



**Cynulliad Cenedlaethol Cymru
The National Assembly for Wales**

**Pwyllgor Deddfwriaeth Rhif 3
Legislation Committee No. 3**

**Dydd Mawrth, 19 Ionawr 2010
Tuesday, 19 January 2010**

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Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynndi yn y pwyllgor. Yn ogystal,
cynhwysir cyfieithiad Saesneg o gyfraniadau yn y Gymraeg.

These proceedings are reported in the language in which they were spoken in the committee.
In addition, an English translation of Welsh speeches is included.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Peter Black	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
William Graham	Ceidwadwyr Cymreig Welsh Conservatives
David Lloyd	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)
Rhodri Glyn Thomas	Plaid Cymru (yn dirprwyo ar ran Helen Mary Jones) The Party of Wales (substitute for Helen Mary Jones)
Joyce Watson	Llafur Labour

Eraill yn bresennol
Others in attendance

Bethan Bateman	Uwch-ddadansoddwr Polisi Trafnidiaeth, Adran yr Economi a Thrafnidiaeth, Llywodraeth Cynulliad Cymru Senior Analyst of Transport Policy, Department for the Economy and Transport, the Welsh Assembly Government
Lynsey Edwards	Cyfreithiwr, Adran yr Economi a Thrafnidiaeth, Llywodraeth Cynulliad Cymru Lawyer, Department for the Economy and Transport, the Welsh Assembly Government
Ieuan Wyn Jones	Aelod Cynulliad, Plaid Cymru (y Dirprwy Brif Weinidog a'r Gweinidog dros yr Economi a Thrafnidiaeth) Assembly Member, the Party of Wales (the Deputy First Minister and Minister for the Economy and Transport)

Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol
National Assembly for Wales officials in attendance

Fay Bowen	Clerc Clerk
Stephen Davies	Cynghorydd Cyfreithiol Legal Adviser
Ruth Hatton	Dirprwy Glerc Deputy Clerk
Anne Thomas	Gwasanaeth Ymchwil yr Aelodau Members' Research Service
Graham Winter	Gwasanaeth Ymchwil yr Aelodau Members' Research Service

Dechreuodd y cyfarfod am 8.58 a.m.
The meeting began at 8.58 a.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

[1] **David Lloyd:** Bore da a chroeso i **David Lloyd:** Good morning and welcome to gyfarfod diweddaraf Pwyllgor Deddfwriaeth the latest meeting of the Legislation Rhif 3. Croesawaf fy nghyd Aelodau i'r Committee No 3. I welcome my fellow pwyllgor. Yr ydym wedi derbyn Members to the committee. We have ymddiheuriadau gan Christine Chapman a received apologies from Christine Chapman

Helen Mary Jones, a chroesawaf Rhodri Glyn Thomas, sydd yn dirprwyo ar ran Helen Mary. Croeso hefyd i Ieuan Wyn Jones, y Dirprwy Brif Weinidog a'r Gweinidog dros yr Economi a Thrafnidiaeth. Byddwn yn clywed mwy ganddo yn nes ymlaen o ran y cwestiynau sydd wedi eu paratoi iddo. Croeso hefyd i Lynsey Edwards a Bethan Bateman.

and Helen Mary Jones, and I welcome Rhodri Glyn Thomas, who is substituting for Helen Mary. I also welcome Ieuan Wyn Jones, the Deputy First Minister and Minister for the Economy and Transport. We will hear more from him later with regard to the questions that have been prepared for him. I also welcome Lynsey Edwards and Bethan Bateman.

[2] Os bydd larwm tân, dylai Aelodau adael yr ystafell drwy'r allanfeydd tân, a dilyn cyfarwyddiadau'r tywyswyr a'r staff. Nid ydym yn disgwyl prawf tân y bore yma. Dylai pawb ddiffodd eu ffonau symudol, galwyr a'u 'mwyar duon' gan eu bod yn amharu ar yr offer darlledu. Bydd pawb yn ymwybodol bod Cynulliad Cenedlaethol Cymru yn gweithredu'n ddwyieithog. Mae clustffonau ar gael ar gyfer clywed cyfieithiad ar y pryd, a gellir addasu lefel y sain arnynt ar gyfer pobl sy'n drwm eu clyw. Mae'r cyfieithiad ar y pryd ar gael ar sianel 1, ac mae'r darllediad gair am air ar sianel 0.

If there is a fire alarm, Members should leave the room through the fire exits, and follow the directions of the ushers and staff. We are not expecting a fire drill this morning. Everyone should switch off their mobile phones, pagers and BlackBerrys as they interfere with the broadcast equipment. You will all be aware that the National Assembly for Wales operates bilingually. Headsets are available to hear the simultaneous translation, and the audio level can be adapted on them for those who are hard of hearing. The simultaneous translation is on channel 1, and the verbatim broadcast is on channel 0.

9.00 a.m.

