

## Education and Learning Committee

EL (3) 08-07  
24 October 2007

### Draft Report of the Enterprise and Learning Committee's scrutiny of the Draft Learner Travel (Wales) Measure

#### 1. Introduction

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.

On the 11 July 2007 the Committee agreed to undertake pre-legislative scrutiny of the *draft Learner Travel (Wales) Measure* and take evidence from key stakeholders during the autumn term. Findings will be presented to the Deputy First Minister.

The scope of the National Assembly's powers to pass legislation on a particular matter is set out in Part 3 and Schedule 5 of the *Government of Wales Act 2006*. In the case of learner travel, the National Assembly is permitted to make Measures for the '*the travel of persons receiving primary, secondary or further education or training to and from the schools or other places where they receive it*'.

In general terms, this gives the National Assembly the scope to legislate for travel to school, and for post-16 learners, as currently established by the *Education Act 1996 (as amended)*. The National Assembly gained this power from the *National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007* which converted the powers in sections 178 and 179 of the *Education and Inspections Act 2006* into amendments to Schedule 5 to the *Government of Wales Act 2006*. 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 of Transport such as, for example, vehicle standards and licensing, vehicle inspection, seating arrangements such as the '3 for 2 concession', seatbelts, and driver licensing.

## **2. Scrutiny**

The Committee held three scrutiny sessions where it took oral evidence from key stakeholders.

### **26 September 2007: Education Bodies**

Fforwm  
Association of School and College Leaders (ASCL) Cymru  
National Association of Headteachers (NAHT) Cymru  
Governors Wales  
Welsh Secondary Schools Association (WSSA)

### **3 October 2007: Parents and Users**

Children's Commissioner  
Belt up School Kids (BUSK)  
Stuart's Campaign  
Rhieni dros Addysg Gymraeg (RhAG)

### **10 October 2007: Transport Providers, Local Government and the Welsh Assembly Government**

Association of Transport Co-ordinators (ACTO)  
Confederation of Passenger Transport (CPT)  
Welsh Local Government Association (WLGA)  
Ieuan Wyn Jones AM, Deputy First Minister and officials

The Committee also noted papers submitted by Sustrans, the National Autistic Society Funky Dragon and CYDAG.

### 3. Analysis of the Evidence

#### 3.1. Age/Distance Model

The draft Measure proposes to provide free transport to all children in primary education if they live two miles or more from the nearest suitable school. For secondary school children, the draft Measure maintains the current three mile distance limit.

This proposal received broad support. Governors Wales<sup>1</sup>, the Welsh Secondary Schools Association (WSSA)<sup>2</sup>, the Children's Commissioner<sup>3</sup>, the Association of Transport Co-ordinating Officers (ATCO)<sup>4</sup>, the Confederation of Passenger Transport Cymru (CPT Cymru)<sup>5</sup> all expressed support and no witnesses expressed opposition to the proposals in the Measure. However, in their oral evidence to the Committee RhAG recommended a review of the three-mile travel distance boundary to secondary school arguing that its reduction to two would address misbehaviour on service buses.<sup>6</sup>

The National Autistic Society (NAS) expressed concerns about the lack of provision for free transport for pupils with mobility difficulties living within the statutory walking distance to their school.<sup>7</sup>

#### 3.2. Discretion of Local Authorities to make travel arrangements

The Measure permits local authorities to continue to use their discretion to provide free or subsidised transport, for example, to Welsh medium and denominational schools. (Section 5) RhAG argued that this places Welsh schools at a disadvantage to English medium.<sup>8</sup> It suggested that the designation of a "suitable school" (section 3(6)) should apply to both English and Welsh medium schools where there are a network of designated Welsh medium schools.<sup>9</sup> The Committee received further written evidence to this effect from CYDAG.<sup>10</sup>

Governors Wales, the Children's Commissioner and ATCO all expressed support in their submissions for retaining the status quo. CPT Cymru is of the view that discretions proposed by local authorities should be subject to approval by Welsh Ministers.

