 2006* (“the 2006 Act”) provides a mechanism for the Assembly to acquire, on a case-by-case basis, more powers to make its own laws.

The ability of the Assembly to make these laws is known as its “legislative competence”. In the 2006 Act, the legislative competence of the Assembly is defined by reference to “fields” and “matters”:

- A “field” is a broad subject area, e.g. highways and transport.
- A “matter” is a specific defined policy area within a field.

In the areas in which it has legislative competence, the Assembly can make its own laws, known as “Measures”. A Measure will have similar effect to an Act of Parliament. The fields and matters are listed in Schedule 5 to the 2006 Act.

Within each field, specific matters will be listed which give the Assembly the power to make Measures within the policy area defined by the matter.

Schedule 5 may be amended to add more matters within fields, providing more policy areas in which it is possible to make Measures. Schedule 5 may be amended by either:

- A new Act of Parliament; or
- A Legislative Competence Order (LCO) (subject to approval by both the Assembly and the UK Parliament).

On 30 April 2008 the National Assembly for Wales agreed that Huw Lewis may lay a proposed LCO, to give effect to his outline proposed LCO dated 20 February 2008:

***To insert in Field 10 (Highways and Transport) the following matter: The provision of bus and coach services.***

*Explanatory Memorandum*

*Policy Objectives of the Proposed Order*

*This LCO will be used to re-introduce a public service ethos to public transport provision, requiring local authorities to ensure that communities are well served by a regular, modern and safe bus service. This will help create a genuinely integrated public transport system in Wales, specifically ensuring that less profitable but socially valuable routes are properly served.*

*These new requirements on local authorities regarding bus services may be met through one or a combination of private, public or co-operative/mutual models.*

The Proposed Provision of Bus and Coach Services Outline Legislative Competence Order, (Huw Lewis) is available from here:

[Huw Lewis Proposed LCO](#)

[Top](#)

#### 4. Policy background

Outside London, local bus services were deregulated in the mid-1980s.

Most services are therefore only provided by bus companies on routes that are considered to be commercial, or are otherwise provided by bus companies on other routes that are subsidised by local authorities, where they are considered to be “socially necessary”. The Welsh Assembly Government provides grants to local authorities for this purpose.

This means that the provision of high-quality services is generally dependent upon both the bus operators (who control the quality of vehicles, the level of fares, the frequency and timing of services, and the overall level of customer care provided) and local authorities (who have control over the roads, traffic signals, bus shelters and other infrastructure). In a deregulated market, neither party has control over all of these factors.

Under the deregulated structure any holder of a public service vehicle (PSV) operator's licence may operate bus services, having first registered various details with the relevant Traffic Commissioner. The commissioners are responsible for enforcing compliance with these registered details, including standards of reliability and punctuality. They are responsible to the Secretary of State for Transport. At present the Traffic Commissioner for Wales is also the Traffic Commissioner for the West Midlands and is based in Birmingham.

The Welsh Assembly Government currently has some limited powers over the provision of bus services in Wales. It has a general power under the *Transport Wales Act 2006* to require local authorities to work together to produce Regional Transport Plans that will deliver integrated transport (including buses) in their areas.

The *Local Transport Bill* currently before Parliament will extend the existing powers of local authorities to enter into voluntary agreements with bus operators or to introduce partnership schemes or to make quality contracts.

The UK Government's objective in presenting the *Local Transport Bill* is to enhance the 'toolkit' available to local transport authorities to improve the quality of local bus services in their area.

This 'tool-kit' includes powers to:

- enter into voluntary partnership agreements with bus operators. The *Local Transport Bill* will allow agreements to also cover minimum frequencies, timings and maximum fares;
- make quality partnership schemes. Only one Quality Partnership scheme has been made in England the Wales so far. The *Local Transport Bill* will allow partnership schemes to also cover minimum frequencies, timings and maximum fares;
- make quality contracts schemes with operators through a competitive tendering process, to run the services specified by the scheme. This is effectively a franchising system. No schemes have been implemented in England and Wales because of the difficulty for the local

authority to meet the statutory requirement that the making of a scheme is 'the only practicable way' of implementing their bus strategy. The *Local Transport Bill* will introduce a wider set of 'public interest' criteria to be met before such a scheme can be introduced;

- work with operators and the traffic commissioners to address factors which might impede the running of punctual and reliable bus services.
- provide subsidies where the service in question would not otherwise be provided or provided to a particular standard (frequency, timings, vehicles used)

In a House of Lords debate on the *Local Transport Bill* in December 2007, Lord Bassam of Brighton, responding for the Government, affirmed that the use of quality contract schemes are "very much ... an approach of last resort" and that the changes being introduced by the Bill will protect both the public's and operators' interests<sup>1</sup>.