Gorchymyn Arfaethedig Cynulliad Cenedlaethol Cymru (Cymhwysedd Deddfwriaethol) (Trafnidiaeth) 2010
The Proposed National Assembly for Wales (Legislative Competence) (Transport) Order 2010

[3] **David Lloyd:** Diben yr eitem hon yw cael tystiolaeth ar lafar mewn perthynas â'r Gorchymyn deddfwriaethol arfaethedig ar drafnidiaeth dysgwyr a theithio rhatach. Mae dwy elfen i'r Gorchymyn arfaethedig hwn ac yr ydym yn ceisio gofyn cwestiynau ar y ddwy elfen ar wahân. Felly, i'r perwyl hwnnw, croesawaf Ieuan Wyn Jones, y Dirprwy Brif Weinidog a'r Gweinidog dros yr Economi a Thrafnidiaeth a'i swyddogion, Bethan Bateman, prif ddadansoddwr polisi Adran yr Economi a Thrafnidiaeth a Lynsey Edwards, sydd yn gyfreithiwr i'r adran honno.

David Lloyd: The purpose of this item is to take oral evidence in connection with the proposed legislative competence Order on learner transport and concessionary travel. There are two elements to this proposed Order and we are trying to ask questions on the two elements separately. Therefore, to that end, I welcome Ieuan Wyn Jones, the Deputy First Minister and the Minister for Economy and Transport and his officials, Bethan Bateman, principal policy analyst for the Department for the Economy and Transport and Lynsey Edwards, who is a lawyer for that department.

[4] Yn ôl ein harfer, symudwn yn syth at gwestiynau, os yw hwnnw'n dderbyniol gyda chi.

As is our custom, we will move straight to questions, if that is acceptable.

[5] **Y Dirprwy Brif Weinidog a'r Gweinidog dros yr Economi a Thrafnidiaeth (Ieuan Wyn Jones):** Ydy,

The Deputy First Minister and Minister for the Economy and Transport (Ieuan Wyn Jones): Yes, that is totally acceptable.

mae hynny'n gwbl dderbyniol.

[6] **David Lloyd:** Yn ôl ein harfer, fi sydd yng ngofal y cwestiwn cyntaf. Yng nghyfarfod y pwyllgor hwn ar 10 Rhagfyr, bu ichi ddweud bod y term 'gwasanaethau bws' yn golygu 'gwasanaethau bysiau lleol'. A allwch esbonio pam na chynhwysir gwasanaethau coetsys yng nghwmpas y Gorchymyn arfaethedig?

David Lloyd: As is our custom, I will ask the first question. At the committee's meeting on 10 December, you said that the term 'bus services' means 'local bus services'. Could you explain why coach services are not included in the scope of the proposed Order?

[7] **Y Dirprwy Brif Weinidog:** Y gwir yw bod gwasanaethau coetsys yn gynwysedig yng nghwmpas y Gorchymyn arfaethedig, ond at ein dibenion ni, mater o bolisi yw peidio â chynnwys coetsys ar hyn o bryd. Fodd bynnag, pe byddem yn cael yr hawl i ddeddfu yn y maes hwn, byddent yn gynwysedig ar gyfer cael eu hystyried ar gyfer tocynnau teithio rhatach.

The Deputy First Minister: The truth is that coach services 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. However, if we were given the right to legislate in this area, they could be considered for concessionary fares.

[8] **David Lloyd:** Mae'r ail gwestiwn yng ngofal Peter Black.

David Lloyd: The second question is from Peter Black.

[9] **Peter Black:** Could I clarify that? Does that mean that you could, at some stage, extend the concessionary fare scheme to the TrawsCambria service?

[10] **The Deputy First Minister:** Yes, we could, as a matter of policy.

[11] **Peter Black:** Would this proposed Order enable you to do that?

[12] **The Deputy First Minister:** I think that we have the right to do that anyway.

[13] **Peter Black:** Yes, but you are bringing forward this proposed Order to give you legislative security. Would that same security apply to that policy on the TrawsCambria service?

[14] **The Deputy First Minister:** Yes.

[15] **Peter Black:** On rail services, why is the proposed Order limited to Welsh rail services provided under the Wales and Borders franchise, currently operated by Arriva Trains Wales?

[16] **The Deputy First Minister:** 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 have competence to deal with the Arriva franchise only and the proposed LCO is therefore limited to that. The irony is that Arriva's services, which go in and out of Wales, are covered, but there will be services that are wholly within Wales, under other franchises that are not covered. However, that is the nature of the settlement.

[17] **Peter Black:** That is an irony that has been lost on us. Does that mean, therefore, that if you were to seek, at a future date, to include other franchised train companies operating

within Wales, and potentially any open-access operators, you could not do so under the proposed LCO because the Government of Wales Act 2006 prevents you from drawing down those powers?

[18] **The Deputy First Minister:** That is right.

