

National Assembly for Wales
Legislation Committee No. 3

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

Committee Report
January 2010



The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales and holds the Welsh Government to account.

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Legislation Committee No.3

Legislation Committee No.3 was established by the National Assembly for Wales to consider and report on legislation introduced into the Assembly, particularly by the Welsh Government. The Committee is also able to consider and report on non-government legislation, as appropriate.

Powers

The Committee was established on 9 December 2008 as one of the Assembly's legislation committees. Its powers are set out in the National Assembly for Wales' standing orders, particularly standing orders 10, 22 and 23. These are available at www.assemblywales.org

List of Reports published by the Committee

<i>Report title</i>	<i>Date of publication</i>
Report of the Enterprise and Learning Committee's scrutiny inquiry on the Draft Learner Travel (Wales) Measure	21 November 2007
Education and Lifelong Learning Committee Report 'School Transport'	25 April 2005

All previous committee reports can be found at www.assemblywales.org

Committee membership

<i>Committee Member</i>	<i>Party</i>	<i>Constituency or Region</i>
Dai Lloyd (Chair)	Plaid Cymru	South Wales West
Peter Black	Welsh Liberal Democrats	South Wales West
Christine Chapman	Labour	Cynon Valley
William Graham	Welsh Conservative Party	South Wales East
Janice Gregory (December 2008 - January 2010)		
Joyce Watson (from January 2010)	Labour	Mid and West Wales
Helen Mary Jones	Plaid Cymru	Llanelli

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The Committee's Recommendations

The report outlines the findings of Legislation Committee No.3's consideration of the National Assembly for Wales (Legislative Competence) (Transport) Order 2010. The Committee's conclusions and recommendations to the Welsh Government are listed below in the order that they appear in this report. Please refer to the relevant pages of the report to see the supporting evidence and conclusions:

Conclusion 1. We agree, in principle that legislative competence in the area provided by Matter 10.2 should be conferred on the Assembly. [Page 16]

Conclusion 2. We are content in principle that legislative competence in the area provided by amendments to Part 2 (Exceptions to Matters) of Schedule 5, paragraph A1 to carve out additional areas of competence, should be conferred on the Assembly. [Page 17]

Conclusion 3. We are content with the scope of proposed Order as it relates to concessionary travel. However, we suggest that the Deputy First Minister gives consideration to amending the explanatory memorandum, in order to make it clear that 'community transport' is included within the scope of the proposed Order. [Page 22]

Conclusion 4. Whilst we recognise the scope of the proposed Order is limited in relation to learner transport, we are content that it will enable the National Assembly to legislate in relation to the description of the vehicles used for learner transport, which will ensure a national minimum standard for many home to school journeys. [Page 32]

Conclusion 5. Having received assurances from the Deputy First Minister, we are content that vehicles owned and operated by educational establishments are included within the scope of the proposed Order. **However, we suggest that the Deputy First Minister gives consideration to amending the explanatory memorandum to make this clear.** [Page 32]

Recommendation 1. We recommend that consideration be given to the inclusion of learner travel by rail within the scope of the proposed Order. **We recommend that the Deputy First Minister gives**

consideration to seeking additional powers in relation to learner travel by rail. [Page 32]

Conclusion 6. Having received assurances from the Deputy First Minister, we are content that the definition of ‘bus services’, in relation to the proposed Order, includes coach services such as the TrawsCambria service. **However, we suggest that the Deputy First Minister gives consideration to amending the explanatory memorandum to make this clear. [Page 34]**

Conclusion 7. We have considered the Deputy First Ministers explanation as to why the definition of ‘train services’ within the proposed Order is limited to the Wales and Borders franchise. We are therefore content that the definition of ‘train services’ within the proposed Order cannot be widened to include other franchise agreements and train operators. [Page 36]

Recommendation 2. Whilst we were able to report within the specified time on this occasion, we would strongly recommend that, in the future, Business Committee give consideration to the deadlines set for the reporting on proposed Orders. This would ensure that the scrutiny process is not restricted and stakeholder engagement and Member involvement in the legislative process is maximised. [Page 38]

1. Introduction

Background

1. On 7 December 2009, the Deputy First Minister and Minister for Economy and Transport, Ieuan Wyn Jones AM (“the Deputy First Minister”), laid the proposed National Assembly for Wales (Legislative Competence) (Transport) Order 2010¹ (“the proposed Order”) and Explanatory Memorandum, in accordance with Standing Order 22.13 and 22.14². The Deputy First Minister made a statement about the proposed Order in Plenary on 8 December 2009³.
2. On 8 December 2009, the Business Committee agreed to refer the proposed Order to a Committee for detailed consideration, in accordance with Standing Order 22.16, and subsequently agreed that the Committee must report on the proposed Order no later than 29 January 2010.
3. The proposed Order was referred to Legislative Committee No.3 for pre-legislative scrutiny on the 8 December 2009.

Terms of reference of the Committee’s Scrutiny

4. At our meeting on 10 December 2009, we agreed the terms of reference of our work, as set out below:
 - (i) to consider the general principles of the proposed Order and whether legislative competence in the area identified in Matter 10.2 be conferred on the Assembly; and
 - (ii) to consider whether the terms of the proposed Order are too broadly or too narrowly defined.