The WLGA agreed with retaining discretion and told the Committee that this issue needed to be considered in the same context as planning school places. Councillor John Davies clarified:

it is about parental preference and not parental choice, and there is a subtle difference in that respect. There will be opportunities, quite rightly, to provide Welsh-medium or denominational provision, but it is scattered; the provision in Powys and Pembrokeshire is a classic example of that. Therefore, the discretion must lie with the authority in terms of transport being available to travel to school A rather than to school B, because you also have to consider the issue of capacity in those schools. Sometimes, if

<sup>1</sup> EL (3) 04-07 (p.2), Governors Wales, Evidence on the Draft Learner Travel (Wales) Measure

<sup>2</sup> EL (3) 04-07 (p.1), WSSA, Evidence on the Draft Learner Travel (Wales) Measure

<sup>3</sup> EL (3) 05-07 (p.1), Children's Commissioner for Wales, Evidence on the Draft Learner Travel (Wales) Measure

<sup>4</sup> EL (3) 06-07 (p.1), ACTO, Evidence on the Draft Learner Travel (Wales) Measure

<sup>5</sup> EL (3) 06-07 (p.2), CPT, Evidence on the Draft Learner Travel (Wales) Measure

<sup>6</sup> Enterprise and Learning Committee, Committee Transcript, 3 October 2007, para.85 <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third-assembly/bus-committees-third-els-home/bus-committees-third-els-agensdas/el20071003qv.pdf?langoption=3&ttl=EL%283%29-05-07%20%3A%20Transcript%20%28PDF%2C%20215kb%29>

<sup>7</sup> EL(3) 06-07(p.5) *Proposal for a Learner Travel (Wales) Assembly Measure: A Response from the National Autistic Society Cymru.*

<sup>8</sup> EL (3) 05-07 (p.2), RhAG, Evidence on the Draft Learner Travel (Wales) Measure.

<sup>9</sup> Op.Cit., Transcript, 3/10/07, para.71

<sup>10</sup> CYDAG Evidence.

parents choose to send their children to school A, there may not be places there, but there may be places in school B that is providing denominational or Welsh-medium education. Therefore, you have to have that discretion. It is about being able to make a decision locally.<sup>11</sup>

The WLGA argued that what parents might consider to be their first choice is not always reasonable in terms of the other elements of providing education. What is important is that school transport is **available** for providing denominational or Welsh-medium education.

Some Members raised the retention of discretion with the Deputy First Minister when he appeared before the Committee. It was explained that if a right to transport to the nearest Welsh-medium school were extended, it would have to be done for English-medium schools all over Wales. Some schools are not clearly designated as Welsh medium or English medium, so it would affect school organisation in various parts of Wales.<sup>12</sup>

### **3.3. Safe Routes and Travel Arrangements**

During the scrutiny process concerns were raised about how a "safe route" is defined and the lack of consistency in how it is defined between different local authorities. Written evidence from the office of the Children's Commissioner made reference to this<sup>13</sup> and they told Members that improved guidance could help to clarify a "safe route".<sup>14</sup> BUSK argued that it was necessary "to establish what a safe journey is", arguing that vehicles that do meet a certain standard do not provide safe learner travel arrangements.<sup>15</sup> WSSA said that the location of schools can vary considerably, and it would be useful if LEAs were able to give guidance on what might constitute a potentially dangerous journey to school. SUSTRANS Cymru would like every child in Wales to have a right to a safe route to school.<sup>16</sup>

### **3.4. Codes of Conduct**

The draft Measure states that Local Authorities must make a Code of Conduct ("the Code") for behaviour on buses after consultation with schools, further education institutions, parents and learners. (Section 10). The Code will be therefore be enforced by giving a head teacher the power to impose sanctions for incidents by virtue of them coming within the scope of a school's behaviour policy (Sections 11 & 12). Under the *Education and Inspections Act 2006*, the behaviour policy can include pupil conduct outside the school premises. The draft Measure proposes to amend this Act so that incidents on buses are included.

#### **3.4.1. The Principle**

All witnesses were broadly supportive of the principle of a Code of Conduct.