[19] **Peter Black:** That is a helpful clarification. The Community Transport Association UK has raised concerns, in its written evidence, that the proposed LCO makes no specific reference to community transport. Does the scope of matter 10.2 currently include community transport?

[20] **The Deputy First Minister:** Yes, it does. We could include community transport services under a Measure or subordinate legislation, but you have to remember that that would be difficult in policy terms. The legislation would allow us to do it, but in policy terms, it would be quite difficult because of how the concessionary fares scheme works. For example, it is for registered bus services and if a community transport operator wished to apply for a registered bus service, that would be fine, but the difficulty is in knowing how widely to draw the definition. We want to ensure that anyone who travels on a registered bus service is entitled to the concessionary fare, but if you have an ad hoc service on which someone might decide to take a group of people from A to B—for example as an ad hoc, one-off journey—we would want that to be extended to the idea of concessionary fares. The difficulty is in knowing where to draw the line. However, as a matter of policy, any Government could, if it wished, include community transport. It is not a legislative bar; it is a question of how you frame the policy.

[21] **Peter Black:** Our concern at this stage is to try to separate the policy from the competence that we are trying to get for Ministers now and in the future. Does that competence include community transport?

[22] **The Deputy First Minister:** It does.

[23] **Peter Black:** That is great. Thank you for that.

[24] **David Lloyd:** Dyna ddiwedd yr elfen ar drafnidiaeth ratach. Symudwn ymlaen i drafod diogelwch trafnidiaeth i ddysgwyr. Mae'r tri chwestiwn cyntaf dan ofal Rhodri Glyn Thomas.

David Lloyd: That is the end of this section on concessionary travel. We will move on to discuss learner transport safety. The first three questions will be asked by Rhodri Glyn Thomas.

[25] **Rhodri Glyn Thomas:** Mae'r Gorchymyn arfaethedig hwn yn ymwneud â mathau o drafnidiaeth. Oherwydd hynny, mae consŷrn ynghylch plant sy'n teithio i'r ysgol gan fod rhai ohonynt yn teithio ar fysiau nad ydynt yn digwydd cwmpo o fewn meini prawf y Gorchymyn arfaethedig hwn, er mai plant sy'n eu defnyddio yn gyfan gwbl. Beth yw eich sylwadau ar y ffaith na fydd nifer o blant yn dod o dan gwmpas y Gorchymyn arfaethedig hwn?

Rhodri Glyn Thomas: This proposed Order relates to forms of transport. Given that, there is concern about children who travel to school as some of them travel on buses that, although used entirely by schoolchildren, do not happen to fall within the criteria of this proposed Order. What are your comments on the fact that a number of children will not be included within the scope of this proposed Order?

[26] **Y Dirprwy Brif Weinidog:** Hoffwn wneud pwynt cyffredinol i ddechrau, a gofynnaf i Lynsey roi'r dehongliad cyfreithiol cywir o'r gwasanaethau sy'n gwbl

The Deputy First Minister: I would like to make a general point to start and I will ask Lynsey to give the correct legal interpretation of the services that are completely covered by

gynwysedig yn y Gorchymyn arfaethedig a'r rhai nad ydynt yn gynwysedig.

the proposed Order and those that are not included.

[27] Yn gyffredinol, rhaid inni weithio gyda'r setliad sydd gennym. Y realiti yr ydym wedi ei wynebu yw nad oes gennym gymhwysedd o gwbl mewn maes trafnidiaeth gyhoeddus o ran rheoleiddio neu edrych ar ddiogelwch bysiau. Mae un maes yn Rhan 1 o Atodlen 5 yn rhoi'r hawl inni wneud pethau ynghylch teithio i'r ysgol, ac yna mae gwaharddiad yn Rhan 2 o Atodlen 5 sy'n ein rhwystro rhag ymdrin â phethau fel diogelwch y bysiau eu hunain. Mae hyn yn golygu bod yn rhaid mynd i lawr y llwybr yr ydym yn ei ddilyn ar hyn o bryd. Heb y Gorchymyn arfaethedig hwn, ni allwn wneud dim ynglŷn â gwregysau diogelwch neu'r defnydd o fysiau unllawr yn hytrach na bysiau deulawr.

In general, we have to work with the settlement that we 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. One field in Part 1 of Schedule 5 gives us the right to act in relation to school transport, and then there is an exemption in Part 2 of Schedule 5 that prevents us from mentioning things like the safety of the buses themselves. This means that we have to go down the path that we are currently following. 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.

[28] Felly, bu'n rhaid inni gael gwelliant i'r gwaharddiad. Mae hwnnw wedi'i gyfyngu i fath arbennig o wasanaeth sy'n delio â chludo plant i'r ysgol. Nid polisi Llywodraeth y Cynulliad yw hwn, ond mater o rwystredigaeth o safbwynt y setliad cyfansoddiadol. Hoffwn ofyn i Lynsey egluro yn union pa wasanaethau sy'n cael eu cynnwys o dan y gwelliant i'r gwaharddiad a pha wasanaethau na fydd yn cael eu cynnwys.

