



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

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

**Dydd Iau, 10 Rhagfyr 2009
Thursday, 10 December 2009**

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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
Christine Chapman	Llafur Labour
Jeff Cuthbert	Llafur Labour
Chris Franks	Plaid Cymru The Party of Wales
David Lloyd	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)

Eraill yn bresennol
Others present

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 Solicitor, 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
Gwyn Griffiths	Cynghorydd Cyfreithiol Legal Adviser
Ruth Hatton	Dirprwy Glerc Deputy Clerk
Siân Thomas	Gwasanaeth Ymchwil yr Aelodau Members' Research Service
Graham Winter	Gwasanaeth Ymchwil yr Aelodau Members' Research Service

Dechreuodd y cyfarfod am 9.13 a.m.
The meeting began at 9.13 a.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

[1] **David Lloyd:** Croeso i gyfarfod **David Lloyd:** Welcome to the meeting of Pwyllgor Deddfwriaeth Rhif 3 yng Legislation Committee No. 3 at the National Nghynulliad Cenedlaethol Cymru. Diben Assembly for Wales. The purpose of this

cyfarfod y bore yma yw ymdrin â Gorchymyn Arfaethedig Cynulliad Cenedlaethol Cymru (Cymhwysedd Deddfwriaethol) (Trafnidiaeth) 2010, sy'n Orchymyn newydd i ni fel pwyllgor. Dyma'r cyfarfod cyntaf i'w drafod.

morning's meeting is to consider the Proposed National Assembly for Wales (Legislative Competence) (Transport) Order 2010, which is a new Order for us as a committee. This is the first meeting to consider it.

[2] Yr ydym wedi derbyn ymddiheuriadau gan William Graham, Janice Gregory a Helen Mary Jones. Mae Jeff Cuthbert a Chris Franks yn dirprwyo, felly croeso i chi'ch dau i Bwyllgor Deddfwriaeth Rhif 3. Os bydd larwm tân yn canu, dylai Aelodau adael yr ystafell drwy'r allanfeydd tân penodol, a dilyn cyfarwyddiadau'r tywyswyr. Nid ydym yn disgwyl prawf y bore yma.

We have received apologies from William Graham, Janice Gregory and Helen Mary Jones. Jeff Cuthbert and Chris Franks are present as substitutes, therefore welcome to you both to Legislation Committee Number 3. If there is a fire alarm, I ask that Members leave the room via the designated fire exits, and follow the instructions of the ushers. We are not expecting a fire drill this morning.

[3] Dylai pawb ddiffodd eu ffonau symudol, eu 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 i'r perwyl hwn, er mwyn clywed y cyfieithiad ar y pryd. Gellir hefyd addasu lefel y sain ar y clustffonau ar gyfer pobl sy'n drwm eu clyw. Mae'r cyfieithiad ar y pryd ar gael ar sianel 1 a darllediad gair am air ar sianel 0.

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[4] Bydd y Gweinidog sydd â gofal am y Gorchymyn arfaethedig, sef Ieuan Wyn Jones, yn ymuno â ni am 9.30 a.m. O ran ymdrin â'r eitem nesaf, mae rhai camau i'w nodi ac mae rhai camau yr ydym wedi eu trafod yn y cyfarfod anffurfiol gydag Aelodau cyn i'r cyfarfod ffurfiol ddechrau.

The Minister in charge of the proposed Order, Ieuan Wyn Jones, will join us at 9.30 a.m. In terms of dealing with the next item, there are some steps to note and some actions that we have already discussed in the informal meeting with Members before the formal meeting began.

9.16 a.m.

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

[5] **David Lloyd:** Diben yr eitem hon yw cytuno ar gwmpas a dull y pwyllgor o graffu ar Orchymyn arfaethedig Cynulliad Cenedlaethol Cymru (Cymhwysedd Deddfwriaethol) (Trafnidiaeth) 2010 ynghylch trafndiaeth dysgwyr a theithio'n rhatach. Mae'r ddwy elfen hynny yn gynwysedig yn y Gorchymyn arfaethedig.

David Lloyd: The purposes of this item is to agree the committee's remit and approach to the scrutiny of the proposed National Assembly for Wales (Legislative Competence) (Transport) Order 2010 regarding learner transport and concessionary travel. Both of those elements are contained in the proposed Order.

[6] Nod y Gorchymyn arfaethedig a

The intention of the proposed Order

gyflwynwyd gerbron y Cynulliad gan y Dirprwy Brif Weinidog a'r Gweinidog dros yr Economi a Thrafnidiaeth ar 7 Rhagfyr 2009 yw ceisio rhagor o gymhwysedd deddfwriaethol i'r Cynulliad ym maes trafndiaeth. Rôl y pwyllgor yw ystyried y Gorchymyn arfaethedig a chyflwyno adroddiad arno. Rhaid i'r pwyllgor gwblhau ei waith a chyflwyno adroddiad gerbron y Cynulliad erbyn 29 Ionawr 2010, yn unol â'r dyddiadau a nodwyd gan y Pwyllgor Busnes.

presented before the Assembly by the Deputy First Minister and Minister for the Economy and Transport on 7 December 2009 is to seek further legislative competence for the Assembly in the field of transport. The committee's role is to consider the proposed Order and present a report on it. The committee must conclude its work and lay a report before the Assembly by 29 January 2010, in line with the deadline set by the Business Committee.