¹ The National Assembly for Wales (Legislative Competence) (Transport) Order 2010. Available at <http://www.assemblywales.org/lco-ld7824-e.pdf>

² Welsh Assembly Government, *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*. Available at <http://www.assemblywales.org/lco-ld7824-em-e.pdf>

³ Record of Proceedings (RoP), 8 December 2009, pages 44-54, (NB: unless otherwise stated, subsequent references in this report to RoP refer to the proceedings of the Legislation Committee No.3)

Evidence

5. We issued a general call for evidence and invited key organisations from the fields of concessionary travel and learner transport to submit written evidence to inform our work. A list of consultation responses is available on pages 40 and 41

6. We took oral evidence from a number of witnesses, details of which are available on page 39.

7. The following report and recommendations represent the conclusions we have reached based on the evidence received during the course of our work. We would like to thank all those who have contributed.

2. Principle of the proposed Order

General

Background

8. 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.

9. The Explanatory Memorandum, accompanying the proposed Order, states that:

“The aim of the proposed Order is to confer legislative competence on the National Assembly for Wales in relation to concessionary travel and learner transport, which will enable the National Assembly to legislate for Wales in these areas”⁴.

10. Since the proposed Order relates to two distinct policy areas, namely concessionary travel and learner transport, for ease of reference these are referred to separately in the section that follows.

Concessionary Fares

Background

11. The Explanatory Memorandum identifies that legislation is required to safeguard the long term sustainability of the concessionary travel scheme in Wales. With reference to Matter 10.2 it states that:

“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

⁴ Explanatory Memorandum, paragraph 17

costs with the operators and/ or administer the scheme directly”⁵.

12. The Explanatory Memorandum also identifies that the need for legislation derives from shortcomings within the existing mechanism of reimbursing operators via local authorities. It states that the current mechanism:

“fails to build in sufficient incentives to control costs since local authorities are reimbursed by the Assembly Government for the full costs incurred”⁶.

13. The competence provided by the proposed Order would also enable the National Assembly to consider amending the legislative framework of the reimbursement scheme.

Evidence from witnesses – Concessionary Travel

14. There was widespread support amongst those giving evidence in favour of the principle of the proposed Order in relation to concessionary travel.

15. In welcoming the Welsh Government’s decision to bring forward the proposed Order, the Community Transport Association (Cymru) (CTA) stated that:

“CTA Cymru is supportive of additional powers being conferred on the National Assembly for Wales in the area of concessionary travel”⁷.

16. This view was shared by a number of witnesses, in written evidence, including the Association of Transport Co-ordinating Officers (ATCO)⁸, The South West Wales Integrated Transport Consortium (SWITCH)⁹ and the South East Wales Transport Alliance (SEWTA)¹⁰.

17. Furthermore, in supporting the principle of the proposed Order, Newport Transport stated in written evidence that:

⁵ Explanatory Memorandum, paragraph 21

⁶ *ibid*

⁷ T4, Written Evidence

⁸ T2, Written Evidence

⁹ T9, Written Evidence

¹⁰ T13, Written Evidence

“Newport Transport supports the Assembly’s willingness through the adoption of the aforementioned LCO to develop and regulate legislation in the areas of learner travel and concessionary travel in Wales”¹¹.

18. They added that:

“The transition of such powers would allow for more direct consultation between Welsh bus operators and the Welsh Assembly on this devolved area – allowing for a more coherent and supportive approach to the adoption and implementation of new legislation and guidelines”¹².

19. Furthermore, in welcoming the proposed Order, the Confederation of Passenger Transport (CPT) was of the view that legislation could address issues within the current arrangements for reimbursement within the concessionary travel scheme. In written evidence, they stated:

“On concessionary fares, the Minister’s Memorandum notes that the current position (where Welsh Ministers are the appellate body for reimbursement arrangements established, effectively, by themselves) is unsatisfactory. The LCO as drafted will provide an opportunity – which must be taken, in our view – to correct this”¹³.

20. Whilst most witnesses supported the general principle of proposed Order some witnesses stressed the importance of consultation with representatives from transport industry and user groups on how such powers over concessionary travel may be used in the future.

21. In written evidence, ATCO stated:

“whilst supporting the principle of the National Assembly having greater powers in these areas, ATCO Cymru would emphasise the importance of consultation with the WLGA and ATCO Cymru,

¹¹ T14, Written Evidence

¹² *ibid*

¹³ T11, Written Evidence

as well as representatives from the bus industry and user groups before deciding on the measures themselves”¹⁴.

22. This was a view shared by SWITCH who wished 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 resources before a Measure is passed”¹⁵.

Evidence from the Deputy First Minister - Concessionary Travel

23. In giving evidence, the Deputy First Minister explained that the need for legislative competence derived from the need for increased control, by Welsh Ministers, over the concessionary travel scheme.

24. In clarifying the need for increased control the Deputy First Minister informed us that:

“This will allow us, in the first instance, to have direct discussions with the bus operators. Secondly it would also mean that we could have an appeals system. The problem with the current system is that, if we were to have direct discussions with bus operators, and they disagreed with the settlement, there is no appeal system that is unique to us; therefore, the system is there, in law, but we would need an independent appeals system to enable those who are not content to approach an independent body”¹⁶.

25. The Deputy First Minister also informed us of the need for Welsh Ministers to have greater control over the concessionary travel scheme budget. During oral evidence we were informed that:

“The second aspect was concessionary travel for senior citizens and disabled people. We saw a significant increase, as expected,

¹⁴ T2, Written Evidence

¹⁵ T9, Written Evidence

¹⁶ RoP, paragraph 19, 10 December 2009

in the budget for that particular area. I believe that the figure for this year is £55 million and that it is likely to increase again. We wanted to see whether we could have better control of that funding, while maintaining the current entitlements. In order to do that, we would need additional powers”¹⁷.