Therefore, we had to amend the exemption. This is limited to a particular type of service that deals with transporting children to school. This is not Assembly Government policy, but a matter of frustration in relation to the constitutional settlement. I would like to ask Lynsey to explain exactly which services are included under the amendment to the exemption and which services will not be included.

[29] **Ms Edwards:** 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 or training. That is something that we have negotiated with the Department for Transport as an exception to the general exclusion of vehicle safety standards within our competence.

[30] We have a limit; we are restricted in what we can do. Overall, UK legislation in relation to vehicle safety standards is governed by EU legislation. The Government of Wales Act 2006 prevents us from making any legislation that contravenes EU legislation. So, we are quite restricted in that area as well. As the Deputy First Minister has said, it is a legislative restriction rather than a policy restriction.

[31] **David Lloyd:** Joyce has a supplementary question.

[32] **Joyce Watson:** It has been answered.

[33] **Rhodri Glyn Thomas:** Derbyniat yr hyn yr ydych yn ei ddweud am y cyfyngiadau o ran y setliad, a'r ffaith nad oes modd mynd y tu hwnt i hynny. Yn hytrach nag edrych ar y dull teithio, sef y drafnidiaeth a ddefnyddir i deithio, a ydych wedi ystyried y

Rhodri Glyn Thomas: I accept what you have said about the restrictions resulting from the settlement, and that there is no way of going beyond that. Rather than looking at the method of travel, namely the mode of transport, have you considered the possibility

posibilrwydd o edrych ar Fesur a fyddai'n ymwneud â diogelwch plant, gan na fyddai hwnnw'n wynebu cyfyngiadau o ran y setliad?

9.10 a.m.

[34] **Y Dirprwy Brif Weinidog:** Nid wyf yn credu y byddai hynny'n bosibl oherwydd rhaid ichi fod mewn sefyllfa i allu pennu yn y ddeddfwriaeth pa fath o fws yr ydych yn credu y byddai'n ddiogel i blentyn deithio arno. Dyna'r broblem yr ydym wedi dod ar ei thraws. Pan graffwyd arnom yn y Pwyllgor Menter a Dysgu yn wreiddiol, dywedwyd wrthym bod eisiau inni geisio cael cymhwysedd i allu rhestru'r math o fws a fyddai'n briodol i gludo plant i'r ysgol. Byddai'r cymhwysedd hwn yn caniatáu inni, drwy Fesur, fynnu, pe byddem yn dymuno, ddefnyddio bysys unllawr yn unig, bysys â gwregysau, neu fysys sydd â chamerau arnynt. Gallem wneud hynny. Fodd bynnag, os ydym yn cyfyngu ein hunain i ddiogelwch plant, heb yr hawl i reoleiddio'r math o fws, ni fyddem yn cyrraedd y nod. Dyna'r broblem.

[35] **Rhodri Glyn Thomas:** O dderbyn hynny, a chan ddychwelyd at y pwynt sylfaenol y bydd nifer sylweddol o blant y tu hwnt i gymhwysedd y Gorchymyn arfaethedig hwn, a oes trafodaethau wedi cael eu cynnal gyda San Steffan? Derbyniaf bwynt Lynsey bod rheoliadau Ewropeaidd yn rhan o hyn i gyd, ond a gafwyd trafodaethau â'r Adran Drafnidiaeth yn San Steffan i weld a oes modd edrych ar ddiogelwch y plant hynny a fydd y tu hwnt i gwmpas y Gorchymyn arfaethedig hwn?

[36] **Y Dirprwy Brif Weinidog:** Do. Mae trafodaethau, yn naturiol, wedi cael eu cynnal rhwng fy swyddogion i â swyddogion yr Adran Drafnidiaeth, a dyma'r lle yr ydym wedi ei gyrraedd. Unwaith yr ydych yn mynd y tu hwnt i'r lle yr ydym wedi ei gyrraedd, byddwch yn agor y drws i bwerau llawer mwy sylweddol a fyddai'n caniatáu ichi reoleiddio cerbydau sy'n cael eu defnyddio ar gyfer unrhyw ffurf ar drafnidiaeth gyhoeddus, ac mae hynny'n mynd â chi i faes llawer mwy cymhleth ac un sydd ymhell y tu hwnt i'r hyn yr ydym yn ceisio ei wneud

of looking at a Measure that would be more to do with child safety, given that that would not be subject to restrictions resulting from the settlement?

The Deputy First Minister: I do not believe that that would be possible, because you have to be in a situation of being to be able to set out in the legislation what type of bus you think it would be safe for a child to travel on. That is the problem that we have come up against. When we were scrutinised originally by the Enterprise and Learning Committee, we were told that we needed to go for competence to be able to list the type of bus that would be appropriate to carry children to school. This competence would allow us to draft a Measure through which we could insist, if we so wish, on the use of single-deck buses only, buses that have been fitted with belts, or buses that have been fitted with cameras. We could do that. However, if we restrict ourselves to child safety, without the right to regulate what type of bus is used, we would not achieve our aim. That is the problem.