[7] Fel yr wyf wedi crybwyll eisoes, yr ydym wedi cael rhywfaint o drafodaeth anffurfiol ynghylch dull y pwyllgor o graffu ar y Gorchymyn arfaethedig. Penderfynwyd mai cwmpas gwaith craffu'r pwyllgor fydd ystyried egwyddorion cyffredinol y Gorchymyn arfaethedig a pha un a ddylid rhoi cymhwysedd deddfwriaethol i'r Cynulliad yn y maes a nodir ym mater 10.2. Yn ail, gofynnir i'r pwyllgor ystyried telerau'r Gorchymyn arfaethedig, yn benodol, pa un a ydynt wedi eu diffinio'n rhy eang neu'n rhy gul. A yw Aelodau yn fodlon ar gwmpas gwaith craffu'r pwyllgor fel yr amlinellwyd? Gwelaf eich bod yn cytuno'n unfrydol. Diolch yn fawr.

As I have already mentioned, we have already held brief informal discussions regarding the committee's approach to the scrutiny of the proposed Order. It was decided that the committee's remit will be to consider the proposed Order's general principles and whether or not the Assembly should have legislative competence in the field noted in matter 10.2. Secondly, the committee is asked to consider the terms of the proposed Order, and in particular whether or not they are too broadly or too narrowly defined. Are Members content with the scope of the committee's scrutiny as outlined? I see that everyone agrees unanimously. Thank you.

[8] Er mwyn helpu i lywio gwaith y pwyllgor, awgrymwyd y dylid cyhoeddi galwad gyffredinol am dystiolaeth ynghyd â gwahoddiad i randdeiliaid allweddol ym maes trafndiaeth dysgwyr a theithio'n rhatach, ac y dylai'r pwyllgor gael tystiolaeth ar lafar gan yr Aelod sy'n gyfrifol am y Gorchymyn arfaethedig yn ystod y cyfarfod hwn, a chael tystiolaeth lafar bellach yn ystod tymor y gwanwyn. A yw Aelodau yn fodlon ar y dull hwn o weithredu? Gwelaf eich bod. Diolch yn fawr. Felly, byddwn yn cyhoeddi'r alwad am dystiolaeth a'r llythyr ymgynghori erbyn diwedd yr wythnos hon, sef dydd Gwener, 11 Rhagfyr 2009.

In order to help inform the committee's work, it was suggested that a general call for evidence should be issued as well as an invitation to key stakeholders in the area of learner transport and concessionary travel, and that the committee should receive oral evidence from the Member in charge of the proposed Order during this meeting, and take further oral evidence during the spring term. Are Members content with this approach? I see that you are. Thank you. So, we will issue the call for evidence and the consultation letter by the end of this week, which is Friday, 11 December 2009.

[9] Gan ein bod wedi dod at ddiwedd yr eitem hon, ac am ein bod ni i gyd mor hapus â'r trefniadau o safbwynt y ffordd ymlaen, yr eitem nesaf fydd cymryd tystiolaeth ar lafar yn uniongyrchol gan y Gweinidog.

As we have come to the end of this item, and as we are all so content with the arrangements as regards the way forward, the next item will be to take direct oral evidence from the Minister.

Cynnig Trefniadol Procedural Motion

[10] **David Lloyd:** Gan nad ydym wedi cyrraedd yn awr benodol ar gyfer yr eitem nesaf, sef 9.30 a.m., nid yw'r Gweinidog yn bresennol eto. **David Lloyd:** As we have not reached the appointed hour for the next item, namely 9.30 a.m., the Minister is not yet in attendance.

[11] Felly, cynigiaf fod Therefore, I move that

y pwyllgor, yn unol â Rheol Sefydlog Rhif 10.25, yn cytuno i ohirio'r cyfarfod am 10 munud. *the committee, in accordance with Standing Order No. 10.25, agrees to adjourn the meeting for 10 minutes.*

[12] A yw Aelodau'n cytuno? Gwelaf eu bod. Are Members content? I see that they are.

*Derbyniwyd y cynnig
Motion agreed.*

*Gohiriwyd y cyfarfod rhwng 9.20 a.m. a 9.28 a.m.
The meeting adjourned between 9.20 a.m. and 9.28 a.m.*

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

[13] **David Lloyd:** Croesawaf bawb yn ôl i gyfarfod diweddaraf Pwyllgor Deddfwriaeth Rhif 3. Cyn yr egwyl, cafwyd trafodaeth gychwynnol ynglŷn â Gorchymyn Arfaethedig Cynulliad Cenedlaethol Cymru (Cymhwysedd Deddfwriaethol) (Trafnidiaeth) 2010. Erbyn hyn yr ydym wedi cyrraedd eitem 3 ar yr agenda. Diben yr eitem hon yw clywed tystiolaeth lafar mewn perthynas â'r Gorchymyn arfaethedig ynghylch trafnidiaeth dysgwyr a theithio rhatach gan y Dirprwy Brif Weinidog a'r Gweinidog dros yr Economi a Thrafnidiaeth, Ieuan Wyn Jones. Croesawaf Ieuan yn wresog i'r cyfarfod, ynghyd â'i swyddogion o Adran yr Economi a Thrafnidiaeth, sef Bethan Bateman, sy'n uwch-ddadansoddwr polisi trafnidiaeth, a Lynsey Edwards, sy'n gyfreithiwr. **David Lloyd:** I welcome everyone back to this meeting of Legislation Committee No. 3. Before the break, we had an initial discussion on the the Proposed National Assembly for Wales (Legislative Competence) (Transport) Order 2010. We have now reached item 3 on the agenda. The purpose of this item is to take evidence from the Deputy First Minister and Minister for the Economy and Transport, Ieuan Wyn Jones, on the proposed Order in relation to learner transport and concessionary travel. I warmly welcome Ieuan to the meeting, along with his officials from the Department for the Economy and Transport, namely Bethan Bateman, who is a senior analyst of transport policy, and Lynsey Edwards, who is a solicitor.