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<sup>11</sup> Enterprise and Learning Committee, Committee Transcript, 10 October 2007, para.135 <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third-assem/bus-committees-third-els-home/bus-committees-third-els-agendas.htm?act=dis&id=61711&ds=10/2007>

<sup>12</sup> Ibid., para.227

<sup>13</sup> Op.cit., Children's Commissioner, para. 4

<sup>14</sup> Op.Cit., Committee Transcript, 3/10/07, paras.50-52

<sup>15</sup> EL(3) 05-07 (p4) Busk, Evidence to the Education and Learning Committee on the Draft Learner Travel Measure.

<sup>16</sup> EL (3) 05-07 (p.6), SUSTRANS, Evidence on the Draft Learner Travel (Wales) Measure

### 3.4.2. Enforcement

However, there were diverging views on the enforcement of the Code. The teaching bodies tended to oppose the Head having the responsibility for enforcement. Evidence submitted jointly from NAHT and ASCL stated:

At the moment, headteachers work to support the LEA, and any information that school staff gain is available to the LEA. However, as the LEA is the contractor and has the responsibility, it takes that final action. The final sanction is to refuse permission for the child to travel on the bus. That already happens. Our concern is that the Measure, as it is worded at the moment, would pass a lot of extra responsibility to the headteacher without any additional powers to fulfil it. It is totally out of the control of the school staff.<sup>17</sup>

They suggest that section 10 (7) of the Measure is amended to make reference to "designated member of staff with delegated responsibility for transport matters".<sup>18</sup> WSSA said that schools feel that full responsibility for enforcement should not lie with the head, partly for legal reasons because the contract is between the local education authority and the transport providers, and because this behaviour takes place out of school.

Other bodies saw the logic of the heads taking responsibility for enforcement. Stuart's Campaign agreed that headteachers are best placed to enforce discipline but felt that there was a lack of clarity in the draft Measure as it stood as between the schools which are responsible for discipline and the local authorities which remain responsible for the operation of the contract.<sup>19</sup> The office of the Children's Commissioner told the Committee that Codes should be drawn up in schools in consultation with pupils. This would confer a sense of ownership and it would be appropriate for heads to enforce them. CPT Cymru agreed that headteachers should enforce the Code in the first instance.

The WLGA argued that the current relationship between LEAs and governing bodies allows the delegation of certain responsibilities in respect of the contract. Enforcement of the Code would need clear delegation to headteachers.

Some witnesses noted that giving powers of enforcement to headteachers would have a knock on effect on other areas of their work. Dr Chris Howard from Stuart's Campaign, who is also a headteacher, explained that as the Measure states that the head may take action through excluding a pupil from school and from transport to school:

That means that there would be an appeal under the exclusion procedures, and, if you do not know, I can tell you that appeals under exclusions procedures have multiplied tenfold or maybe twenty-fold in the last 10 years. You can hardly exclude for any period of time these days without having a formal hearing. That is not only an administrative burden, but an emotional one on headteachers. Due to the way that it is drafted, it is the headteacher who would have to prosecute the case before the complaining parent and maybe their legal representative. It is the school governing body that would have to referee and adjudicate the case and I think that that is a step beyond for lay people on school governing bodies. It would be far better if you just retained the power and the sanction with the local authority as the contracting party working with headteachers.<sup>20</sup>

<sup>17</sup>EL(3) 04-07(p.4), Evidence from NAHT/ASCL para.3.

<sup>18</sup>Ibid., para.2

<sup>19</sup>Op.cit, Stuart's Campaign, para.10

<sup>20</sup>Op.cit., Committee Transcript, 3/10/07 para.143

NAHT and ASCL saw difficulties where sanctions are imposed on pupils as a result of the LEA giving guidance to the head to the effect that it thinks that sanctions should be imposed, then, when an appeal comes in, the head and the governing body are in a difficult position. They would have no evidence; they would have simply been directed by the LEA.<sup>21</sup>

What emerged overwhelmingly in the evidence from a range of witnesses was the lack of clarity in where responsibility lies in law as it stands **currently**, as well as in the draft Measure. BUSK and CPT in particular stressed that often LEAS, operators, drivers and schools did not seem to know where responsibilities lie and that often there was insufficient capacity and expertise within local authorities.