Rhodri Glyn Thomas: Accepting that, and returning to the basic point that a substantial number of children would fall outside of this proposed Order's competence, have any discussions been held with Westminster? I accept Lynsey's point that European regulations are part of all this, but have there been any discussions with the Department for Transport at Westminster to see whether there is any way of looking at the safety of those children who would be beyond the scope of this proposed Order?

The Deputy First Minister: Yes. Discussions have, naturally, taken place between my officials and those at the Department for Transport, and this is where we are at. Once you go beyond where we are, you open the door to much more substantial powers that would allow you to regulate vehicles that are used for any form of public transport, and that takes us to a much more complex field and one that is way beyond what we are seeking to do with the powers that we have.

gyda'r pwerau sydd gennym.

[37] Yr wyf yn derbyn bod yn rhaid, mewn unrhyw drafodaethau, ichi ddod i ryw ddealltwriaeth, a dyma'r ddealltwriaeth yr ydym wedi llwyddo dod iddi.

I accept that, in any discussions, you have to reach some form of understanding, and this is the understanding that we have managed to reach.

[38] **Rhodri Glyn Thomas:** Y cwestiwn wedyn yw: beth sy'n digwydd i'r plant sydd y tu hwnt i gwmpas y Gorchymyn arfaethedig hwn? A allwn wneud unrhyw beth i sicrhau eu diogelwch neu i wella eu sefyllfa o ran diogelwch?

Rhodri Glyn Thomas: The question then is: what happens to the children who are outside the scope of this proposed Order? Can we do anything to ensure their safety or to improve their situation with regard to safety?

[39] **Y Dirprwy Brif Weinidog:** Yr wyf yn hapus i ofyn i Bethan ateb hwnnw. Mae rhai pethau y gallwn eu gwneud, ond y broblem fawr yw nad ydym yn teimlo'n gyfforddus y gallwn fynd yn ôl ac ymestyn y cyfyngiadau sydd arnom o safbwynt y ddeddfwriaeth. Efallai y gall Bethan egluro hyn, hefyd. Mae'n rhaid inni egluro ein bod nid yn unig wedi gofyn am gymhwysedd, ond ein bod hefyd wedi gofyn am bwerau gweithredol ychwanegol yn y maes hwn. Hynny yw, mae dau fath o drosglwyddiad—oherwydd y cyfyngiadau a oedd arnom yn Atodlen 5 o'r Ddeddf bu'n rhaid inni ofyn am bwerau gweithredol yn ogystal â phwerau deddfwriaethol.

The Deputy First Minister: I am happy to ask Bethan to answer that. There are some things that we can do, but the major problem is that we do not feel comfortable that we can return to this matter to extend the restrictions that we are under with regard to the legislation. Perhaps Bethan can clarify this, too. It must be clear that we have not only asked for the competence, but that we have also asked for additional executive powers in this field. That is, there are two types of transfer—because of the restrictions under Schedule 5 to the Act we have had to ask for executive powers as well as legislative powers.

[40] Perhaps, Bethan, you could deal with this issue of whether there is anything we can do.

[41] **Ms Bateman:** As the proposed LCO is currently drafted, it is right to say that public service buses would not come under the legislative vehicle safety standards. However, the Learner Travel Measure, which the Assembly has passed, covers school behaviour codes on Arriva Trains, which gave evidence to this committee, and on public buses, too. So, there are ways in which we currently make behaviour codes and look for safety standards on those buses. In addition, the Assembly Government has considerable leverage to talk to bus operators, not least because of the amount of finance and so on that goes to public service buses in the form of concessionary fares, the bus service operators grant, and all the various revenue funding streams. So, although we do not have legislative controls to put on them—they come under the European Union and the UK framework—we nevertheless have a range of policy options open to us that would enable us to address specific concerns to do with safety on school buses. We will come later to the figures on the number of people who travel on those buses.

[42] **Y Dirprwy Brif Weinidog:** Yr wyf yn credu hefyd mai'r rhwystredigaeth yr oeddem yn ei hwynebu o flaen y pwyllgor oedd nad oedd gennym gymhwysedd cyfreithiol o gwbl. Bellach, mae gennym gymhwysedd cyfreithiol sy'n mynd â ni ran o'r ffordd, ond byddai'n anodd inni fynd yn

The Deputy First Minister: I think that another frustration that we faced when we appeared before the committee was the fact that we did not have any legal competence at all. Now, we have legal competence that takes us some of the way, but it would be difficult for us to go back to the Department

ôl at yr Adran Drafnidiaeth a gofyn am gymhwysedd ychwanegol. Yr addewid y gallwn ei roi i'r pwyllgor yw y byddem yn ystyried gofyn am ragor o bwerau yn y dyfodol, pe baem yn gallu mynd yn ôl i wneud hynny. Yr ofn mawr sydd gennym yw pe baem yn penderfynu mynd yn ôl, byddem yn peryglu cael yr hyn sydd gennym drwodd erbyn etholiad y Cynulliad yn 2011. Ni waeth inni fod yn onest ynghylch hynny.