26. In explaining this further the Deputy First Minister stated:

“I needed to have legislative competence because the current budget is controlled by us, but the actual discussions are between local authorities and bus operators. We wanted to make it clear that we could control the budget by having direct discussions with operators because, currently, we have to reimburse the local authority for the full cost”¹⁸.

Learner transport

Background

27. With regard to the need for legislation the Explanatory Memorandum states that:

“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.

28. The Explanatory Memorandum also states that legislation is required to enable the Welsh Government to address issues relating to learner transport safety. It states that currently:

“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,

¹⁷ RoP, paragraph 16, 10 December 2009

¹⁸ *ibid*

¹⁹ Explanatory Memorandum, paragraph 18

construction and equipment of vehicles used for learner transport and in relation to transport security”²⁰.

29. The Explanatory Memorandum explains that a ‘carve out’ to the exceptions, outlined in the proposed Order, will:

“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.

Evidence from witnesses

30. The majority of witnesses agreed with the general principle of legislative competence, arising from the carve-out to exceptions relating to learner transport, should be conferred on the National Assembly.

31. In supporting the general principle of the proposed Order the WLGA/ADEW stated:

“The introduction of the Learner Travel Measure has meant that the National Assembly has responsibility for certain areas in relation to school transport. Therefore it makes sense that the National Assembly also has powers with regards to the safety aspects outlined in this LCO”²².

32. In written evidence, Governors Wales also agreed with the general principle of the proposed Order and emphasised the need for legislative competence stating that:

“Governors Wales strongly supports the acquisition of legislative competence in this area. The issues arising from the tragic case in December 2002 have not been completely addressed by the

²⁰Explanatory Memorandum, paragraph 20

²¹ Ibid

²² Additional written evidence, WLGA, 15 January 2010

2008 Learner Travel Measure. Matters relating to the safety standards of vehicles could not be covered by that Measure, and that is one of the purposes of this proposed Legislative Competence Order”²³.

33. Support in favour of the general principles of the proposed Order, in relation to learner transport, was also expressed in written evidence from the Children’s Commissioner for Wales²⁴, the National Association of Head Teachers (NAHT) Cymru/Association of School and College Leaders (ASCL)²⁵, CTA Cymru and Stuart’s Campaign²⁶.

Evidence from the Deputy First Minister – Learner Transport

34. In explaining the need for legislative competence in the area of learner transport the Deputy First Minister stated that:

“When I appeared before the Enterprise and Learning Committee to discuss the Proposed Learner Travel (Wales) Measure, I was asked a number of questions as to whether issues such as the safety of children on buses could be included, covering seatbelts, closed-circuit television and so forth. I said that the proposed Measure at that time would not allow us to do so because we had received framework powers under a Westminster Bill. I also told the committee that I would be willing to consider seeking further powers from the Department for Transport, which would allow us to do that. Therefore, that is why I have sought competence on safety issues”²⁷.

35. In clarifying the principle of the proposed Order the Deputy First Minister informed us that:

“these additional powers would allow use to set out clearly the kind of safety requirements needed on buses. For example, we could ensure that only single-deckers were used, rather than

²³ T19, Written evidence

²⁴ T22, Written Evidence

²⁵ T3, Written Evidence

²⁶ T5, Written Evidence

²⁷ RoP, paragraph 15, 10 December 2009

double-deckers, for the transportation of children to school, and ensure that CCTV, safety belts and so forth are available. We currently do not have powers to do that”²⁸.

36. In questioning the Deputy First Minister, we referred to the report of the Education and Lifelong Learning Committee²⁹, which reported during the second Assembly on the subject of school transport. We referred to the findings of the report, which suggested that it would be possible, by use of contracts that local authorities have with the bus companies, to make provision in relation to safety.

37. We noted that, through the use of such contracts, local authorities can make provision for the safety measures that Welsh Ministers are seeking to implement through the proposed Order. In light of this we questioned the Deputy First Minister as to whether legislation is therefore necessary³⁰.

38. In responding, the Deputy First Minister explained that:

“It can be done by contract, but there is no requirement on them to include the provision in the contract”³¹.

39. He added that:

“We have issued non-statutory guidance to local authorities to say that it is the Government’s views that they should only use buses that comply with these safety standards”³².

Our View

40. We note the broad support that exists for the proposed Order and in particular that no organisation has opposed, in principle, the conferral of legislative competence in relation to concessionary travel and learner transport. **We agree, in principle that legislative competence in the area provided by Matter 10.2 should be conferred on the Assembly.**

²⁸ RoP, paragraph 18, 10 December 2009

²⁹ Education and Lifelong Learning Committee Report 'School Transport', 25 April 2005

³⁰ *ibid*, paragraph 99

³¹ *ibid*, paragraph 100

³² *ibid*, paragraph 102

41. Having carefully considered the evidence, we support the need for the proposed Order in enabling Welsh Ministers to gain greater control over the concessionary travel scheme and the ability to directly negotiate with bus and train operators.

42. We also agree with the need for additional powers to be conferred on the National Assembly to enable Welsh Ministers to improve the safety of learner transport. We are content **in principle that legislative competence in the area provided by amendments to Part 2 (Exceptions to Matters) of Schedule 5, paragraph A1 to carve out additional areas of competence, should be conferred on the Assembly.**

3. Scrutiny of the Proposed Order

43. The following section explores the key issues that emerged during our consideration of the proposed Order.

Scope of the Proposed Order

Background

Concessionary Travel

44. In relation to the scope of the proposed Order, the Explanatory Memorandum states that:

“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^{*33}.”

45. It further states that:

“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-Country³⁴.”