[14] Yn ôl yr arfer, paratowyd cyfres o gwestiynau, ac mae nifer helaeth ohonynt. Gobeithiaf y bydd fy nghyd-Aelodau yn weddol gryno wrth ofyn y cwestiynau, ac er mwyn inni allu gorffen y cyfarfod mewn da bryd, gofynnaf hefyd i'r atebion fod yn As usual, we have prepared a series of questions, of which there is an extensive number. I hope that my fellow Members' questions will be brief, and, so that we can end the meeting on time, I also ask that the answers are relatively brief, so that we are

weddol gryno, rhag inni fod yma drwy'r dydd. Gofynnaf fi y cwestiwn cyntaf. Weinidog, a allwch chi esbonio i'r pwyllgor beth yn union yw'r rhesymau dros geisio cymhwysedd deddfwriaethol ynghylch trafniadaeth i ddysgwyr a theithio rhatach?

9.30 a.m.

[15] **Y Dirprwy Brif Weinidog a'r Gweinidog dros yr Economi a Thrafnidiaeth (Ieuan Wyn Jones):** Yr wyf yn falch o gael y cyfle i ddod yma i ateb cwestiynau ar y maes hwn. Pan ymddangosais gerbron y Pwyllgor Menter a Dysgu i drafod y Mesur Arfaethedig ynghylch Teithio gan Ddysgwyr (Cymru), gofynnwyd nifer o gwestiynau imi ynglŷn ag a oedd modd cynnwys materion megis diogelwch plant ar fysiau, fel gwregysau diogelwch, teledu cylch cyfyng ac ati. Dywedais nad oedd y Mesur arfaethedig ar y pryd yn caniatáu inni wneud hynny gan ein bod wedi cael y pwerau fframwaith o dan Fesur San Steffan. Dywedais hefyd wrth y pwyllgor y byddwn yn fodlon ystyried gofyn am bwerau ychwanegol gan yr Adran Drafniadaeth, a fyddai'n caniatáu inni wneud hynny. Felly, dyna pam yr wyf wedi ceisio cymhwysedd o safbwynt diogelwch.

[16] Yr ail agwedd oedd teithio rhad i bensynwyr a phobl anabl. Gwelsom gynnydd sylweddol, yn ôl y disgwyl, yn y gyllideb ar gyfer hynny. Credaf mai £55 miliwn yw'r swm eleni ac mae'n debygol o gynyddu eto. Yr oeddem am weld a allem gael rheolaeth well dros yr arian, tra'n cynnal yr hawliau presennol. Er mwyn gwneud hynny, yr oedd angen inni gael pwerau ychwanegol. Gan ein bod yn datblygu polisi mewn dau faes yn y maes trafniadaeth, yr oedd yn gwneud synnwyr i ddod â'r ddau at ei gilydd yn yr hyn sydd ger eich bron heddiw.

[17] **David Lloyd:** Yn dilyn hynny, a allwch amlinellu sut y bydd y Gorchymyn cymhwysedd deddfwriaethol arfaethedig hwn yn eich galluogi i gyflawni'r blaenoriaethau polisi, fel y'u gwelir yn y memorandwm esboniadol?

[18] **Y Dirprwy Brif Weinidog:** Yn yr un cyntaf, o safbwynt diogelwch, byddai'r

not here all day. I will ask the first question. Minister, could you explain to the committee the reasons for seeking legislative competence in respect of learner transport and concessionary travel?

The Deputy First Minister and Minister for the Economy and Transport (Ieuan Wyn Jones): I am pleased to have the opportunity to appear before you to answer questions on this particular issue. 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.

The second aspect was concessionary travel for senior citizens and disabled people. We saw a significant increase, as expected, 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. As we are developing policies in two areas related to transport, it made sense to bring both together in the legislative competence that you have before you today.

David Lloyd: Following on from that, can you outline how this proposed legislative competence Order will enable you to achieve the policy objectives set out in the explanatory memorandum?

The Deputy First Minister: In the first area, in terms of safety, these additional powers

pwerau ychwanegol hyn yn caniatáu inni nodi'r glir y math o fesurau diogelwch fyddai eu hangen ar fysiau. Er enghraifft, gallem sicrhau mai bysiau un llawr yn unig, yn hytrach na bysiau deulawr, fyddai'n cael eu defnyddio ar gyfer cludo plant i'r ysgol, a bod teledu cylch cyfyng, gwregysau diogelwch ac ati ar gael. Ar hyn o bryd, nid oes gennym y pwerau i wneud hynny.

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. We currently do not have the powers to do that.