Dr Chris Howard drew Members' attention to a Department for Transport consultation on the use of seat belts and child restraints which spells out quite clearly that the legislation governing the control of children and adults misbehaving on school transport places a duty of care on the three parties to the contract, namely the school, the local authority as the contracting authority, and the contractor, which is the bus company. He told us:

A huge difficulty, which, quite honestly, the Learner Travel Measure tries to resolve, is the fact that, although the law is clear, hardly anyone who is operating under that law seems to know what it is. Five years down the line, despite the high-profile campaigns that we, BUSK and the Assembly Government have been engaged in, in this part of the UK, those things still happen, and you still get bus drivers saying that this is the school's responsibility and school clerks saying, 'It has nothing to do with us'. I can tell you, anecdotally, that in a constituency not far from here, a parent was told three weeks ago by a transport official that misbehaviour on school buses was nothing to do with the local authority.<sup>22</sup>

### 3.4.3. Coverage

We heard similarly diverging views on the coverage of the Code of Conduct. Stuart's Campaign, NAHT/ASCL and CPT all believe that the Code of Conduct should be Wales wide but ATCO and the WLGA believe that local authorities should have discretion. Stuart's Campaign, noted that with more diverse arrangements for transport – for example as a result of 14-19 Learning Pathways – strengthened the rationale for having an all-Wales approach.<sup>23</sup>

The WLGA agreed that the Code should be a national requirement but argued that operationally it should be regional and good practice was already in place where it had developed in a bottom up way which ensured local ownership.

Some witnesses expressed concerns about the difficulties of operating different Codes of Conduct on a bus where there were pupils from more than one school or local authority area.

<sup>21</sup>Enterprise and Learning Committee, Committee Transcript, 26 September 2007, para.240 <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third-assem/bus-committees-third-els-home/bus-committees-third-els-agendas/el070926qv7.pdf?langoption=3&ttl=EL%283%29-04-07%20%3A%20Transcript%20%28PDF%2C%20171kb%29>

<sup>22</sup> Op.Cit., Committee Transcript 3/10/07, para.141

<sup>23</sup> Ibid,

#### *3.4.4 Other modes of transport*

During the course of taking evidence the issue of extending the Code of Conduct to pupils not on school buses was raised by Members and witnesses. This was both in the context of pupils travelling on service buses and those travelling to schools by other means.

With regard to the former, section 1(2) of the draft Measure explains that the travel arrangements that come within the scope of the Measure include transport provision where the authority pays for the whole or any part of a person's reasonable travel expenses, or pays allowances in respect of the use of particular modes of transport. So, if a person travels on a general service bus and the local authority pays for the ticket, that comes within the scope of the travel arrangements outlined in the Measure, and that would therefore fall within the scope of the supervision and discipline arrangements.

With regard to other modes of travel, the office of the Children's Commissioner told the us that s.175 of the *Education Act 2002* deals with a duty on schools in regard of 'welfare of children' which "must surely encompass their behaviour, and their safe travel to and from school. So, that duty already exists for schools, and it is one that is being debated within the teaching profession at the moment. I do not think that there is a clear answer, but it is an important point—the school has a responsibility on that."

### **3.5. Changes to Start & Finish times**

There was broad support for this proposal from most witnesses. The Children's Commissioner argued that it is "logical" that local authorities are given the power to vary school session times as they assess the need for learner travel and told the Committee that here the Measure had been drafted "in a sensible way". However, it was questioned whether the system would work in rural areas and that arrangements would need to be kept under review.<sup>24</sup> WSSA, Stuart's Campaign, ATCO and the WLGA expressed support. CPT Cymru stated that Welsh Ministers should be prepared to direct schools in this matter having expressed doubts about the will of some stakeholders to co-operate.<sup>25</sup> CPT further added that the economies of scale delivered by the policy would offer significant savings and better-quality vehicles, "because the more work that you have out of the vehicle, the better it is for the operator and the more efficient it is for the client."<sup>26</sup>

However, Governors Wales are opposed to giving the power to local authorities and believe that it should be retained by Governing Bodies. They drew the Committee's attention to the recommendation in the former Education and Life Long Learning Committee's Report which stated:

"We feel that LEAs should take the lead in identifying clusters of schools where such collaboration would be effective. It would then be a matter for school governing bodies to agree, in consultation with teachers and parents".