*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

³⁴ Explanatory Memorandum, paragraph 23

Learner Transport

46. In relation to Learner Transport, the Explanatory Memorandum states that:

“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 exceptions 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)”³⁵.

47. The Explanatory Memorandum also states that:

“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”³⁶.

Evidence from Witnesses

General

48. Most witnesses were content, in principle, with the scope of the proposed Order. This was a view expressed by the ATCO³⁷,

³⁵ Explanatory Memorandum, paragraph 24

³⁶ *ibid*

³⁷ T2, Written Evidence

SWITCH³⁸, CPT³⁹, SEWTA⁴⁰, Governors Wales⁴¹, WLGA/ADEW⁴², and Wrexham County Borough Council⁴³.

49. However, a number of witnesses commented specifically on the two distinct policy areas covered by the proposed Order, namely the areas of concessionary travel and learner transport. For ease of reference these are referred to separately in the section that follows.

Concessionary Travel

50. In supporting the scope of the proposed Order Passenger Focus stated in written evidence that:

“We welcome the fact that the scope of the proposed legislation includes rail travel. We have been involved with the evaluation of the rail pilot scheme, with our research finding a very high degree of support for this initiative”⁴⁴.

51. In oral evidence, Arriva Trains Wales commented that the scope of the proposed Order would not alter existing arrangements and stated that:

“I do not think that it would change anything in how we deal with the Welsh Assembly Government”⁴⁵.

52. Similarly the CPT informed us that:

“intent has been set out in the explanatory memorandum, and in that sense, if that is the thrust of what is intended to be delivered, we would be happy that it is set out in a manner that would allow it to be done”⁴⁶.

53. Some witnesses were not content with the scope of the proposed Order in relation to concessionary travel. In written evidence CTA - Cymru) stated that it:

³⁸T9, Written Evidence

³⁹T11, Written Evidence

⁴⁰T13, Written Evidence

⁴¹T19, Written Evidence

⁴²T8, Written Evidence

⁴³T21, Written Evidence

⁴⁴T16, Written Evidence

⁴⁵RoP, paragraph 118, 13 January 2010

⁴⁶ibid, paragraph 124,

“is disappointed that the order is limited to bus and (certain) rail services and makes no specific mention of community transport”⁴⁷.

54. They added that:

“it 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”⁴⁸.

55. In addressing this CTA - Cymru suggested that:

“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”⁴⁹.

56. ATCO also supported the inclusion of community transport in the proposed Order stating in oral evidence that:

“In my area, we use community transport services to replace little parts of the bus network, and therefore allow free travel as part of this scheme. It is a very small scale initiative, but that does happen. The Local Transport Act 2008 also gives us more scope for using community transport to operate local services. It would be appropriate to include that”⁵⁰.

Evidence from the Deputy First Minister

57. In responding to concerns raised by witnesses regarding the inclusion of community transport within the scope of the proposed Order, the Deputy First Minister clarified that community transport is included within the scope of the proposed Order⁵¹.

⁴⁷ T4, Written Evidence

⁴⁸ T4, Written Evidence

⁴⁹ *ibid*

⁵⁰ RoP, paragraph 38, 13 January 2010

⁵¹ ROP, paragraph 20, 19 January 2010

Our View

58. Having carefully considered the evidence we note the level of support in favour of the scope of the proposed Order as it relates to concessionary travel. We have considered the concerns of witnesses regarding the inclusion of community transport within the scope of the proposed Order. We therefore welcome the Deputy First Minister's assurance that community transport is included within the scope of the proposed Order.

59. In light of this, **we are content with the scope of proposed Order as it relates to concessionary travel.** However, we suggest that the Deputy First Minister give consideration to amending the explanatory memorandum, in order to make it clear that 'community transport' is included within the scope of the proposed Order.

Learner Transport

Evidence from Witnesses

60. In written evidence the National Association of Head Teachers NAHT/ASCL stated that they:

"welcomed that the proposed Order would allow the National Assembly to specify via Measures that, for example, only single deck buses may be used for school transport, that CCTV be introduced and that suitable seat belts are fitted"⁵².

61. However, in commenting on the breadth of the proposed Order NAHT/ASCL also stated that:

"the Order is too narrowly drawn. We very much regret the fact that the provisions of the proposed LCO are limited to LEA-contracted school transport. They would not cover learner transport on normal service buses"⁵³.

62. They added that:

"This omission means that the Ystradowen bus, which crashed in 2002 killing Stuart Cunningham-Jones, would not be covered by

⁵²T3, Written Evidence

⁵³ibid

the scope of the LCO nor any Measures flowing from it. We consider this a very serious omission which significantly weakens it. Given that it was established some years ago that CCTV, seat belts and single-deck buses could be stipulated by local authorities in their contract with school bus operators, the only additional power that would be invested in the National Assembly by means of this LCO would be the ability to instruct local authorities to specify these safety measures, should any of them be reluctant to do so. This is sensible but does not go far enough”⁵⁴.

63. In commenting on this issue during oral evidence, Stuart’s Campaign stated that:

“Generally speaking, enough powers are included in the proposed LCO as it is. There are some issues around public service transport, but the question there is whether you would allow local authorities, where they are purchasing seats, to use that public transport and for what purpose. Essentially, the powers are there, but they could be widened to encompass other areas”⁵⁵.