The *Local Transport Bill* will therefore increase the powers of a local authority to enter into various types of schemes or contracts with bus companies but will not introduce a duty to do so. A Local Authority will still need to demonstrate that "public interest" criteria have been met before a quality contract scheme, suspending the deregulated market in their area, can be introduced.

The Traffic Commissioner will also remain responsible for regulating and monitoring the performance of bus companies and will gain a new power to hold local authorities to account for their contribution to the performance of local bus services.

In London, bus services are still regulated with services provided through a franchising system. London Buses (part of Transport for London) manages bus services in London. It plans routes, specifies service levels and monitors service quality. It is also responsible for bus stations, bus stops and other support services.

The bus services are operated by private operators, which work under contract to London Buses.

[Top](#)

## **5. Safety on school transport**

The Welsh Assembly Government had intended to use the Framework powers in the *Education and Inspections Act 2006* to bring forward an Assembly Measure to address the issues identified in the review of school transport by the Education and Lifelong Learning Committee of the Second Assembly, published in April 2005.

However the Framework powers in the *Education and Inspections Act 2006* do not allow the Assembly to legislate on some of the issues identified by the Committee.

The Assembly Government made a statement on the draft Learner Travel (Wales) Measure in Plenary on 26 June 2007. The draft Measure went out to consultation, which closed on 28 September 2007.

The Enterprise and Learning Committee carried out pre-legislative scrutiny of the draft Measure. In its report published in October 2007 the Committee explains:

*There are restrictions on the National Assembly's scope to make a Measure for learner travel. The National Assembly cannot legislate for matters which are the responsibility of the Department for Transport such as, for example, vehicle standards and licensing, vehicle*

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<sup>1</sup> HL Deb 12 December 2007, c119GC  
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*inspection, seating arrangements such as the '3 for 2 concession', seatbelts, and driver licensing.*

The Deputy First Minister told the Committee that his “current thinking” was to:

*“[...] legislate where we can under this Measure, but we will seek further powers to enable us to deal with some of the other issues that have been raised, which go outside the competence of this Measure”.*

The Committee recommended the following:

*A clear consensus exists across the board that the scope of the draft Measure is too limited (because the Assembly’s legislative competence is too limited) and further powers should be sought from Westminster. The Committee welcomes the Deputy First Minister’s undertaking to seek those powers.*

*However, we await to see what proposals the Assembly Government brings forward and an indication of a likely timescale for bringing forward an LCO.*

*We may therefore consider bringing forward an LCO of our own if we remain unsatisfied in respect of these.*

The Enterprise and Learning Committee report on the draft Learner Travel (Wales) Measure is available at:

<http://www.assemblywales.org/cr-ld6874.pdf>

The LCO proposed by Huw Lewis could be used to obtain the necessary competence for the National Assembly for Wales, so that a Measure to improve school transport safety could then be introduced.

[Top](#)

## 6. Consultation questions

1. Do you agree with the principle that legislative competence for “the provision of bus and coach services” in Wales should be conferred on the National Assembly for Wales?

Please give the reasons for your answer.

2. If you agree with the principle, do you think that the wording of the proposed legislative competence order is correct, or do you think it is too broad or too narrow?

Please give the reasons for your answer.

Schedule 7 of the *Government of Wales Act 2006* sets out the legislative competence that the National Assembly would have following a referendum supporting the commencement of Assembly Act provisions.

Subject 10 is Highways and Transport. This is defined as:

*Highways, including bridges and tunnels. Streetworks. Traffic management and regulation. Transport facilities and services.*

**Exceptions** to Subject 10 include the following:

- *Regulation of use of motor vehicles and trailers on roads, their construction and equipment and conditions under which they may be so used, apart from regulation of use of vehicles carrying animals for purpose of protecting human, animal or plant health, animal welfare or the environment.*
- *Driver licensing*
- *Drivers' hours*
- *Public service vehicle operator licensing*

3. Do you think that the National Assembly for Wales should be given competence over some or all of the exceptions listed above in relation to the provision of bus and coach services in Wales?:

Please give the reasons for your answer.

4. What are your views on the main objective of the proposed LCO which is to introduce a bus franchising system in Wales?

5. What are your views on the use of the proposed LCO to provide the Assembly with the necessary powers to improve school transport safety?

[Top](#)