Governors Wales said they would be content with this recommendation.

<sup>24</sup> Op.Cit., Children's Commissioner., para. 6

<sup>25</sup> Op.cit, CPT, para.12

All bodies were agreed, however, that staggered times would only work if there was full and proper consultation and co-operation between all the relevant stakeholders.

### **3.6. Co-operation**

Section 15 of the draft Measure requires governing bodies to give local authorities “any information or other assistance that is reasonably required by them for the performance of their functions under this Measure” and for local authorities to co-operate with each other. Evidence from the Children’s Commissioner expressed a hope that the requirement to collaborate will “improve co-ordination of learner transport.”<sup>27</sup>

### **3.7. Transport for post-16 learners and children in nursery education**

The WLGA gave a cautious welcome to the additional powers in post-16 education and nursery education. However, it wants to ensure that there is sufficient consultation with local authorities before addressing issues to do with transport for nurseries and post-16 education. Both the Deputy First Minister and the WLGA stressed to us the need to look at the outcomes of the pilot projects that are currently under way in Bridgend and the north, which are looking at half-fare concessions for post-16 learners.<sup>28</sup>

RhAG’s evidence to the Committee touches on both of these. It wished any arrangements for nursery education to place Welsh medium provision on a level footing with English medium. With regard to post-16 education, RhAG is concerned that current local authority proposals to cut post-16 transport is placing Welsh medium provision under threat.<sup>29</sup>

Fforwm told us that the definition of ‘suitable institution’ is something that they would like to see addressed. It is not necessarily the case that suitable provision is found at the institution closest to home. The definition of what is appropriate or suitable must really centre on the learner.<sup>30</sup>

### **3.8. Promotion of Sustainability**

The draft Measure requires that local authorities “must promote” sustainable modes of travel. Some witnesses, including Governors Wales and WSSA argued that environmental issues should not override educational issues.

Stuart’s Campaign thought that the promotion of sustainability would lead to an improvement in bus stock.

SUSTRANS Cymru said that the Measure would benefit from a more positive approach to the contribution walking and cycling could make to tackling the school run, and a pro-active strategy to increase levels of active travel.

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<sup>26</sup> Op.cit., Committee Transcript, 10/10/07, para.14

<sup>27</sup> Op.cit., Committee Transcript 3/10/07, para.7

<sup>28</sup> Ibid., para.308 and para.175

<sup>29</sup> Op.Cit., RhAG Evidence, paras. 2&3

<sup>30</sup> Op.cit., Committee Transcript 26/09/07

### **3.9. 14-19 Education: Learning Pathways**

In the course of scrutiny of the draft Measure Members and witnesses raised concerns that the Measure did not fully address the emerging context of 14 to 19 education which can involve pupils moving between sites during the day.

The acting Children's Commissioner told the Committee that more consideration needed to be given to "places of learning" as agenda is much wider than just schools, encompassing work-based and vocational learning that might take place at an employer's premises. There was a need for the Measure to be "future-proofed" to take 14-19 Learning Pathways in to account.

Dr Chris Howard of Stuart's Campaign suggested that the Measure should be drafted to cover the fact that there will be contractors other than the local authority, and they may use buses, coaches, minibuses, or taxis. However, there would still need to be a minimum standard on all that provision within the law.

Fforwm told us that the the Measure should be re-drafted to state that the 14-19 pathways partnerships are to be included in the planning process or are perhaps in control of the planning process for that age group.<sup>31</sup>

The Deputy First Minister told us that travel during the school day is not proposed to be included in the Measure.<sup>32</sup>

### **3.9. Criminal Record Bureau Checks**

The law does not currently require employers to make CRB checks on school bus drivers and escorts. Employers have the discretion to commission checks and some LEAs require transport operators to make CRB checks as a condition of the home to school transport contract. However, the Welsh Assembly Government encourages LEAs to ensure that CRB checks are carried out on all staff employed on contracted school transport services as a matter of good practice. The checks required, and how they are arranged, should be set out when LEAs enter contracts with transport operators.

