

**National Assembly for Wales**  
Legislation Committee No. 4

**Proposed Safety on Learner Transport  
(Wales) Measure**

Stage 1 Committee Report  
December 2010



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## Legislation Committee No.4

Legislation Committee No.4 was established by the National Assembly for Wales to consider and report on legislation introduced into the Assembly, particularly by the Welsh Government. The Committee is also able to consider and report on non-government legislation, as appropriate.

## Powers

The Committee was established on 4 February 2009 as one of the Assembly's legislation committees. Its powers are set out in the National Assembly for Wales' Standing Orders, particularly Standing Orders 10, 22 and 23. These are available at [www.assemblywales.org](http://www.assemblywales.org)

## Committee membership

<i>Committee Member</i>	<i>Party</i>	<i>Constituency or Region</i>
Jenny Randerson (Chair)	Welsh Liberal Democrats	Cardiff Central
Peter Black	Welsh Liberal Democrats	South Wales West
Christine Chapman	Labour	Cynon Valley
Brian Gibbons	Labour	Aberavon
Bethan Jenkins	Plaid Cymru	South Wales West
Jonathan Morgan	Welsh Conservative Party	Cardiff North

## List of related reports published by Legislation Committees

<i>Report title</i>	<i>Date of publication</i>
<u>Report on the National Assembly for Wales (Legislative Competence) (Transport) Order 2010</u>	January 2010

All previous committee reports can be found at <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-perm-leg.htm>

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## **Summary of conclusions and recommendations**

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Our conclusions and recommendations are listed below, in the order that they appear in this report. Please refer to the relevant pages of the report to see the supporting evidence:

### ***General principles of the proposed Measure***

We welcome the provision in section 14 of the proposed Measure that any regulations made under the Measure will be subject to the Assembly's affirmative resolution procedure. (Paragraph 63)

We acknowledge the weight of evidence received from consultees in relation to the financial implications of the proposed Measure and we draw this evidence to the Deputy First Minister's attention. (Paragraph 65)

Based on the evidence we received, we are content to recommend that the Assembly agrees the general principles of the proposed Measure, in so far as it provides a framework within which the government will further implement its policy objectives on learner transport. (Paragraph 67)

### ***Section 1: Descriptions of vehicle that may be used for learner transport***

#### ***The fitting of appropriate seatbelts***

We welcome the Deputy First Minister's statement that he would prioritise the making of regulations in relation to seat belts on learner transport. (Paragraph 104)

We note the Deputy First Minister's evidence that the type of seat belt used on learner transport could be a matter to be considered as part of a home to school transport risk assessment and we strongly recommend that any such risk assessments promote the use of 'all-generation' seat belts. (Paragraph 107)

We welcome the advice provided to pupils as part of the travel code to always wear a seat belt, where one is provided. (Paragraph 108)

### *The phasing out of double deck vehicles*

We consider it would be prudent to await the outcome of the pilot schemes currently being undertaken in various parts of Wales in relation to the use of CCTV cameras and supervisors on learner transport before drawing any final conclusions on the desirability of phasing out the use of double deck vehicles, and we recommend this approach to the Deputy First Minister. (Paragraph 137)

We also consider that risk assessments should determine the use of double deck vehicles for learner transport in relation to individual schools. We recommend that any regulations made under section 1 should enable the retention of double deck vehicles in cases where a risk assessment had shown that the continuing use of double deck vehicles was necessary for safety reasons, particularly at embarkation and disembarkation points along a learner transport route. (Paragraph 138)

Further to this, and prior to any future implementation of this policy, we recommend that the Deputy First Minister undertakes an audit of the number of schools in Wales that do not have adequate space on-site to accommodate an increase in the number of single deck vehicles that may be needed as a result of the policy decision to phase out double deck vehicles. (Paragraph 139)

### *The phasing out of older vehicles*

We are content that section 1 of the proposed Measure will enable Welsh Ministers to regulate to phase out the use of older vehicles. (Paragraph 156)

### *The 'yellow bus' specification*

As there was some confusion about the yellow bus specification in operation in the United States and whether this was to be applied in Wales, we believe it would be helpful for stakeholders if the Deputy First Minister were to clarify this point. One way to achieve this could be the insertion of a statement into the Explanatory Memorandum. (Paragraph 166)