[19] Byddai'r ail faes yn caniatáu inni gael trafodaethau uniongyrchol â darparwyr gwasanaethau bysiau ar gcontract i awdurdodau lleol ac ysgolion. Ar hyn o bryd, yr ydym yn cynnal trafodaethau rhyngom ni ac awdurdodau lleol a'r bobl sy'n gweithredu'r gwasanaethau. Bydd hyn yn caniatáu, yn y lle cyntaf, inni gael trafodaethau uniongyrchol. Yn ogystal, byddai'n golygu y gallem gael system apêl. Y broblem gyda'r system bresennol yw, pe byddem yn cael trafodaethau uniongyrchol gyda darparwyr y gwasanaethau, a bod y rheini'n dadlau yn erbyn y setliad, nid oes system apêl ar ein cyfer ni yn unig; felly mae'r system yno mewn cyfraith, ond bydd angen cael system apêl annibynnol. Felly, yn y Mesur, gallem sicrhau bod y trafodaethau yn uniongyrchol a bod system apêl sy'n caniatáu i'r rhai sy'n anhapus fynd at gorff annibynnol.

The second area would allow us to have direct discussions with the bus operators contracted by local authorities and schools. At present, we are in discussions with local authorities and the bus operators. 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 the 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. So, in the Measure, we could ensure that the discussions could be held directly and that there is an appeals system to enable those who are not content to approach an independent body.

[20] **Peter Black:** I wish to follow up on something that the Deputy First Minister has just said, Chair. You say that, effectively, where you have a contractual arrangement between the local authority and the transport provider to deliver school transport, Measures that follow from this proposed legislative competence Order will enable you to effectively bypass that contract and go directly to the transport provider and ask it to do things that it is not contracted to do? Is that correct?

[21] **The Deputy First Minister:** No. We fund the scheme, but under current legislation we are obliged to reimburse local authorities in full.

[22] **Peter Black:** I am confusing school transport with concessionary fares.

[23] **The Deputy First Minister:** Sorry; on concessionary fares—

[24] **Peter Black:** We are talking about school transport now. When you said that were you referring to school transport or concessionary fares?

[25] **The Deputy First Minister:** No. I was talking about concessionary fares.

[26] **Peter Black:** That is the confusion for me with this proposed LCO. Sorry, the misunderstanding is mine.

[27] The question that I have is this: why have you proposed a single LCO to provide

competence in two distinct areas?

[28] **The Deputy First Minister:** The reason for that is that we have policy developments going on in two distinct areas in transport. One is in relation to the assurances that I gave to the Enterprise and Learning Committee, in that I agreed that the learner travel Measure that I was bringing forward did not go far enough in relation to safety on buses. I made it clear that that was happening.

[29] At the same time, we were conducting internal discussions about policy development in relation to concessionary fares. We want to maintain existing entitlement, but we need to control the budget, which is currently £55 million, as I have indicated. In order to do that, 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 that budget by having direct discussions with operators because, currently, we have to reimburse local authority for the full cost. So, given that those two policy developments were happening in parallel, when it came then to seeking legislative competence, it made sense to join them. So, although both are in the transport field, they are two distinct areas.

[30] **Peter Black:** Did you consider seeking a much wider LCO to take account of other transport areas at the same time?

[31] **The Deputy First Minister:** No, we did not because I particularly wanted to ensure that I could meet the committee's request with regard to bus safety, and I could also deal with the issue of controlling the budget for concessionary fares while so doing. Actually, the competence will go wider than that, but one would hope that the Measures that flow from it will tackle those two issues.

[32] **Peter Black:** Okay. Paragraph 15 of the explanatory memorandum states that

[33] 'revised guidelines may be issued under Section 145B(6) of the Transport Act 2005'.

[34] What evidence is there to support the need for legislation rather than further guidance and policies?

[35] **The Deputy First Minister:** As I have indicated, local authorities currently administer the scheme. We issue guidance to local authorities concerning the operation of the scheme, and these cover matters such as eligibility, appeals, and reimbursement arrangements. However, the current reimbursement arrangements via local authorities fail to build in sufficient incentives to control costs, as I have indicated, because local authorities are reimbursed by the Assembly Government for the full costs incurred. We cannot rectify that by guidance; we need legislative competence to do that.

[36] **Peter Black:** I think that you have dealt with my next question already.

[37] **Jeff Cuthbert:** Thank you, Minister, for what you have said so far. This question, too, is about control and why you are moving towards this competence. The explanatory memorandum states that the competence over concessionary travel would enable the Assembly to legislate to

[38] 'exercise more rigorous control over the scheme'.

[39] Can you explain what you mean by this? In order to save time, perhaps you could add to that why you think further legislation is necessary, given that the existing legislative framework allows you to issue regulations for reimbursement arrangements and the power to

increase or decrease entitlement to concessionary travel.

[40] **The Deputy First Minister:** On your first point, the first policy decision that we came to as a Government was that, despite the fact that this was now a large budget in my department, we wanted to devise a scheme that would allow entitlement to continue unchanged. So, we did not want to change people's entitlement to the card, or impose limits on travel, which would be one way of controlling the budget. Our policy decision was not to do that. We therefore had to find other ways of ensuring that the budget that we allocate does not go beyond what is affordable. To do that, we decided that legislative competence would allow us to control the budget at a reasonable level. Clearly, if more people are entitled to the card—as I am sure will be the case as time goes on—there will be a requirement for an increase in the budget, but we wanted to ensure, as far as possible, that we could keep it more or less at the current figure.

9.40 a.m.

[41] We are talking about a policy area that has considerable public and cross-party support; I cannot think of any party in the Assembly that would want us to change the level of entitlement or the extent of travel that we currently have, although I understand that some want reciprocal arrangements for travel to other parts of the UK. We are not able to do that at the moment because of the budgetary implications. We decided that we would tackle this from the budgetary point of view, and try to control the budget, and in order to do that, we needed this legislative framework.