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 future, if we could go back to do that. The great fear that we have is that if we decide to go back, it might risk not getting what we already have through by the Assembly election in 2011. We may as well be honest about that.

[43] **Peter Black:** We received evidence last week that about 50 per cent of schoolchildren travel to school on non-contract buses. That figure was a guesstimate, I think, but it is still a significant number of pupils travelling on service buses, in effect. That witness also pointed out that the service buses that transfer children to and from schools often travel on routes slightly amended from those that they would normally follow. The service buses would be almost exclusively full of pupils, often using passes issued by the local authority. Therefore, although they are not contracted by the local authority, those buses are, effectively, school-only buses, the only difference being that they are licensed or registered with the transport authority, and that is largely because it allows the bus company to take advantage of fuel duty rebates. Given that those buses are specifically designed for school transport, is there any way in which they could be encompassed by this proposed Order, or does the fact that they follow registered routes make this more difficult?

[44] **The Deputy First Minister:** We need to look at the words included in the current proposed LCO. The words that we need to consider are those in section 3(2)(b)(c):

[45] 'regulation of the description of vehicle which may be used pursuant to learner transport arrangements'.

[46] The question is what 'pursuant to learner transport arrangements' means in relation to the type of service that is covered. Is that limited to contracted services or, as Peter asked, could it be extended to those services that might not be contracted but that might be used primarily for school transport?

[47] **Ms Edwards:** No, it would not cover those services, unfortunately. The definition of 'learner transport arrangements' is the provision of a specific service by a public authority or by an education body for the purpose of transporting people to their place of education.

[48] **The Deputy First Minister:** In a sense, we need to make it clear to the committee that this is not a policy issue for the Government. The policy issue is that we could do a number of the things that you are asking for if we had the legislative competence. It is the settlement itself that prevents us from going beyond what we have highlighted.

[49] **Peter Black:** As I understand it, under the Learner Travel (Wales) Measure 2008, there are issues with putting escorts on the buses and so on, which could accommodate some of the issues. That was a concern expressed last week.

[50] **The Deputy First Minister:** To reiterate what I said to Rhodri Glyn Thomas, if you go wider than what is included in the amendment to the exception, you get into the much wider area of the regulation and safety of public transport vehicles generally. Currently, the Department for Transport feels that the area should be limited to the competence that we have.

[51] **William Graham:** Can you confirm that the scope of the proposed Order, in

reference to the technical standards, will enable the Welsh Government to fulfil its policy objectives, specifically to improve the safety of learners on their journeys, bearing in mind that we are advised that this does not include those who walk or cycle?

9.20 a.m.

[52] **The Deputy First Minister:** Would you like to deal with that, Lynsey?

[53] **Ms Edwards:** The short answer is ‘yes’. With the proposed LCO, we will be able to describe the type of vehicle and, in that definition, we could describe a vehicle according to its age, its size and the equipment that it carries, such as seat belts or closed-circuit television. So, we would be able to cover all the policy areas that we are pursuing through this proposed LCO.

[54] **William Graham:** Referring back to the question that Peter Black raised, we heard that 50 per cent of pupils at local authority-funded schools travel on public service buses. As such, they would be outside the scope of the proposed Order. The Welsh Local Government Association has told us that that proportion can vary significantly in rural areas, and could be as high as 80 per cent. Do you agree with the estimated average proportion of 50 per cent of pupils at schools funded by local authorities travelling by public service bus? How many school pupils and students would be excluded from the scope of the proposed Order for that reason? In those terms, would that not weaken your proposed Order quite substantially?

[55] **The Deputy First Minister:** We have not seen the statistics on which that evidence is based, but I will ask Bethan to deal with the information that we have through the Living in Wales survey, which gives us an indication that the situation is not quite as you have indicated. We would need to see the statistics on which that evidence is based.

[56] **Ms Bateman:** We have different data sets and we have not seen the WLGA’s. Averages over Wales, which are what we are looking at, can mask the differences between particular regions, and so I say everything with that qualification. The 2005 Living in Wales survey had a sample of around 300,000 adults, and showed that, in 2005, the year for which we have the most recent data, 33 per cent of secondary school students travelled by school bus compared with 6 per cent of secondary school children who were travelling by service bus. If you were to extrapolate those findings and regard them as reliable—and in statistical terms they are not as robust as they might be because they are across two different data sets—they would equate to 75,000 secondary school students travelling by school bus and 13,500 travelling on service buses. If you did the same calculation for primary school students, you would see that 11 per cent travelled by school bus and 1 per cent travelled by other buses, which would equate to 22,000 pupils on school buses and 2,000 on other buses.