The Welsh Assembly Government has issued guidance to employers on preventing unsuitable people from undertaking any role with children and young persons in the education service.<sup>33</sup> It outlines the details of the pre-appointment checks that should be made on all staff who will have contact with children.

The *Safeguarding Vulnerable Groups Act 2006*<sup>34</sup> includes arrangements that will effect CRB checks for home to school transport. The Act makes enhanced level CRB checks mandatory for persons who drive a vehicle for the purpose of conveying children or any person supervising or caring for them. Thus, drivers of dedicated school buses, taxi drivers, and escorts will have to be CRB checked. This

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<sup>31</sup> Ibid., para.155-56

<sup>32</sup> Op.Cit., Committee Transcript, 10/10/07, para. 309

<sup>33</sup> Welsh Assembly Government, Circular 34/02, 'Child Protection: Preventing Unsuitable People from Working with Children and Young Persons in the Education Service, October 2002.'

<sup>34</sup> *Safeguarding Vulnerable Groups Act 2006* (Chapter 47) <http://www.opsi.gov.uk/ACTS/acts2006/60047--h.htm>

will come into force next year. We were told by the Assembly Government that this is why CRB checks were not included in the draft Measure.<sup>35</sup>

Both CPT and ACTO drew the Committee's attention to inconsistency in carrying out CRB checks throughout Wales. ACTO noted that the DVLA had announced a consultation, in which one proposal involves CRB checks on all licence applications when they are processed. This would centralise the process at a stroke and provide consistency.<sup>36</sup>

### 3.10. Procurement

We heard compelling evidence about the importance of procurement in ensuring the provision of good quality and safe school transport. Moreover, witnesses made an explicit link between the quality of the transport and behavioural issues. Gney Mehta's evidence to the Committee, in particular, highlighted this experience.<sup>37</sup>

ACTO told the Committee **"the procurement regime which local authorities must comply with acts against some of the Measure's objectives"**.<sup>38</sup> For example, local authorities are obliged to obtain the best value for money and, by giving children season tickets and putting them on service buses—buses that are already operating as opposed to putting out a new contract—they are achieving value for money. They are helping to support some services which otherwise would not operate by putting season ticket revenue into that particular operator.

BUSK told us that risk assessments are not always carried out on modes of transport and that short term contracts discourage operators from investing in modern, quality vehicles.<sup>39</sup> The CPT also explained that using a bus that receives fuel duty rebate is far more cost efficient for the operator and the local authority. If a service is "a closed-door service" there is no fuel duty rebate, because the parameters for that are that the service must be available to the general public.<sup>40</sup>

Stuart's Campaign said that a standard tender document should be implemented by the 22 local authorities to ensure a common standard throughout Wales.<sup>41</sup>

The Welsh Assembly Government is currently considering responses to its consultation on its non-statutory Guidance on Home to School Transport.<sup>42</sup> The draft Guidance, an extract of which is set out in Box 1 below, shows that the Assembly Government is aware of the case for raising procurement standards. However, as non statutory Guidance it is not binding on local authorities.

#### Box 1

<sup>35</sup> Op.cit., Committee Transcript, 10/10/07, para.271

<sup>36</sup> DVLA, *Improving Bus Passenger Safety through the Vehicle Licensing System*, Consultation Paper, September 2007. [http://www.dvla.gov.uk/media/pdf/consultations/cons\\_190907.pdf](http://www.dvla.gov.uk/media/pdf/consultations/cons_190907.pdf)

<sup>37</sup> Op.cit., Committee Transcript, 3/10/07 para. 120-123

<sup>38</sup> Op.cit., Committee Transcript, 10/10/07, para. 106

<sup>39</sup> Op.cit., Committee Transcript 3/10/07, para.113

<sup>40</sup> Op.cit. Committee Transcript, 10/10/07, para.12

<sup>41</sup> Op.cit, Committee Transcript, 3/10/07,para.149

<sup>42</sup> When finalised, the guidance will replace Welsh Office Circular 19/95 ('Home to School Transport').



In many parts of Wales the core of home to school transport arrangements are dedicated contracts between LEAs and transport operators. LEAs may enter secure value for money and should adhere to procurement best practice.