64. Similar views were expressed by CPT who referred to the number of pupils travelling to schools on public bus services. In giving oral evidence they stated that:

“I do not think that politicians appreciated that a large number – it is roughly half – of learners travelling to on buses to school travel on non-school bus services. You ask whether, if there is to be a power, it should be here, I suppose so, is the answer. As to whether the modes of transport included are sufficient, I think that that is a can of worms because it opens everything up and there is the aspect of expectations, because this proposed legislative competence order has, over a number of years, had a

⁵⁴ T3, Written Evidence

⁵⁵ RoP, paragraph 250, 19 January 2010

high profile and I think there is an expectation by the public that all buses taking children to school will be subject to these regulations. However, but that is not the case, and again, there is a lack of clarity”⁵⁶.

65. This was a view shared by SWWITCH who, in written evidence, raised concerns that:

“the proposals will raise the expectations of the public as there will be no powers over the type of vehicles used on schedule public transport services that a large number of school children use each day to access education and training”⁵⁷.

66. In terms of the numbers of pupils travelling by bus, who would not be covered by the proposed Order, the WLGA stated that they “do not hold the exact figures”⁵⁸. However, they also stated that:

“This figure will vary significantly between local authority areas. For example some authorities will have very low numbers such as 1%, whereas in other more urban areas the figure could be anything up to 80%. Several authorities have approximately 20% of pupils using public transport routes”⁵⁹.

67. During further questioning, regarding whether they would support an extension of the powers allowing Welsh Ministers to legislate over service buses carrying school children, CPT stated that:

“We firmly believe that the power to legislate should be transferred from Westminster to rule over all of it. The individual proposed Measures are to be argued at a later stage”⁶⁰.

68. The Regional Transport Consortia (RTC) also raised concerns that the omission of public transport used by pupils from the proposed

⁵⁶ RoP, paragraph 216, 19 January 2010

⁵⁷ T9, Written Evidence

⁵⁸ T8, Written Evidence

⁵⁹ Additional Written Evidence, Welsh Local Government Association

⁶⁰ RoP, paragraph 219, 13 January 2010

Order could lead to the creation of a two tier system⁶¹. They stated that:

“There are two forces pulling in opposite directions here. On the one hand, we have powers between us to easily improve closed school transport, that is, transport for entitled pupils only. On the other hand, if that means a deterioration in the rural bus network, particularly at peak times, for those people travelling to work and for those pupils paying a fare, then that would be to the detriment of those other groups”⁶².

69.They added that:

“My concern is that, unless we find a way between the two, or a way of supporting both kinds of school transport, then parents will see one kind of school transport being preferred over another, and that will cause stress and strains within the system as parents perhaps lose trust in local bus services; we could then lose those passengers. It is a difficult one to balance”⁶³.

70.Whilst a number of witnesses noted that the proposed Order is restricted to dedicated school transport they expressed a view that this omission should not impact on the progress of the proposed Order.

71.The WLGA/ADEW stated in written evidence that:

“the powers outlined in the LCO, as far as can be seen, cover dedicated school transport but not public transport which is used by pupils. Thus a proportion of children would not be travelling on buses that are covered by the new legislation”⁶⁴.

72.However, they added that:

⁶¹RoP, paragraph 219, 13 January 2010,

⁶²RoP, paragraph 76, 13 January 2010

⁶³ ibid

⁶⁴ T8, Written Evidence

“These issues are not intended to constitute an objection to the LCO as it stands, but rather highlight an issue that will need to be considered”⁶⁵.

73. The Children’s Commissioner for Wales also noted that the powers being sought would be applicable only to contracted home to school transport vehicles but stated that:

“However, given this restriction we do welcome the proposal for the description of the vehicle to be laid down which will ensure a national minimum standard for a large part of the home to school journeys. This can be seen as ensuring an entitlement to children which we would welcome”⁶⁶.

74. Some witnesses referred to the potential difficulties that could arise from widening the scope of the proposed Order to include public transport being used by pupils. RTC commented in oral evidence that:

“There would probably be practical difficulties, particularly when you consider commercial bus services carrying both entitled and fare-paying pupils”⁶⁷.

75. Issues surrounding the types of transport included in the scope of the proposed Order were raised by a number of witnesses. CTA – Cymru sought clarification in written evidence:

“as to whether any future measures flowing from the proposed Order would apply only to vehicles used for home-to-school transport or also those vehicles owned and operated by educational establishments themselves (e.g. school minibuses) and/or hired in for extra-curricular trips and/or after-school activities”⁶⁸.

76. In oral evidence, BUSK emphasised the importance of including school minibuses in the scope of the proposed Order. They stated that there were instances whereby:

⁶⁵ T8, Written Evidence

⁶⁶ T22, Written Evidence

⁶⁷ RoP, paragraph 78, 13 January 2010

⁶⁸ T4, Written Evidence

“Many schools allow teachers to drive minibuses because they have driven for years, without even questioning them or looking at their driving licence”⁶⁹.

77.They added that teachers:

“are not required to be professional drivers, the same as driving passenger carrying vehicles, and that is why I think that it should be looked at and questioned”⁷⁰.

78.Some witnesses also referred to the exclusion of learner travel by rail from the scope of the proposed Order. In oral evidence, Stuart’s Campaign stated that:

“If it affected 50 percent of children, and we know that it does not, it would have to be included. If it affected 1 per cent, could that 1 per cent be taken in school buses and so on? To extend the power to cover trains would be difficult, and could stall the Measure, which I would be against”⁷¹.

79.In responding to questioning as to whether, pupils travelling by rail should be included within the scope of the proposed Order, Stuart's Campaign confirmed that, provided it would not present difficulties, it should⁷².

80.In oral evidence BUSK stated that “Any mode of transport that is used to get children to and from school should be included, if at all possible”⁷³.