[42] On the issue of whether we currently have powers to issue regulations for reimbursement arrangements, we have to make it clear that this proposed LCO, like all LCOs, is about the National Assembly acquiring powers to legislate in these areas rather than relying on executive powers within Acts of Parliament. Having legislative competence in a specific area allows you to create a made-in-Wales Measure rather than bolting something on to existing Acts of Parliament in a piecemeal fashion. That is much better from a legal point of view, and so, to confirm, the Assembly Government's aim is to safeguard the long-term viability of concessionary fares, maintaining the existing entitlement and eligibility levels. Therefore the powers of variation that we currently have are not, in my view, sufficient.

[43] **Jeff Cuthbert:** Before I move on to my next formal question I have a supplementary on concessionary travel. I agree about the popularity and value of the scheme, but is there evidence that the current arrangements are insufficient?

[44] **The Deputy First Minister:** If you look at the development of the budget over the last three or four years, you will find that we budgeted for a particular allocation on concessionary fares at the beginning of the year, and then found at the end of the year that take-up was considerably higher. I do not think that there was a single year that we hit the budget target that we had set—we always had to secure additional money from elsewhere, either from reserves or from other parts of the department. We all accept that this is a successful scheme, and therefore we decided that we could not allow this overspend to happen every year because there comes a point where money cannot be found from anywhere else. So, we had to control the budget. We have been able, through discussions with the local authorities and bus operators, to change the arrangements for the reimbursement formula. However, we could see that in the long term, to deliver a robust budgetary control system, we would need to negotiate directly with the bus operators. We pay the money, but local authorities distribute it, and they are currently obliged to reimburse operators in full. It is much better to deal directly with the bus operators, and then if they are unhappy with what they get, they can appeal to an independent adjudicator. It is a lot clearer and simpler, and then the person who is in control of the budget has a direct role in negotiations.

[45] **Jeff Cuthbert:** I will move on to a question about conflicts of interest around concessionary travel. The explanatory memorandum states that there is a potential conflict of interest because Welsh Ministers will directly negotiate reimbursement with local bus operators, but any appeal by the operators would be determined by the Welsh Ministers themselves. How does that work at the moment? Why do you feel that the current arrangements could lead to a conflict of interest? Has that occurred?

[46] **The Deputy First Minister:** The legal situation is that, if we were to negotiate directly with the bus operator, and they were unhappy with the terms, then the appeal mechanism as it stands would involve an appeal to us. In law, that is not a sensible arrangement; you do not have a system of appeal to the person that has already rejected your proposals. So, what we would envisage is that, under the proposed Measure—and it is a matter for the proposed Measure—where we had direct negotiations with bus operators, we could include provisions for an independent adjudication system. We have not finally come to a judgment on what that would be, but we would need to set something up that is independent. Then, of course, the bus operators would feel that there was more justice in it if they could appeal to someone who is independent.

[47] **Jeff Cuthbert:** That could be a panel of suitable people who are quite separate.

[48] **The Deputy First Minister:** Absolutely.

[49] **Jeff Cuthbert:** My final question at this stage is on new technologies such as smart cards. Why do you feel that extra competence is required in order to introduce better technology?

[50] **The Deputy First Minister:** There may have been a difficulty here. I made it clear in answer to David Melding when we discussed my statement in Plenary that I believed that we would be able to introduce better technology to control the budget through the use of smart cards. I also went on to say that my officials had advised me that it was necessary to obtain legislative competence in order to do that. The truth is that it is not necessary. When this matter was in its policy development stage, there were areas where officials thought that it might be necessary to have legislative competence. This could be quite complicated. Although we wanted to simplify matters for travellers, so that, if we wanted, we could have a smart card for bus and rail travel so that we could have a fully integrated service, there was some initial thought that legislative competence might be required, because you cannot force bus or train operators to accept a card. However, we now understand that that is not necessary and that we can introduce smart cards that enable you to do that, so we do not actually need legislative competence. So, although it was true at the early policy development stage, the current position, in terms of what we plan to do, is that we would not need it. So, I am pleased to have the opportunity to clarify that to the committee.

[51] **Jeff Cuthbert:** Thank you for that clarification.

[52] **Christine Chapman:** I want clarification on some of the definitions used. What is the definition of bus services in the proposed Order? Does it include coach services such as the TrawsCambria long-distance coach network?

[53] **The Deputy First Minister:** No, it would not include TrawsCambria. In relation to bus services, I think that it would only apply—I will check to make sure that I have understood this correctly—to local services and to contracted local services. Perhaps Lynsey needs to clarify that.

[54] **Ms Edwards:** I think that there is a bit of confusion about this. 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. However, the concessionary travel scheme at the moment only applies to local bus services, so it would not apply to TrawsCambria.

[55] **Christine Chapman:** Can you confirm which rail services are covered by the definition of Welsh services in the proposed Order?

[56] **The Deputy First Minister:** Arriva Trains Wales has Wales-only services, services that come in and out of Wales, like the north-south services, and a limited number of services that are England-only. The proposed Order will cover the first two, but not the third. In other words, it will cover services that are Wales-only and those that come in and out, but not services that start and end in England. I think that, as we understand it, there are only three England-only services, so it does not cover those.

[57] **Christine Chapman:** You have touched on this already, but we have talked about reciprocal arrangements. What impact, if any, does the proposed Order have on the likelihood of harmonisation of the different national concessionary bus pass schemes across the UK, as provided for in the Concessionary Bus Travel Act 2007?