[57] I want to qualify those data, in a way, because they come from the Living in Wales survey. There is a possibility of underreporting the number of children travelling on service buses. When pupils are asked in a survey how they get to school, they might say by school bus, but you have to allow for the fact that it could be by service bus. Overall, there seems to be a different quantification between our figures and the WLGA’s, and I would be happy to take them away and look at them again. Before we go and make any Measures, a regulatory impact assessment would need to pull out these figures in far more depth than we have done already.

[58] **The Deputy First Minister:** There is one sad fact about these Living in Wales survey figures, which is that the vast majority of primary school children travel to school by car: four times as many as by school bus. This is another matter that we need to address, but it is not for this proposed LCO.

[59] **Peter Black:** I wish to ask a supplementary questions. If a local authority is using a contracted bus, does it not get any returns on the number of pupils using that bus? Would that not be a more accurate data set?

[60] **Ms Bateman:** Yes, it would, but the issue is that different local authorities might use different ways of measuring who travels on the bus. We need to get the 22 different data sets and have a close look at them.

[61] **The Deputy First Minister:** We are happy to pursue that, but we would do that as part of the regulatory impact assessment under a proposed Measure.

[62] **William Graham:** Deputy First Minister, are there concerns that, as an unintended consequence, the proposed Order could lead to Measures being passed that result in more learners using dedicated school transport and fewer using public bus services, which might have an impact on public transport provision, particularly in rural areas?

[63] **The Deputy First Minister:** I do not think so. The driver here is to make school transport safer and to encourage the greater use of public transport. We have a long way to go. Looking at the figures, we see that, according to the 2005 survey, 44 per cent of primary school students and 22 per cent of secondary school students travelled to school by car or van. That is almost half of primary school students, although not as many secondary school students. We have put a great deal of effort into encouraging the use of school buses as well as making buses safer. Overall, the impact of what we are doing will be to increase, rather than diminish, the use of buses.

[64] **Joyce Watson:** I have a quick supplementary question on the difference between the figures for primary and secondary schools. Is it not the case that there is a policy at local authority level not to provide free school transport to people living within 3 miles of the school? Primary schools tend to be more local than secondary schools, and so most pupil will live within that distance of the school. You talk about changing the means by which primary school children get to school and the aim of using more public transport, but how would you achieve that without legislating to force local education authorities to lower the distance within which students have to live if they are to claim free school transport? Then you are getting into a completely different ball game.

[65] **The Deputy First Minister:** That is outside the competence of the proposed Order, because it is about a policy direction that we want to pursue. It would not just be a matter for me, but for other Ministers as well. Generally speaking, it is not just about that, because there is a cost to travelling by car, is there not? That is inevitable. To be honest, I think that it has more to do with parents feeling safer taking their children in the car. That is at least part of the reason. The other aspect of this is that we need to make the school environment, and the areas around it, feel safer, and we can do that by introducing 20 mph speed limits, for example, and traffic-calming measures around schools. We all have to make a contribution to this, although it is outside the scope of what we are discussing today.

[66] **Joyce Watson:** Moving on, I want to ask about vehicles owned by education establishments, such as school minibuses. Can you confirm whether the proposed Order applies only to home-to-school transport, or does it also apply to transport on vehicles owned and operated by educational establishments, one example of which would be school minibuses? Are they included?

[67] **The Deputy First Minister:** Yes, they are included. We have to remember that the wording is:

[68] ‘regulation of the description of vehicle which may be used pursuant to learner

transport arrangements’,

[69] whatever those arrangements may be. It would also include transport during the day, provided it is for educational reasons.

[70] **Ms Edwards:** Yes, it covers all transport provided by educational establishments, including their own vehicles.

[71] **Joyce Watson:** Just for clarification—because this is an issue that people were quite exercised about—I heard what you said about the transport having to be used for educational purposes, but does that mean that if it were used for an after-school activity, such as sports matches, it would not be covered?

[72] **Ms Edwards:** It would be covered, because it is transport to and from places of learning. It would be covered whatever.

[73] **The Deputy First Minister:** The definition is wide enough to cover after-school activities and is not just limited to school hours—provided those activities are for educational purposes.

[74] **David Lloyd:** A oes unrhyw gwestiynau eraill gan Aelodau? A yw pawb yn hapus? Pawb heblaw am Peter. **David Lloyd:** Are there any other questions from Members? Is everyone happy? Everyone except Peter.

[75] **Peter Black:** I wanted to ask about an issue that came out of the legal note that was circulated earlier. The proposed Order does not consider the safety of learners who walk or cycle to their place of learning. I know that we were talking about modes of transport, but is there any scope for the proposed Order to include that?

9.30 a.m.

[76] **Ms Edwards:** It is restricted to the provision of motor vehicles, so there is no scope for walking or cycling.