### *Application of the Disability Discrimination Act 1995*

We believe that the use of wheelchair accessible vehicles by learner transport operators is something that could usefully be considered as part of any home to school transport risk assessment. We recommend

the Deputy First Minister gives consideration to this matter at the appropriate time. (Paragraph 171)

*Taxis and Private Hire Vehicles and Criminal Records Bureau (CRB) checks*

We believe it is important for there to be a clear line of accountability in relation to CRB checks for drivers of taxis and private hire vehicles used for learner transport. We suggest that one way to achieve this would be by requiring a valid CRB check as part of any contractual arrangement with a taxi or private hire vehicle company (or with an individual driver, where applicable). We recommend the Deputy First Minister gives due consideration to this matter at the appropriate time. (Paragraph 176)

***Section 2: Recording visual images or sound on learner transport***

We believe there should be robust regulation of the use, storage, retention and access to footage from CCTV cameras on learner transport. We note that section 2 of the proposed Measure makes provision for such regulation and we welcome the Deputy First Minister's commitment to consult on these regulations - we recommend he does so at the earliest opportunity. (Paragraph 210)

We also recommend that regulations made under section 2 should address whether footage from CCTV cameras on learner transport could be used for training purposes, and if so, how and to what extent. (Paragraph 211)

We are satisfied that the making of the regulations under section 2 will be subject to the Assembly's affirmative resolution procedure. (Paragraph 212)

We note the Deputy First Minister's evidence that access arrangements for relevant parties to images and sound recorded on learner transport will be set out in an agreement between the local authority and the transport operator, and we welcome his commitment to issue guidance on these agreements. We recommend he does so at the earliest opportunity. (Paragraph 213)

We are content with section 2 as drafted. (Paragraph 214)

### ***Section 3: Safety risk assessments of learner transport***

In view of the evidence we have received, we recommend that, in making regulations under this section, the Deputy First Minister pays particular attention to ensuring there is clarity, as part of the risk assessment process, as to who has responsibility for embarkation and disembarkation points on a learner transport route. (Paragraph 256)

We are content with section 3 as drafted. (Paragraph 257)

### ***Section 4: Driver training***

We recommend the Deputy First Minister gives consideration to taking forward training initiatives for pupils about safety standards and behaviour on learner transport. (Paragraph 297)

We strongly recommend that, when making regulations, the Deputy First Minister ensures that specific provision is made for drivers who work with children with additional learning needs to receive special training. (Paragraph 299)

We are content with section 4 as drafted. (Paragraph 301)

### ***Section 5: Supervisors on learner transport***

We are content in principle that the Deputy First Minister's policy priority for the provision of supervisors is in relation to transport provided for primary school aged children. (Paragraph 328)

We are conscious that a number of pilot studies are currently being undertaken across Wales and that, depending on their respective outcomes, there may be a need for this policy to be extended in some cases to include supervisors on learner transport for other groups, such as secondary school aged pupils or pupils deemed to be vulnerable. We trust the Deputy First Minister will take full account of the evidence from these pilot schemes before making regulations under this section of the proposed Measure. (Paragraph 329)

We have some concerns that prioritising primary school aged pupils could have a greater financial impact in those local authority areas where greater numbers of primary school aged children travel to school on learner transport, particularly in rural areas. We draw the Deputy First Minister's attention to this point, and urge him to take full

account of it when implementing the provisions of this section of the proposed Measure. (Paragraph 330)

We recommend the Deputy First Minister amends the proposed Measure to enable any person trained, insured and CRB checked by a relevant body to act as a supervisor on learner transport, without necessarily having to be a “member of staff” of the relevant body, as currently required in section 5. (Paragraph 334)

### ***Section 6: Civil sanctions***

We are content with section 6 as drafted. (Paragraph 372)

### ***Section 7: Enforcement authority***

We recommend that, when bringing forward regulations under section 7 of the proposed Measure, the Deputy First Minister identifies the Vehicle and Operator Services Agency (VOSA) as the relevant enforcement body, as VOSA has considerable experience and expertise in this area. (Paragraph 403)