9.50 a.m.

[58] **The Deputy First Minister:** This proposed Order will have no implications for the harmonisation of different national concessionary travel schemes. Our current legislative powers would allow that to happen. It is not the lack of legislative competence that prevents it from happening, it is budgetary considerations. The other factor—I had a look at this and found that it is quite complicated—is that you do not have the same entitlement or eligibility in other parts of the UK either, and in order to have a harmonised system, people would need to know whether or not they could use it within and outside Wales. You cannot use it in some parts of England, for example before 9.30 a.m.. So, there are different levels of eligibility and entitlement, and, to harmonise the system, you need to try to make people understand what they are entitled to, which is difficult. There are also quite substantial budgetary considerations. So, as things currently stand, because of those two issues, we are not minded to introduce a harmonised system across the UK.

[59] **Peter Black:** When you were defining the rail services that would be affected, you said that services going in and out of Wales, but not services that start and end in England, would be affected. Presumably, it would not apply to the First Great Western Swansea to London service, and—I am not too familiar with north Wales services—the north Wales services to Chester and to Crewe.

[60] **The Deputy First Minister:** It only applies to Arriva franchise services; perhaps I should have clarified that.

[61] **Peter Black:** I just want clarification on this.

[62] **The Deputy First Minister:** It only applies to Arriva services that begin and end in England. It would not even 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.

[63] **Chris Franks:** I will refer to paragraph 16 of the explanatory memorandum. To what extent could the proposed Order be used to alter the current executive powers of the Welsh Ministers to increase or decrease the levels of entitlement to concessionary fares? Secondly, why does the explanatory memorandum list possible options for restricting entitlement, given your commitment to maintaining existing entitlement levels?

[64] **The Deputy First Minister:** To answer your first question, Welsh Ministers currently have considerable powers of variation within the current legislation, which is the Transport Act 2000, and this is outlined in paragraph 16 of the explanatory memorandum. Our wish is to safeguard the scheme and not to amend or reduce entitlement; however, we need to make it clear that we have the powers if we wanted to do that. Any Measure made by the National Assembly could grant the Welsh Ministers additional executive functions in this area.

[65] The explanatory memorandum outlines fully the current legal position, including the existing executive functions of Welsh Ministers under the Transport Act 2000. While, potentially, the Act does provide methods of amending entitlement, it is not our policy to do so. So, although we have the competence to do so, we have no intention of using the policy in that particular direction. It is only really listed for information—in other words, to make it clear what powers we have. It does not prevent a future Government, at some point, considering it, because it will have the powers, but this Government has made it clear that it has no intention of changing entitlement.

[66] **Jeff Cuthbert:** I will ask both of my questions together, if I may. My first question is about terminology, because this proposed Order refers to ‘learner transport arrangements’, while the Government of Wales Act 2006 and the Learner Travel (Wales) Measure 2008 refer to ‘learner travel’. Why has different terminology been used in this proposed Order? Secondly, how much has the implementation of the Learner Travel (Wales) Measure 2008 to date informed the scope of this proposed Order?

[67] **The Deputy First Minister:** On the terminology, whereas matter 5.10 in Schedule 5 to the Government of Wales Act 2006 and the Learner Travel (Wales) Measure 2008 are concerned with the provision of transport for learners, the proposed transport LCO is concerned with the type of vehicle that is used and its description and specification. We felt that ‘transport’ would be a better description than ‘travel’ when referring to vehicles. So, that is the rationale for that.

[68] In relation to the scope of the proposed Order and how that is influenced by the learner travel Measure, the proposed Order is being introduced as a result of the shortcomings in the Assembly’s competence that the committee identified in the Measure, particularly the lack of competence relating to safety standards. I listened carefully to that. I said to my officials, ‘This is what we were able to do under the learner travel Measure; the committee considered that we should go further, so how do I make sure that I can meet the committee’s concerns, with which I agreed?’ Their view was that we had to do it by way of this proposed legislative competence Order.

[69] **Peter Black:** The explanatory memorandum states that the current legislative competence excludes

[70] ‘the use, construction and equipment of vehicles used for learner transport’.

[71] Are you content that 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?

[72] **The Deputy First Minister:** Yes. 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. I was keen to make sure that the proposed LCO enabled me to deliver on the promise that I gave to the committee. 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 areas 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 were 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 buses. The wider phraseology goes into areas that would be covered by European legislation. So, I was content with those words.

[73] **Peter Black:** The proposed Order states specifically that the technical standards for the construction of vehicles will remain non-devolved.

[74] **The Deputy First Minister:** That is right. Those are in European regulations.

[75] **Peter Black:** When you specify that a vehicle should have seat belts, are you able to specify the type of seat belt, whether it is suitable for a child or an adult, and so on, which is quite crucial in this regard?

[76] **The Deputy First Minister:** We would not be entitled to specify the type of seat belt, but I am not sure about the question of suitability for children or adults. I think that we probably would, but I need to check.

[77] **Peter Black:** That is quite important.

[78] **Ms Edwards:** UK-wide legislation is currently in place that specifies which seat belts are required for children under the age of 14, children above the age of 14, and adults. We did not consider that to be appropriate for the proposed LCO. Elaborating on the Deputy First Minister’s point on EU legislation, there is a restriction in the Government of Wales Act 2006 that prevents us from making Measures that would go outside the scope of EU legislation. We were limited in that area as well.