There is a balance to be struck between the length of contract, the quality of vehicles that a contractor offers and the training opportunities for a contractor's drivers. Contractors are more willing to invest in better quality vehicles if they have a longer contract, such as five or more years, during which they can make a better return on their investment. Contractors are also more prepared to invest in staff training if there is certainty that those skills are useful for longer. It is for LEAs to determine where the balance lies, though obtaining a high quality service ought to be a high priority.

Successful tendering and management of LEA contracts should cover:

- objective criteria for the selection of contractors using best value for money practices;
- the types of vehicles to be used, including specifications about required standards;
- specification of the roles and responsibilities of contractors, drivers and any escorts;
- procedures for the collection, evaluation, keeping and accessibility of information (such as CRB checks, operators' licences, drivers' licences, MOT certificates);
- training for drivers and other contractor staff;
- procedures for contractors to bring matters to the attention of LEAs and /or schools;
- stipulation of the frequency and types of monitoring activities that LEAs, or their agents, may undertake (such as programmed visits, spot checks, complaint investigations, and liaison with schools, parents and pupils);
- information exchange with external agencies (such as the Vehicle and Operator Service Agency (VOSA) and the Traffic Commissioner); and
- arrangements to monitor and evaluate the delivery of the service, and to take action if the LEA deems that necessary.<sup>43</sup>

The Welsh Assembly Government Director of Transport Policy and Administration, Simon Shouler, also told us that regional transport planning across Wales under the *Transport (Wales) Act 2006* was underway. Regional transport consortia are putting their regional transport plans together and the Assembly Government is looking at those to form a framework to consider bigger bus contracts that could provide far more integrated services.<sup>44</sup>

The Deputy First Minister also told us that in setting contracts, the local authorities would have to have regard to the contents of the Measure, and contracts that conflict with it would be unenforceable.<sup>45</sup>

### **3.11. Transport for Learners with Special Educational Needs**

<sup>43</sup> Welsh Assembly Government, *Home to School Transport, Consultation Document*, November 2006. Paras. 2.6- 2.8 <http://new.wales.gov.uk/docrepos/40382/4038232/403829/Consultations/2006/hometoschooltransport-con-e?lang=en>

<sup>44</sup> Op.cit. Committee Transcript, 10/10/07, para.240

<sup>45</sup> Ibid., para.275

The draft Measure as it stands does not propose making changes to arrangements for learners with Special Educational Needs (SEN). The acting Children's Commissioner, Maria Battle, had earlier given evidence to the Committee considering the Additional Learning Needs LCO.<sup>46</sup> In her evidence to us she said she thought it "more appropriate that travel is included in this Measure than in the LCO. However, there needs to be similarity in the definitions of the additional or special need between the Measure and the LCO". She concluded:

In our view, if we are to have just one measure applicable to the travel needs of children with special educational needs, it is more appropriate for that to be in this Measure. I would submit, however, that it should be broader than currently drafted.<sup>47</sup>

Fforwm also argued that the Measure should give further consideration to disabled learners need to be looked. There is different practice among local authorities about entitlement— some apply it to the age of 19, and others to the age of 25, for providing financial support for transport. Clarification on age criteria for disabled learners would be useful.<sup>48</sup>

### **3.12. Looked after Children**

The Acting Children's Commissioner also thought that the Measure could be tightened up in respect of "looked after children":

There is a definition within the Measure of 'ordinarily resident', which it would be beneficial to look at again. When a child is looked after, particularly if the child is placed out of the local authority area in which his or her parents live—and a number of children are in out-of-county placements, particularly in rural areas—our experience is that we have to intervene when there are disputes in other fields, such as health, about who will pay for the child. Is it the authority that placed the child or the authority that is housing the child? The definition of 'ordinarily resident' is about a child living with a parent and so on, and I counsel that that should be looked at again with looked-after children in mind.<sup>49</sup>

### **3.13. Legal Scope**

Due to the restrictions on the Assembly's legal scope noted above, a range of concerns about safety, highlighted in earlier reports, have not been addressed in the proposed Measure, for example, seatbelts, 3 for 2 and escorts on all school buses. Witnesses such as BUSK and Stuart's Campaign expressed their disappointment at the scope of the Measure and most witnesses were of the view that that further powers should be sought from Westminster.