81.Finally some witnesses raised concerns regarding section 3(c) of the proposed Order, which states that:

“regulation of the description of vehicle which may be used by pursuant to learner transport arrangements (including description by reference to a vehicle's construction or

⁶⁹ RoP, paragraph 294, 13 January 2010

⁷⁰ *ibid*

⁷¹ *ibid*, paragraph 282

⁷² *ibid*, paragraph 286,

⁷³ *ibid*, paragraph 288

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”⁷⁴.

82. In reference to this section CPT commented, in written evidence, that:

“Given that the European standards for urban buses, inter urban buses, and coaches each allow for single and double deck variants within the technical specification, it is arguable that the Order in this form would not give the Assembly power to regulate the use of double deck vehicles on learner transport. Indeed, one of the objectives of the current European legislation on bus construction was to prevent national and local legislatures from favouring particular operators (and builders) with local specifications”⁷⁵.

Evidence from the Deputy First Minister

83. In oral evidence, the Deputy First Minister clarified the scope of the proposed Order and stated that:

“in terms of safety, these additional powers would allow us to set out clearly the kind of safety requirements needed on buses. For example, we could ensure that only single-deckers were used, rather than double deckers, for the transportation of children to school, and ensure that CCTV, safety belts and so forth are available”⁷⁶.

84. During our discussions we questioned the Deputy First Minister on the issues raised by witnesses in relation to the modes of transport over which the proposed Order seeks powers to regulate. We specifically referred to Article 3 of the proposed Order, which will ‘carve out’ an exception that will allow the National Assembly to

⁷⁴ The National Assembly for Wales (Legislative Competence) (Transport) Order 2010. Available at <http://www.assemblywales.org/lco-ld7824-e.pdf>

⁷⁵ T11, Written Evidence

⁷⁶ RoP, paragraph 18, 10 December 2009

legislate to regulate certain local authority contracted services but not other modes of transport such as public service buses.

85. In clarifying the modes of transport covered by the proposed Order the Deputy First Minister stated that:

“The proposed Order seeks competence in relation to motor vehicles which means motor vehicles that are mechanically propelled vehicles intended or adapted for use on roads. It has a wide scope, but would not include rail”⁷⁷.

86. With regard to motor vehicles covered by the proposed Order, the Deputy First Minister clarified that this would include buses, private hire vehicles and taxis⁷⁸.

87. An official accompanying the Deputy First Minister further clarified the scope of the proposed Order in stating that:

“It is limited to public authorities. However, if the LEA is contracting transport for purposes other than education or training, it would not be covered by the proposed Order. It is quite specific that it relates to public authorities that are concerned with the provision of education or training. So, if it was for that purpose, it would be covered; otherwise it would not be”⁷⁹.

88. The official also confirmed that the proposed Order would not apply to instances whereby, a local authority has issued a termly or yearly bus pass to a child to travel to school using a normal service bus as opposed to a contracted bus⁸⁰.

89. In responding to concerns raised by witnesses regarding the inclusion of vehicles owned and operated by educational establishments, for example school minibuses, within the scope of the proposed Order, the Deputy First Minister assured us that:

⁷⁷RoP, paragraph 92, 10 December 2009

⁷⁸ RoP, paragraph 10, 19 January 2010

⁷⁹RoP, paragraph 94, 10 December 2009

⁸⁰ *ibid*, paragraph 96

“they are included. What we have to remember is that the wording is ‘regulation of the description of vehicle which may be used pursuant to learner transport arrangements’, whatever those arrangements may be, it would also include transport during the day, provided it is for educational reasons”⁸¹.

90. An official accompanying the deputy First Minister also confirmed that the proposed Order would include transport, owned by and operated by educational establishment, being used for after school activities such as sport⁸².

91. In responding to concerns that the scope of the proposed Order could exclude a significant number of pupils using local authority funded transport, the Deputy First Minister informed us that:

“In general, you have to work with the settlement that you have. The reality that we have been facing is that we do not have competence at all in relation to public transport with regard to regulation or looking at the safety of buses”⁸³.

92. In clarifying this further the Deputy First Minister stated that:

“One field in Part 1 of Schedule 5 gives the right for us to act in relation to travel to school, and then there is an exemption in Part 2 of schedule 5 that restricts us. This means that we have to go down the path that we are currently following, which prevents us from mentioning things like the safety of buses themselves. Without this proposed Order, we can do nothing in relation to safety belts or the use of single-decker buses instead of double-decker buses”⁸⁴.

93. An official accompanying the Deputy First Minister added that:

“The proposed legislative competence Order will cover the provision of motor vehicles by public authorities and educational institutions that are concerned with the provision of education

⁸¹ RoP, paragraph 68, 19 January 2010

⁸² *ibid*, paragraph 72,

⁸³ *ibid*, paragraph 27

⁸⁴ *ibid*

or training. That is something that we have negotiated with the Department of Transport as an exception to the general exclusion of vehicle safety standards within our competence”⁸⁵.

94. The Deputy First Minister acknowledged the concerns of the both the committee and witnesses regarding the exclusion of pupils travelling on public service buses from the scope of the proposed Order. He informed us that the proposed Order would allow:

“legal competence that takes us some of the way, but it would be difficult for us to go back to the Department for Transport to request additional competence. The assurance that we can give to the committee is that we would consider asking for more powers in the future, if we could go back to do that. The great fear that we have is that of we decided to go back, it might risk not getting what we already have through”⁸⁶.