If, however, the Vehicle and Operator Services Agency is unable to undertake this role, we recommend that the Deputy First Minister should first consider using another existing organisation to fulfil this role, before establishing a new body. (Paragraph 404)

We are content with section 7 as drafted. (Paragraph 405)

### ***Sections 8, 9 and 10: Power of entry, power of inspection, power to require provision of information***

We are content with sections 8, 9 and 10 as drafted. (Paragraph 426)

### ***Section 11: Offences: liability of officers and partners***

As section 11 relates to the creation of offences and personal liability for failure to comply with statutory duties under the proposed Measure, we recommend the Deputy First Minister amends the proposed Measure to provide absolute clarity about where this personal liability would lie, particularly in relation to local authorities, schools, head teachers and governors. (Paragraph 440)

### ***Section 12: Regulations: consultation***

We are content with section 12 as drafted. (Paragraph 452)

### ***Section 13: Interpretation***

#### *Definition of “learner transport”*

We recommend the Deputy First Minister amends the proposed Measure to include a provision that would enable a future Minister to make regulations applying the provisions of the proposed Measure to transport provided for pupils during the school day. We recognise that, before making any such regulations, the relevant Minister would need to consult fully with stakeholders. (Paragraph 480)

Two members of the Committee did not support this recommendation. Although they agreed that the evidence we received demonstrated a need for the safety standards provided for in the proposed Measure to apply to learner transport during the school day, they believed this was a matter more appropriate for a future Measure. (Paragraph 481)

#### *Provision for pupils with additional learning needs*

We recommend the Deputy First Minister brings forward a Measure at the appropriate point in the future to apply the safety standards provided for in this proposed Measure to pupils with additional learning needs, aged 17 to 19, travelling on learner transport. (Paragraph 485)

# 1. Introduction

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## *Background*

1. On 20 September 2010, the Deputy First Minister and Minister for Economy and Transport, Ieuan Wyn Jones AM (‘the Deputy First Minister’), introduced the proposed Safety on Learner Transport (Wales) Measure (‘the proposed Measure’) and Explanatory Memorandum. He made an oral statement during a plenary meeting of the Assembly the following day.
2. The proposed Measure was referred to Legislation Committee No.4 (‘the Committee’) by the Business Committee on 16 September 2010, for the Committee to “consider and report on the general principles of the proposed Measure”<sup>1</sup> no later than 17 December 2010.<sup>2</sup>

## *Scope of the Committee’s Scrutiny*

3. At our first meeting on 30 September 2010, we agreed the scope of our scrutiny, as set out below:

To consider:

- i) the need for a proposed Measure to deliver the stated policy objectives of “improving the safety image and travel experiences of dedicated learner transport”;
- ii) whether the proposed Measure achieves its stated objectives;
- iii) the key provisions set out in the proposed Measure and whether they are appropriate to deliver its objectives;
- iv) potential barriers to the implementation of the key provisions and whether the proposed Measure takes account of them;
- v) the views of stakeholders who will have to work with the new arrangements.

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<sup>1</sup> In accordance with Standing Order 23.23

<sup>2</sup> Reporting deadline set by the Business Committee

### *The Committee's approach to evidence gathering*

4. We consulted widely, issuing an open call for written evidence through the Welsh media and the Assembly's website.
5. We invited key organisations with a subject area interest to submit written evidence to inform our work. A list of those who submitted written evidence is available at the end of this report.
6. We heard oral evidence from a number of witnesses; further details are attached at the end of this report.
7. We also published a questionnaire, in hard copy and electronically on the Assembly's website, in order to gather the views of children and young people in respect of this proposed Measure. A summary of their responses is attached at the end of this report.
8. We had to conduct our scrutiny in a relatively short time and are grateful to all those who provided evidence. Their contribution to our consideration of the proposed Measure has been invaluable.
9. In reporting on the proposed Measure, we have taken account of the views of each of the groups involved in areas of education and transport, and have sought to reflect the key issues raised in their evidence in relation to the proposed Measure, adopting a consensual approach.
10. The Constitutional Affairs Committee and the Finance Committee have also reported on the proposed Measure. Their reports are available separately, on the Assembly's website.<sup>3</sup>
11. The following report details the conclusions we have reached based on the evidence received during the course of our work.