When the Deputy First Minister appeared before the Committee he outlined three options to us:

The first option is to simply say, 'Well, we think that this Measure goes far enough and there is nothing more that we should do'. The second option is to say, 'We will legislate where we can under this

<sup>46</sup> ALN(3)-03-07(p.1) Children's Commissioner for Wales: *Response to the National Assembly for Wales consultation on the proposed additional learning needs draft legislative competence order 2007*. <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third-assem/bus-committees-third-aln-home/bus-committees-third-aln-agendas.htm?act=dis&id=59517&ds=10/2007>

<sup>47</sup> Op.cit., Committee Transcript, 3/10/07, para. 17

<sup>48</sup> Op.Cit., Committee Transcript, 26/09/07, para.188

<sup>49</sup> Op.cit., Committee Transcript, 3/10/07, para.66



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 third option is to say, 'Well, we could put everything on hold and wait for further powers and then have a comprehensive Measure'.<sup>50</sup>

He told us that he is minded to go with the second option. We welcome the willingness of the Assembly Government to acquire further powers in respect of safety on School Transport and we look forward to seeing any proposals that are brought forward.

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<sup>50</sup> Op.cit., Committee Transcript, 10/10/07. para.220  
Enquiry no: 07/2583/ Alys Thomas

## Draft Recommendations

A clear consensus exists across the board that the scope of the draft Measure 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.

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

We heard compelling evidence that procurement was an issue of vital importance in ensuring safe and good quality school transport which has a knock on effect on behaviour. The Deputy First Minister assured us that Guidance issued under the Measure would have a bearing on local authority contracts.

### **2. We recommend that the current non-statutory Guidance on contracts be placed on a statutory basis and that it should include a standard draft tender document.**

A number of witnesses felt strongly that the draft Measure fails to take account of the 14-19 Learning Pathways agenda which involved learners moving between sites of learning during the school/college day. The Deputy First Minister said that this was not being considered in the draft Measure.

### **3. The Committee recommends that the Deputy First Minister reconsiders his position and explores the ways in which the draft Measure may be re-drafted to take into account the 14-19 Agenda.**

While most witnesses were in favour of the principle of a Code of Conduct the committee heard widely diverging views on how they could be enforced and what their coverage should be.

### **4. The Committee makes recommendations in respect of the enforcement and coverage of the Code of Conduct.**

We also heard some evidence that the Code of Conduct should apply to pupils travelling to school by other modes of transport than dedicated school buses. The Committee received legal advice that the Measure did cover all forms of transport if arrangements were made by the local authority.

### **5. The Committee recommends that the Deputy First Minister considers how the Measure may be used to make provisions for pupils travelling to school in modes other than the school bus.**

Most witnesses support the decision on staggering opening hours resting with local authorities but Governors Wales remain strongly opposed. Everyone agreed that there would need to be very good co-operation between key stakeholders.

### **6. The Committee makes a recommendation in respect of staggered hours.**

The committee received some evidence that the part of the Measure that retains the discretion of the local authorities to make arrangements for Welsh medium and denominational should be changed so that Welsh medium schools were placed on the same basis as English schools. The Assembly Government told us that this would have a knock on effect on school organisation in different parts of Wales.

### **7. The Committee makes a recommendation in respect of retaining discretion.**



We heard from the acting Children's Commissioner that issues relating to SEN learners' travel should be dealt with in this Measure rather than a future Measure emerging from the Additional Learning Needs LCO. She also said that the definitions of what constituted disability needed to be aligned in the draft Measure and the LCO. The Deputy First Minister said that he would consider her comments.

**8. We recommend that the Deputy First Minister takes account of the comments of the acting Children's Commissioner in respect of the definition of disability in the Measure and the Additional Learning Needs LCO and amends the Measure if necessary.**

The acting Children's Commissioner also suggested amending the wording in the draft Measure in respect of "ordinarily resident" and its implications for looked after children.

**9. We recommend that the Deputy First Minister and his officials consider the implications for looked after children and amend the draft Measure if necessary.**