95. In response to concerns raised regarding the inclusion of learner transport by rail within the scope of the proposed Order, the Deputy First Minister clarified that:

“The proposed LCO seeks competence in relation to motor vehicles, which means motor vehicles that are mechanically propelled vehicles intended or adapted for use on roads. It has a wide scope, but it would not include rail”⁸⁷.

96. During our discussions, we noted that the current legislative competence excludes the ‘use, construction and equipment of vehicles used for learner transport’. We questioned the Minister as to whether the proposed Order provides sufficient scope in respect of these issues to meet the Welsh Government’s policy objectives to sufficiently improve the safety of learners on their journeys.

97. In oral evidence the Deputy First Minister informed us that:

⁸⁵ RoP, paragraph 42, 19 January 2010

⁸⁶ *ibid*, paragraph 92,

⁸⁷ RoP, paragraph 72, 10 December 2009

“The proposed Order is worded in such a way as to make sure that we can regulate the description of the vehicle, and include a reference to the vehicle’s construction or equipment”⁸⁸.

98. He added that:

“Although the inclusion of the words ‘use, construction and equipment of vehicles’ would have enabled me to do so, the scope of the proposed LCO would have become substantially wider and would have strayed into area in which there are technical matters that are, I gather, under the purview of European legislation. That would have made it quite difficult for us. We are content with the proposal, as long as it allowed us, by using the term ‘description of the vehicle’, to deliver things such as seat belt regulations, closed circuit television and single decker buses⁸⁹”.

Our View

99. Given the strength of the concerns raised by witnesses, regarding the omission of learner transport on public services buses from the scope of the proposed Order, we have given the matter careful consideration.

100. We note concerns that a significant number of pupils, travelling on public services buses, will be excluded from the scope of the proposed Order. However, whilst we understand and share these concerns we accept the Deputy First Ministers explanation that the National Assembly does not have competence in relation to public transport with regard to regulation or the safety of buses.

101. We are concerned that any attempt to seek additional competence at this stage could delay the progress of the proposed Order and prevent any improvements to learner transport vehicle safety. **Whilst we recognise the scope of the proposed Order (in relation to learner transport) is limited, we are content that it will enable the National Assembly to legislate in relation to the**

⁸⁸ RoP, paragraph 72, 10 December 2009

⁸⁹ *ibid*

description of the vehicles used for learner transport, which will ensure a national minimum standard for many home to school journeys.

102. We have listened carefully to the concerns of witnesses regarding the inclusion of vehicles owned and operated by educational establishments, for example school minibuses, and/or those hired in for extra-curricular trips and/or after school activities, should be included in the scope of the proposed Order. **Having received assurances from the Deputy First Minister, we are content that vehicles owned and operated by educational establishments are included within the scope of the proposed Order. However, we suggest that the Deputy First Minister gives consideration to amending the explanatory memorandum to make this clear.**

103. We have also given careful consideration to the omission of learner travel by rail from the scope of the proposed Order and recognise the concerns of witnesses that any mode of transport used for learner transport should be included, if at all possible, in the scope of the proposed Order. **We recommend that the Deputy First Minister gives consideration to seeking additional powers in relation to learner travel by rail.**

Definitions and Terminology

Bus Services

Background

104. There is no definition of bus services provided in either the Explanatory Memorandum or the proposed Order. In oral evidence, an official accompanying the Deputy First Minister provided clarification of the definition of ‘bus services’ and stated that:

“If we are talking about bus services in relation to concessionary travel, then we are talking about local services. If we are talking about bus services in relation to learner transport, then we are talking about contracted services”.

105. In responding to a question regarding whether the definition of ‘bus services’ included coach services such as the TrawsCambria long-

distance coach network, the Minister confirmed that “it would not include TrawsCambria”⁹⁰.

Evidence from Witnesses

106. Some witnesses suggested that the definition of ‘bus services’, in relation to the proposed Order should include the TrawsCambria network. In oral evidence, ATCO informed us that:

“the TrawsCambria network is very much integrated with the local bus service in many areas, so if it were not included, that would affect people’s shorter, local journeys in certain areas. If the TrawsCambria network were completely separate, and not have a local function, then excluding it would be an option, as would offering a lower fare for pass holders, rather than making it free. However, unless it were unravelled from the local bus network, doing so would make things quite complicated”⁹¹.

107. In oral evidence CPT raised the issue of whether other coach services such as National Express and shuttle services between Swansea and Cardiff should be included in the definition of ‘bus services’⁹².

Evidence from the Deputy First Minister

108. In clarifying the definition of ‘bus services’ the Deputy First Minister explained that coach services are included within the scope of the proposed Order. He stated that:

“they are included in the scope of the proposed Order, but for our purposes, it is a matter of policy not to include coaches at present”⁹³.

109. The Deputy First Minister also confirmed that the proposed Order would enable the Welsh Government to extend the concessionary fare scheme to the TrawsCambria service⁹⁴.

⁹⁰RoP, paragraph 53, 10 December 2009

⁹¹RoP, paragraph 29, 13 January 2010

⁹² RoP, paragraph 164

⁹³ RoP, paragraph 7, 19 January 2010

⁹⁴ *ibid*, paragraph 10

110. Having received assurances from the Deputy First Minister, we are content that the definition of 'bus services', in relation to the proposed Order, includes coach services such as the TrawsCambria service. However, we suggest that the Deputy First Minister gives consideration to amending the explanatory memorandum to make this clear.

Rail Services

Background

111. The Explanatory Memorandum states that:

“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 excluded the services which operate in Wales provided by First Great Western, Virgin and Cross-Country”⁹⁵.