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<sup>3</sup> [Link to Finance Committee 'Reports' internet page](#); [Report of the Constitutional Affairs Committee, December 2010](#)

## 2. Policy background

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### *Legislative Competence*

12. The Assembly's legislative competence in relation to learner travel is derived from Matter 5.10 of Schedule 5 to the Government of Wales Act 2006. This Matter is set out in Schedule 5 as follows:

“Matter 5.10  
Arrangements for persons to travel to and from the places where they receive education or training.

This matter applies to—

- (a) persons receiving nursery, primary, secondary or further education or training;
- (b) persons described in matter 5.17 receiving higher education.”

13. Matter 5.10 provided the competence for the Assembly to make the Learner Travel (Wales) Measure 2008 ('the 2008 Measure').

14. The 2008 Measure provides the legislative framework for the provision of school transport in Wales, prescribing the circumstances in which local authorities must provide free school transport, promoting access to Welsh medium education, extending the powers of head teachers to address poor behaviour and giving local authorities powers to promote sustainability.<sup>4</sup>

15. During the consideration of the 2008 Measure by the Enterprise and Learning Committee (as part of the Measure's passage through the Assembly) it became apparent that, due to certain exceptions to the competence in Matter 5.10, the Assembly's authority to legislate for matters concerning vehicle safety was not sufficiently broad. This led to a commitment by the Deputy First Minister to seek further powers over the safety standards of vehicles used for learner transport.

16. The National Assembly for Wales (Legislative Competence) (Transport) Order 2010 ('the 2010 Order) extended the Assembly's legislative competence in this area by amending the exceptions in Matter 5.10, thereby enabling the Assembly to legislate for the

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<sup>4</sup> See Explanatory Memorandum, paragraphs 3.1-3.9, pages 5-6

description of vehicle that may be used for dedicated learner transport and for the security features of those vehicles.

17. The competence conferred by the 2010 Order relates to dedicated school buses (as well as taxis and private hire vehicles), but not to public service buses – this remains a non-devolved matter.

18. The proposed Measure makes use of the competence derived from the 2010 Order by seeking to amend the 2008 Measure to make provision in relation to safety on learner transport.

*Policy objectives of the proposed Measure*

19. The Explanatory Memorandum sets out the policy objectives of the proposed Measure:

“The proposed Safety on Learner Transport (Wales) Measure aims to improve the image and quality of dedicated learner transport and to ensure that safety standards are sufficiently high for the public and parents to have confidence in dedicated learner transport.”<sup>5</sup>

20. The Explanatory Memorandum goes on to state that the proposed Measure will complement the objective of encouraging a modal shift away from car use towards collective school transport.<sup>6</sup>

21. The Explanatory Memorandum notes that the proposed Measure will enable the Welsh Ministers to place a duty on local authorities, or governing bodies of maintained schools, to:

- “(i) fit appropriate seat belts (part 1);
- (ii) use only single deck vehicles (part 1);
- (iii) use buses manufactured after a certain date (part 1);
- (iv) fit CCTV [closed circuit television] and meet the conditions of operation set out by the Welsh Ministers (part 2);
- (v) use vehicles which meet the “yellow buses” specification and the standards of such buses (part 1);

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<sup>5</sup> Explanatory Memorandum, paragraph 1.1, page 3

<sup>6</sup> Explanatory Memorandum, paragraph 3.10, page 6

(vi) provide the relevant standards of driver training set out by the Welsh Ministers (part 4);

(vii) carry out safety risk assessments set out by the Welsh Ministers (part 3);

(viii) provide staff to supervise school buses (part 5); and

(ix) in relation to taxis and private hire vehicles, meet the specifications set out by the Welsh Ministers (part 1)."<sup>7</sup>

22. It further states that the proposed Measure provides the Welsh Ministers with the power to create criminal offences for breaches of statutory safety regulations by providers of learner transport; to create a civil sanctions regime for breaches of the safety regulations by providers of learner transport; to establish an enforcement body to enforce the regulations; and to establish a tribunal for appeals.<sup>8</sup>

23. The proposed Measure is divided into two main areas, core provisions (sections 1 to 5) and enforcement provisions (sections 6 to 11). General provisions relating to consultation, interpretation, orders and regulations, and commencement are set out in sections 12 to 16.