[79] **Peter Black:** So, as there is existing UK legislation that makes that distinction between those over, and those under, 14 years of age, could you refer in the Measure to a particular type and specify that seat belts for learner travel buses would be for under 14s?

10.00 am.

[80] **Ms Edwards:** Yes. As long as we do not refer to the technical standards relating to the equipment, that would be okay.

[81] **Peter Black:** So, you can do that. That is quite important.

[82] **David Lloyd:** Mae gan Jeff Cuthbert **David Lloyd:** Jeff Cuthbert has a gwestiwn atodol ar y pwynt hwn. supplementary question on this point.

[83] **Jeff Cuthbert:** You may have answered it there. Can we safely assume that if we specify ‘seat belts’—just put as crudely as that—existing law would demand the specification that would apply?

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

[85] **Jeff Cuthbert:** So, in a sense, we do not need any further powers in that area.

[86] **The Deputy First Minister:** No, that is right. We accept that that is an important point, so if it is necessary for us to come back to clarify that, we will do so. I think that it is clear, but we will come back if you would like further clarification.

[87] **Peter Black:** The clarification that you have given us is enough at this stage. As the law specifies different types of seat belts, you can refer to those as part of the regulations.

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

[89] **Chris Franks:** The proposed Order specifies that ‘learner transport arrangements’ means arrangements of the kind described in matter 5.10 and goes on to specify

[90] ‘which consist of the provision of motor vehicles’.

[91] Will you clarify the modes of transport that the proposed LCO seeks powers to regulate? What would be the position of non-school contract services where the travel is paid for by the local education authority? Can you explain why the competence over learner travel by rail has been excluded?

[92] **The Deputy First Minister:** 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. That is the first point. I will come to explain that in a second. So, the power to regulate learner transport is limited to public authorities, institutions and other bodies concerned with the provision of education and training.

[93] To go back to the question, it is about motor vehicles. By and large, that would be buses, but it would also cover private hire vehicles and taxis, because they would be contracted. Your question also goes a little wider than that. For example, for non-school contracted services where travel is paid for by the LEA, if it is on a public service—in other words, a normal bus service—I do not think that it would apply, even though the LEA has paid. However, I think that I should check with Lynsey on that one.

[94] **Ms Edwards:** 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 LCO. 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.

[95] **Peter Black:** I have a few supplementary questions. To follow up that point, if a local authority issued a termly or a yearly bus pass to a child to travel to school using a normal service bus as opposed to a contracted bus, would it apply in that case?

[96] **Ms Edwards:** No.

[97] **Peter Black:** So, in effect, this applies only to buses that have been contracted by the local authority specifically for learner travel.

[98] **Ms Edwards:** Yes, for the use of learners.

[99] **Peter Black:** Okay. My second supplementary follows from that. When the Education and Lifelong Learning Committee reported in the second Assembly on school transport, it specifically suggested that it would be possible, by use of the contracts that local authorities have with the bus companies, if they were of a sufficient length, to make provision in relation to safety as part of that. So, through the use of their contracts, local authorities can make provision for the safety measures that you want to put in place. Given that this can be done through contracts, why is legislation necessary and how will legislation interact with the existing contracts that local authorities have with the bus companies on these services?

[100] **The Deputy First Minister:** It can be done by contract, but there is no requirement on them to include the provision in the contract. So, if a local authority in a particular area decided, for whatever reason, not to include those provisions in the contract—and I think that we have issued guidance, actually.

[101] **Peter Black:** You have issued non-statutory guidance.

[102] **The Deputy First Minister:** We have issued non-statutory guidance to local authorities to say that it is the Government's view that they should only use buses that comply with these safety standards. Of course, they do not have to do that. So, if a parent or guardian wished to ask, 'What about the Government guidance?', the local authority would say, 'That's not statutory guidance'. The other thing that is important, from our point of view, is that what is quite difficult for parents to understand is the variability in provision across Wales. I think that it is important to have standard provision, so that everybody understands what the standards are, whether you are travelling to school in Holyhead or in Chepstow. On the other point that you made, in relation to non-contracted services, we would not be able to get competence in that area under this proposed LCO. However, of course, the fall-back or the default position is the contract, under those circumstances.

[103] **Peter Black:** The issue about non-contract services is quite important because, of course, the tragic death in the Vale of Glamorgan was on a non-contract service. Essentially, we have not been able to do much about that issue. In terms of the way that you will approach this, will you be issuing statutory guidance to local authorities so that they will now have to include this in the contracts, or will you be approaching it in a different way? Is that the intention?

[104] **The Deputy First Minister:** We have not got to the stage of deciding on the detail of a Measure or the regulations that will flow from a Measure; what we want is the competence to enable us to do a variety of things. There is always a danger when you are discussing an LCO, as I think that you are aware, Peter, of discussing what you would do by Measure if you got the LCO.

[105] **Peter Black:** I understand that.

[106] **The Deputy First Minister:** I think that I would prefer not to be drawn on that currently because once you have begun travelling down that road, you have more or less written the Measure while writing the LCO, and we want to get away from doing that. We want the general power to enable us to do it and once we have got it, we will determine what to do and be scrutinised on the detail of a Measure, and then, after that, the regulations.

[107] **Peter Black:** I am trying not to go down that road. I am trying to define the area and how the competence will operate.

[108] **The Deputy First Minister:** May I just put it like this? We can do a range of things that would include what you are asking us to do, but not that exclusively.

[109] **Peter Black:** Okay, thanks.