[77] **The Deputy First Minister:** What we are trying to achieve is the creation of safer modes of transport. It would be difficult to conceive of circumstances in which a proposed Order like this could help—walking, for example. We could only tackle it as a more general point. However, I am conscious of the fact that we want to make every journey, whether by bus, car, walking or cycling, a safer one. I think that we have sufficient ability to look at those means of transport without having to include safety issues in this proposed Order in relation to walking and cycling. We already have powers to do that.

[78] **David Lloyd:** Dyna ddiwedd y sesiwn gwestiynau ffurfiol. Diolchaf i’r Dirprwy Brif Weinidog a’i swyddogion am eu cyfraniadau. A oes gennyh unrhyw sylwadau pellach i’w gwneud? A oes rhywbeth nad ydym wedi craffu arno yn ddigon trwyadl neu a oes rhywbeth arall yr hoffech ei bwysleisio? **David Lloyd:** That is the end of the formal questioning session. I thank the Deputy First Minister and his officials for their contributions. Do you have any further comments to make? Is there anything that we have not scrutinised in enough detail or is there anything that you would like to underline?

[79] **Y Dirprwy Brif Weinidog:** Yr wyf yn derbyn ac yn cydnabod y rhwystredigaeth sydd wedi’i hamlygu mewn rhai o’r cwestiynau o ran hyd a lled yr hyn yr ydym **The Deputy First Minister:** I accept and recognise the frustration that has become apparent in some of the questions as to the long and the short of what we are trying to

yn ceisio ei wneud. Yr unig beth yr hoffwn ei bwysleisio yw nad mater o bolisi'r Llywodraeth hon yw hynny, ond mater ynglŷn â'r setliad datganoli presennol a'r ffaith ein bod yn gorfod gweithredu o fewn hwnnw. Mae hynny'n mynd â ni at faterion ehangach na'r hyn y gallwn ei drafod yn y pwyllgor hwn.

[80] **Rhodri Glyn Thomas:** Ar sail yr hyn yr ydych newydd ei ddweud, oherwydd y cyfyngiadau arnoch o ran y Gorchymyn cymhwysedd deddfwriaethol arfaethedig hwn, wrth ei lunio, a wnaethoch ystyried sut y gellid ychwanegu ato a'i ymestyn yn y dyfodol er mwyn sicrhau nad oes dim o fewn y Gorchymyn arfaethedig a fydd yn gwneud pethau'n anos i chi? A fydd modd i'w ymestyn neu a fydd rhaid i chi greu Gorchymyn cymhwysedd deddfwriaethol arfaethedig newydd neu geisio pwerau pellach?

[81] **Y Dirprwy Brif Weinidog:** Mae dwy broblem yn codi: yn gyntaf, mae'n rhaid wrth gael y pwerau gweithredol, a'r gwir yw, yn y maes hwn, ychydig iawn sydd gennym, felly mae angen y pwerau gweithredol a'r pwerau deddfwriaethol. Mewn meysydd eraill, dim ond cymhwysedd o ran deddfwriaeth sydd ei angen, ond yn y maes hwn, mae angen pwerau gweithredol hefyd. Os edrychwch ar Atodlen 5 i Ddeddf Llywodraeth Cymru 2006, lle mae eithriadau, gwelwch fod nifer ohonynt yn y maes trafniadaeth.

[82] **David Lloyd:** Diolch unwaith eto i'r Dirprwy Brif Weinidog a'i swyddogion.

9.33 a.m.

Cynnig Trefniadol Procedural Motion

[83] **David Lloyd:** Cynigiaf fod

y pwyllgor yn penderfynu gwahardd y cyhoedd o weddill y cyfarfod yn unol â Rheol Sefydlog Rhif 10.37(vi).

[84] Gwelaf fod y pwyllgor yn gytún.

do. The only thing that I would like to emphasise is that that is not a matter of this Government's policy, but a matter relating to the current devolution settlement and the fact that we have to act within that. That throws up issues that go beyond what we can discuss in this committee today.

Rhodri Glyn Thomas: On the basis of what you have just said, because of the restrictions placed on you in relation to this proposed legislative competence Order, when you were drawing it up, did you think about how you could add to it and extend it in future so that you could ensure that there is nothing in this proposed Order that will make things more difficult for you? Is there a way of expanding it or will you have to draw up a new proposed legislative competence Order or seek further powers?

The Deputy First Minister: Two problems arise: first, you must have the executive powers, and the truth is that, in this area, we have few such powers, so we need the executive powers and the legislative powers. In other areas, only legislative competence is required, but in this area, we also need executive powers. If you look at Schedule 5 to the Government of Wales Act 2006, where there are exceptions, you will see that many of them are in the transport field.

David Lloyd: Thank you again to the Deputy First Minister and his officials.

David Lloyd: I move that

the committee resolves to exclude the public from the remainder of the meeting in accordance with Standing Order No. 10.37(vi).

I see that the committee is in agreement.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 9.33 a.m.
The public part of the meeting ended at 9.33 a.m.*