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<sup>7</sup> Explanatory Memorandum, paragraph 1.2, page 3

<sup>8</sup> Explanatory Memorandum, paragraph 1.3, page 3

### 3. General principles of the proposed Measure and the need for legislation

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#### General principles of the proposed Measure

##### *Evidence from consultees*

24. The majority of evidence we received in relation to the general principles of the proposed Measure was positive, with most consultees, including Belt Up School Kids (BUSK), SNAP Cymru, Newport Transport, the National Association of Head Teachers Cymru (NAHT Cymru), the Association of School and College Leaders Cymru (ASCL Cymru), the Confederation of Passenger Transport Wales (CPT Cymru), the Welsh Local Government Association (WLGA), the Association of the Directors of Education in Wales (ADEW) and the Association of Transport Coordinating Officers Cymru (ATCO) welcoming the proposed Measure as a means of improving safety standards on learner transport and enabling parents to have greater confidence in learner transport.

25. In expressing their support for the proposed Measure, BUSK set out what they considered to be the main benefits of the legislation:

“The proposed Measure has the potential to bring about a sweeping change in what organisations currently do by requiring transport providers, local authorities and schools to work to a specific standard. By implementing a set of requirements that are not optional means that no matter what a student’s postcode, they will be able to expect a level of service provision and improved safety standards. No longer will it be a postcode lottery.”<sup>9</sup>

26. SNAP Cymru made a similar point in their written evidence and also commented on the likely impact of the proposed Measure in the longer term:

“(…) over time [the proposed Measure] will further change the image of school transport and build confidence in parents and

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<sup>9</sup> Written evidence, SLT 1

young people as well raise the status of drivers and escorts providing learner travel services.”<sup>10</sup>

27. The Children’s Commissioner for Wales (‘the Children’s Commissioner’) expressed his support for the proposed Measure, arguing:

“(…) on the basis of the evidence from children and young people themselves there is a need for a Measure to improve the safety image and travel experience of dedicated learner transport and to ensure that children and young people as well as the public and parents have confidence in the safety standards.”<sup>11</sup>

28. Governors Wales also supported the general principles of the proposed Measure, saying it was “pleasing” that the Assembly had secured further powers in relation to safety on learner transport (such as seat belts, seating arrangements and supervisors) and that provision had been made for these in the proposed Measure, along with other safety matters such as the use of CCTV and arrangements for driver training. They went on to suggest that:

“(…) some of the provision in the proposed measure could be delivered by consortia working which may prove more cost effective and efficient. The importance of collaboration between local authorities, governing bodies and other education providers cannot be over-emphasised on this important area. Nevertheless, local authorities should retain the task of assessing the travel needs of learners and the required arrangements.”<sup>12</sup>

29. In their evidence, CPT Cymru argued that the safety initiatives proposed under the Measure were already in use “in one form or another” by several of their members, having been introduced in partnership with local authorities. They said:

“(…) a Wales-wide approach (…) would be beneficial in obtaining a quality provision throughout Wales. It would appear

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<sup>10</sup> Written evidence, SLT 3

<sup>11</sup> Written evidence, SLT 12

<sup>12</sup> Written evidence, SLT 7

that the Measure succeeds in bringing together all the good work already adopted by CPT members.”<sup>13</sup>

30. Newport Transport made a similar point in their evidence, saying that many of the safety measures proposed in the legislation mirrored their own practices and that it was right that these measures were adopted on an all-Wales basis. They did, however, express concern with two of the safety initiatives proposed under the Measure, namely the fitting of appropriate seat belts and the use of single deck vehicles only.<sup>14</sup>

31. Several other consultees, including BUSK, the WGLA and ADEW, were also concerned about these and other initiatives arising from the proposed Measure, including the ‘yellow bus standard’, the phasing out of older vehicles, the use of CCTV on learner transport and the ability to recruit and retain supervisors. These matters are discussed in more detail in Chapter 4 of this report.