[110] **David Lloyd:** Mae'r cwestiynau olaf o **David Lloyd:** The last questions are from dan law Christine Chapman. Christine Chapman.

[111] **Christine Chapman:** Could you explain the significance of including taxis and private hire vehicles in the context of the proposed Order? How do you envisage that you would be able to use the powers in the proposed Order to address safety issues for these two types of transport?

[112] **The Deputy First Minister:** Again, I think that the second part of the question is probably a matter for a Measure. The detail of any future legislation will be considered when we are in a position to introduce a Measure. That would be, as I think that we are all aware, subject to the usual consultation procedures. On why we decided to include taxis and private hire vehicles, in parts of Wales, particularly in rural areas, where you sometimes have small numbers of children travelling to school, you could not justify using a bus. In those circumstances, you can either have a taxi or a private hire vehicle and, in order to maintain the safety standards, we would not want a child that travels in a private car or a taxi to have lower standards applied to them than if they were travelling by bus. So, we have covered that and that is why we have done it.

[113] **Jeff Cuthbert:** As a point of interest, you mentioned a 'private car', but I think that you may have meant private hire car—

[114] **The Deputy First Minister:** Yes, private hire vehicles. It does not affect personal travel conducted by parents or—

[115] **Jeff Cuthbert:** Even if a parent was transporting three or four children on a regular basis, it could not impact on that.

[116] **The Deputy First Minister:** No.

[117] **Christine Chapman:** Paragraph 10 of the explanatory memorandum refers to paragraph A1 of Schedule 5. The draft National Assembly for Wales (Legislative Competence) (Environment) Order 2010 amends paragraph A1 of Schedule 5. Can you explain why you have not included an example of how the amended paragraph will be set out?

[118] **The Deputy First Minister:** I will ask Lynsey to respond.

[119] **Ms Edwards:** The draft environment Order has not yet come into force. Even when it does, the changes that will be made will not be to the proposed transport LCO itself, but will be to paragraph A1 of Schedule 5.

10.10 a.m.

[120] It will just change the appearance of Schedule 5, and any exceptions that are put into Schedule 5 by the draft environment Order will not have any impact whatsoever on the proposed transport LCO. It is just for information purposes, really, to explain how Schedule 5 will change once the draft environment Order comes into force and then, hopefully, once the proposed transport LCO is made.

[121] **Christine Chapman:** May I just clarify that? As you said, it is still awaiting approval. Can you clarify what its position would be if for any reason the draft environment Order is not made?

[122] **Ms Edwards:** If the draft environment Order is not made, it will not have any impact on the proposed transport LCO. All that will happen is that Schedule 5 will look different. Instead of three exceptions, we will only have two.

[123] **David Lloyd:** Diolch am hynny. A oes **David Lloyd:** Thank you for that. Are there cwestiynau eraill? any other questions?

[124] **Peter Black:** May I ask one more question? When talking about the safety issues and

the report of the Education, Lifelong Learning and Skills Committee during the previous Assembly, one of the issues that it identified was that of consistency in Criminal Records Bureau checks for drivers and other adults on the buses, particularly on buses that move between local authority areas. Would this give you competence to address the inconsistencies in how the CRB checks are applied?

[125] **The Deputy First Minister:** Do we know?

[126] **Ms Bateman:** We have not done that in this proposed LCO because, since that committee report, another piece of legislation was made, and that gave us the powers to carry out CRB checks.

[127] **Peter Black:** So you have that power already.

[128] **Ms Bateman:** Yes.

[129] **Peter Black:** That is great. Thank you.

[130] **David Lloyd:** Diolch yn fawr iawn i chi i gyd. A oes cwestiynau atodol eraill nad oeddem yn eu disgwyl? Gwelaf nad oes a bod pawb yn hapus. Gallaf gyhoeddi felly fod y sesiwn cymryd tystiolaeth ar lafar ar ben. Diolchaf yn fawr i'r Dirprwy Brif Weinidog, Ieuan Wyn Jones, a'i swyddogion, Lynsey Edwards a Bethan Bateman, am eu cyfraniad y bore yma. Diolchaf hefyd i swyddogion y Cynulliad am eu presenoldeb a'u cefnogaeth ac am y cyfieithu. Hon yw'r sesiwn gyntaf i gymryd tystiolaeth ar lafar. Bydd sesiynau eraill yn y flwyddyn newydd, gyda thystion eraill.

David Lloyd: Thank you all very much. Are there any more supplementary questions that we were not expecting? I see that there are none and that everyone is content. I can therefore announce that this oral evidence-taking session is over. I thank the Deputy First Minister, Ieuan Wyn Jones, and his officials, Lynsey Edwards and Bethan Bateman, for their contributions this morning. I thank the Assembly officials, too, for their attendance and support, and for the interpretation. This is the first oral evidence-taking session. Other sessions have been scheduled for the new year, with other witnesses.

[131] Wrth gloi, hysbysaf fy nghyd-Aelodau y byddwn i gyd yn clywed am ddyddiad a manylion cyfarfod nesaf y pwyllgor hwn maes o law, gan eu bod eto i'w trafod. Gyda hynny, deuaf â'r cyfarfod i ben a dymuno Nadolig llawen i chi i gyd.

In closing, I inform my fellow Members that we will know the date and details of the next committee meeting in due course, as they have yet to be arranged. With that, I bring this meeting to a close and I wish you all a merry Christmas.

*Daeth y cyfarfod i ben am 10.12 a.m.
The meeting ended at 10.12 a.m.*