Evidence from Witnesses

112. Some witnesses referred to the limitation of 'train services' to Welsh rail services provided under the Wales and Border franchise in the proposed Order.

113. In oral evidence CPT referred to the possible widening of the definition to include other train services and stated that:

“By including cross-country trains, Virgin trains and First Great Western trains, you could expand the opportunity for people in Wales to travel”⁹⁶.

⁹⁵ Explanatory Memorandum, paragraph 23

⁹⁶ RoP, paragraph 16, 13 January 2010

Evidence from the Deputy First Minister

114. In clarifying the definition of ‘train services’ the Deputy First Minister informed us that:

“It would not apply to a First Great Western service, even if that journey was only within Wales. So, if you were travelling from Swansea to Cardiff using a First Great Western service, it would not cover it”⁹⁷.

115. During questioning the Deputy First Minister provided us with clarification as to why the proposed Order is limited to Welsh rail services provided under the Wales and Border franchise. He stated:

“That is because of the nature of the devolution settlement. Our powers are limited to the Wales and Borders franchise. We have no Government responsibility, either Executive or legislative, in relation to franchises such as First Great Western and Virgin, which also operate in Wales or even in relation to an open-access operator that would operate here. So, in essence, we only have competence to deal with the Arriva franchise and therefore, the proposed LCO is limited to that”⁹⁸.

116. We have considered the Deputy First Ministers explanation as to why the definition of ‘train services’ within the proposed Order is limited to the Wales and Borders franchise. We are therefore content that the definition of ‘train services’ within the proposed Order cannot be widened to include other franchise agreements and train operators.

⁹⁷RoP, paragraph 62, 10 December 2009

⁹⁸ *ibid*, paragraph 16

4. Other Issues

Pre-legislative scrutiny by committees of the House of Commons and House of Lords

117. In preparing its report on the proposed Order, in accordance with Standing Order 22.21, the Committee must, as far as is reasonably practicable take account of any recommendation on the proposed Order that has been made by any committee of the House of Commons or the House of Lords or any joint committee of both Houses of Parliament.

118. We understand that the Welsh Affairs Committee of the House of Commons is currently undertaking pre legislative scrutiny of the proposed Order and has not yet reported.

119. However, whilst we have been unable to take into account their findings, we have monitored the work and progress of the Welsh Affairs Committee.

Timetable

120. The proposed Order was laid before the National Assembly on 8 December 2009 and the Business Committee required us to report by 29 January 2010.

121. The timetable meant that we had just 4 sitting weeks to complete our work. We considered this to be insufficient as it only allowed us to undertake a 5 week consultation period from 11 December 2009 to 15 January 2010 (4 weeks of which coincided with the Christmas recess). This put pressure on witnesses in terms of preparing responses to the general call for evidence. This also meant that we were unable to consider issues arising in written evidence in great depth or discuss such issues further with respondents.

122. The short timescale also restricted the number of committee meetings at which we were able to take oral evidence and therefore the number of witnesses we were able to invite to give oral evidence. We were also unable to take a flexible approach in our evidence gathering and, due to the time restrictions and other Assembly Business, we were unable to arrange additional committee meetings at which to take evidence.

123. The timetable also restricted the time available to consider key issues arising from our work and to discuss and complete our draft report.

124. Whilst we were able to report within the specified time on this occasion, we would strongly recommend that in the future Business Committee gives consideration to the deadlines set for the reporting on proposed Orders. This would ensure that the scrutiny process is not restricted and stakeholder engagement and Member involvement in the legislative process is maximised.

Witnesses

The following witnesses provided oral evidence to the Committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed in full at <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-perm-leg/bus-committees-third-lc3-agendas.htm>

10 December 2009

leuan Wyn Jones	Deputy First Minister and Minister for Economy and Transport
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13 January 2010

Bob Saxby	Association of Transport Coordinating Officers
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Peter Daniels	Regional Transport Consortia
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Mike Bagshaw	Arriva Trains Wales
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Mike Vaughan	Arriva Trains Wales
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John Pockett	Confederation of Passenger Transport
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Tony McNiff	Confederation of Passenger Transport
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David Cunningham-Jones	Stuart's Campaign
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Pat Harris	BUSK
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19 January 2010

leuan Wyn Jones	Deputy First Minister and Minister for Economy and Transport
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List of written evidence

The following people and organisations provided written evidence to the Committee. All written evidence can be viewed in full at <http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-legislative-competence-orders/bus-legislation-lco-2009-transport-2.htm>

<i>Organisation</i>	<i>Reference</i>
Disability Arts Cymru	T1
Association of Transport Coordinating Officers Cymru (ATCO)	T2
Association of School and College Leaders (ASCL) and National Association of Headteachers (NAHT)	T3
Community transport Association Cymru	T4
Stuart's Campaign	T5
Belt Up School Kids (BUSK)	T6
The Guide Dogs for the Blind Association	T7
Welsh Local Government Association	T8
The South West Wales Integrated Transport Consortium (SWITCH)	T9
Arriva Trains Wales	T10
Confederation of Passenger Transport (CPT)	T11
Deafblind Cymru	T12
South Wales East Transport Alliance	T13
Newport Transport	T14
North Wales Transport Consortium	T15

Passengerfocus	T16
Rail Freight Group	T17
Cliff Croft MBE	T18
Governors Wales	T19
North Pembrokeshire Transport Forum	T20
Wrexham County Borough Council	T21
Children's Commissioner for Wales	T22
Royal National Institute of Blind People (RNIB)	T23
Disability Wales	T24
Jane Hutt AM, Minister for Business and Budget	T25