32. The evidence we received from children and young people showed a clear majority in favour of the general principles of the proposed Measure.<sup>15</sup>

#### *Evidence from the Minister*

33. In his evidence, the Deputy First Minister said that the introduction of the proposed Measure addressed a longstanding commitment to bring forward legislation relating to the safety standards of vehicles used for learner transport, following a number of accidents involving buses carrying children, resulting in the death of Stuart Cunningham-Jones and injury to several others.<sup>16</sup>

34. He said the key policy objectives of the proposed Measure were to:

“(...) improve the quality and safety standards of dedicated learner transport by enabling Ministers to set out in regulations a consistent set of minimum safety standards for dedicated learner transport vehicles in relation to matters such as fitting

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<sup>13</sup> Written evidence, SLT 6

<sup>14</sup> Written evidence, SLT 2

<sup>15</sup> A summary of the evidence from the children and young people’s questionnaire is provided at the end of this report

<sup>16</sup> RoP, paragraph 5, 7 October 2010, Legislation Committee No.4 and Explanatory Memorandum, paragraph 3.12, page 7.

seat belts and closed-circuit television, single-decker buses, driver training and risk assessment.”<sup>17</sup>

35. He went on:

“As the explanatory memorandum highlights, non-legislative approaches have not succeeded in delivering the consistent safety standards that we want. Therefore, the proposed Measure takes forward the commitment that I made in committee at an earlier stage that I would seek legislative competence to introduce these legislative proposals.”<sup>18</sup>

### ***Regulation and Order making powers in the proposed Measure***

#### *Background*

36. The proposed Measure is framework in nature and provides extensive regulation-making powers for the Welsh Ministers.

37. The Explanatory Memorandum states that the making of regulations under the proposed Measure would follow a “phased approach”.<sup>19</sup>

#### *Evidence from consultees*

38. We asked consultees for their views on this approach and whether they thought the correct balance had been achieved between powers on the face of the proposed Measure and the powers given to Welsh Ministers to make regulations.

39. NAHT Cymru, ASCL Cymru, the WLGA and ADEW all said they were in favour of a phased approach. The WLGA and ADEW suggested that it would help with matters such as the cost of the proposed Measure and some of the practical elements, such as changes to school bus fleets.<sup>20</sup>

40. In his evidence, the Children’s Commissioner noted that the Deputy First Minister had taken the view that a framework Measure was the “most expedient way of introducing the legislation before the end of this Assembly term”, but went on to say:

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<sup>17</sup> RoP, paragraph 5, 7 October 2010, Legislation Committee No.4

<sup>18</sup> RoP, paragraph 5, 7 October 2010, Legislation Committee No.4

<sup>19</sup> Explanatory Memorandum, paragraph 8.8, page 27

<sup>20</sup> RoP, paragraphs 8-9, 21 October 2010, Legislation Committee No.4

“However as the Measure is a framework Measure and the detail will be contained within the Regulations it is difficult at this point in time to comment as to whether the sections will achieve the stated objectives.”<sup>21</sup>

41. In their evidence, SNAP Cymru expressed some concerns with the phased approach, saying they were worried this could delay the implementation of key provisions, such as the requirement to fit seat belts on school buses and end the 3 for 2 concession.<sup>22</sup>

#### *Evidence from the Minister*

42. We asked the Deputy First Minister why he had adopted a framework approach in the proposed Measure. On this point, he said:

“I would have preferred to put more on the face of the proposed Measure, but it was a matter of having to deal with quite severe time constraints. (...) it would have been very difficult to have a detailed proposed Measure within the timescale. Therefore, while there are some matters that, ideally, I would have wanted to include on the face of the proposed Measure, we also wanted to ensure that it was enacted before the end of this third Assembly, and therefore the other matters will have to be dealt with through regulations.”<sup>23</sup>

43. He went on to say that the timetable for introducing regulations under the proposed Measure would be a matter for the next government, as there would not be time to do so before the next Assembly election in May 2011. He said:

“I have made it clear that my priority is to introduce legislation requiring the fitting of seat belts, because this would ensure that every child has a dedicated seat fitted with a seat belt, and it would prohibit the three-for-two seating concession. (...) The other issues, such as closed-circuit television and double-decker buses, would need to follow, and we will need to agree on the timescales for compliance with the new regulations. You cannot expect compliance overnight, so there should be a

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<sup>21</sup> Written evidence, SLT 12

<sup>22</sup> RoP, paragraph 9, 14 October 2010, Legislation Committee No.4

<sup>23</sup> RoP, paragraph 11, 7 October 2010, Legislation Committee No.4

reasonable timescale for the introduction of regulations, in respect of the contracts (...) and the cost implications.”<sup>24</sup>

### ***Cost implications***

#### *Background*

44. Part 2 of the Explanatory Memorandum, the ‘Regulatory Impact Assessment’, provides an assessment of the costs involved with implementing the proposed Measure.

45. The remit of the Assembly’s Finance Committee enables it to consider and report on financial information presented in support of Assembly Measures. The Finance Committee invited the Deputy First Minister to give oral evidence on the financial implications of the proposed Measure at their meeting of 4 November 2010. To inform their evidence-taking, we have shared all the evidence we have received from consultees in relation to costs with that Committee.

46. On this basis and in order to avoid duplication, we have not considered, in detail, the financial aspects of the proposed Measure, as this was a matter more appropriate for the Finance Committee. Their report on the proposed Measure is available separately.

47. However, in view of the considerable volume of evidence we received from consultees in relation to costs, we considered it was important for that evidence to be represented in our report.

#### *Evidence from consultees*

48. A significant number of consultees commented on the financial implications of implementing the provisions of the proposed Measure.

49. In their evidence, the WLGA and ADEW reported “widespread concern within local government” about the costs associated with the proposed Measure and about the availability of resources to implement the provisions. They said:

“As the Explanatory Memorandum to the Measure states, school transport costs have risen significantly in recent years and these costs continue to rise, reaching £102.2 million in 2007/08. Councils are working hard to ensure that cuts will not

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<sup>24</sup> RoP, paragraph 34, 7 October 2010, Legislation Committee No.4

impact adversely on service provision in areas like learner travel, for example through collaborative approaches to school transport and addressing the high cost of SEN transport. Although such measures are expected to make savings there are concerns that there will not be resources available, within diminishing local authority budgets, to fund the predicted £46 million cost to introduce this Measure.”<sup>25</sup>

50. They went on to say that, although the Deputy First Minister had said he would provide additional financial support towards the introduction of specific safety features and that this funding would be subject to available resources:

“This does not provide local authorities with a sufficient guarantee of funding to enable them to implement the Measure. There needs to be a clear commitment that should this Measure be implemented then it will be fully funded by the Welsh Assembly Government.”<sup>26</sup>

51. They drew attention to the provisions in the proposed Measure for criminal and civil sanctions to be imposed on local authorities for failure to implement the new safety regulations, saying:

“If the Assembly Government does not find available resources then local authorities will still be responsible for implementing the legislation, this could lead to services being cut in other areas to ensure this legislation is complied with.”<sup>27</sup>

52. These views were supported by other local authorities, including the City and County of Swansea and Rhondda Cynon Taf County Borough Council.<sup>28</sup>

53. CPT Cymru said they were concerned about the cost implications of the proposed Measure for their members:

“The Measure will place higher demands on CPT members in terms of resources and time. The Explanatory Memorandum to the proposed Safety on Learner Transport Measure, (paragraph 8.8) notes that the Welsh Assembly Government intends to

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<sup>25</sup> Written evidence, SLT 5

<sup>26</sup> Written evidence, SLT 5

<sup>27</sup> Written evidence, SLT 5

<sup>28</sup> Written evidence, SLT 10 and SLT 11

meet the costs associated with the Measure subject to available resources. Annexe C of the memorandum gives estimated gross costs of the main proposals. The impact will inevitably be in significantly greater cost. In addition to the capital cost of introducing several of these measures there are also, for example, training implications. The introduction of any significant scheme such as this will inevitably create changes to current operating practices at many bus and coach operators in Wales.”<sup>29</sup>

54. In their evidence, ATCO Cymru said that consideration needed to be given to possible indirect costs arising out of the proposed Measure:

“The report [Explanatory Memorandum] only seems to consider or include direct costs. The Assembly would need to consider some of the indirect costs (staffing required to implement, monitor and review these measures; campus changes to accommodate vehicles; the cost of delivering/monitoring training and supervisor etc).”<sup>30</sup>

#### *Evidence from the Minister*

55. We asked the Deputy First Minister to clarify whether he intended to make additional resources available as part of the implementation of the proposed Measure.

56. He said that was a matter that would need to be considered “very carefully when the regulations are introduced. Introducing the proposed Measure does not impose further costs, because those will arise when the regulations are introduced”.<sup>31</sup>

57. He went on to say:

“We would need to consider the costs involved carefully with local authorities and contractors. At that time, we would need to take decisions on what financial assistance we could give, if any.”<sup>32</sup>

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<sup>29</sup> Written evidence, SLT 6

<sup>30</sup> Written evidence, SLT 10

<sup>31</sup> RoP, paragraph 32, 7 October 2010, Legislation Committee No. 4

<sup>32</sup> RoP, paragraph 32, 7 October 2010, Legislation Committee No. 4

## *Our view*

### *Need for legislation*

58. We note the evidence from the Deputy First Minister that the purpose of the proposed Measure is to address the government's objective of improving the safety image and travel experiences of dedicated school transport, and to act to ensure that safety standards are sufficiently high for the public and parents to have confidence in collective learner transport.

59. We acknowledge that the introduction of the proposed Measure takes forward a commitment by the Deputy First Minister to seek legislative competence to introduce these legislative proposals and that, in his opinion, non-legislative approaches have not been successful in delivering the consistent safety standards required by the government.

60. The evidence we received from consultees illustrated a general consensus in favour of the need for legislation to improve the safety and quality of home to school transport in Wales.

### *Framework nature of the proposed Measure*

61. In relation to the framework nature of the proposed Measure, we note the evidence from the Deputy First Minister that he would have preferred to include more detail on the face of the legislation, but that he was prevented from doing so because of time constraints imposed by the forthcoming Assembly election in May 2011.

62. We accept that, as a framework Measure, the detail of its implementation will be a matter for future regulations and for a future government. We trust that, when making regulations under the proposed Measure, the appropriate Minister will consult widely.

63. Finally, **we welcome the provision in section 14 of the proposed Measure that any regulations made under the Measure will be subject to the Assembly's affirmative resolution procedure.**

### *Costs*

64. As noted above, we did not undertake detailed consideration of the cost implications of the proposed Measure, as these were the subject of consideration by the Finance Committee.

65. However, **we acknowledge the weight of evidence received from consultees in relation to the financial implications of the proposed Measure and we draw this evidence to the Deputy First Minister's attention.**

*Conclusion*

66. We note the majority of consultees expressed support for the general principles of the proposed Measure, in that it provides a legislative vehicle for the delivery of an earlier commitment by the Deputy First Minister in relation to the safety and quality of learner transport in Wales.

67. **Based on the evidence we received, we are content to recommend that the Assembly agrees the general principles of the proposed Measure, in so far as it provides a framework within which the government will further implement its policy objectives on learner transport.**

## 4. Core provisions: Sections 1 to 5

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### Section 1: Descriptions of vehicle that may be used for learner transport

#### *Background*

68. Section 1 of the proposed Measure inserts new section 14A into the 2008 Measure. It provides for Welsh Ministers to make regulations requiring that only certain descriptions of vehicle are used for learner transport provided or secured by a local authority or the governing body of a maintained school.

69. The Explanatory Notes accompanying the proposed Measure state that the vehicle may be described “by reference to safety features such as seat belts, its age, whether it is a single deck or double deck vehicle, or other descriptions of the vehicle by reference to its construction, equipment or other characteristics”.<sup>33</sup>

70. In relation to section 1, the Explanatory Memorandum states that the proposed Measure will address safety of vehicles used for learner transport by enabling the Welsh Ministers to propose regulations in relation to:

- The fitting of appropriate seat belts on learner transport;
- The phasing out of double deck vehicles as dedicated learner transport vehicles;
- The phasing out of older vehicles on contracted learner transport services; and
- The regulation of learner transport to meet the “yellow bus” specification.<sup>34</sup>

71. We received a considerable amount of evidence from consultees in relation to the above points. Further detail on each of these points is provided in the following paragraphs.

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<sup>33</sup> Explanatory Memorandum, paragraph 17, page 37

<sup>34</sup> Explanatory Memorandum, paragraphs 3.16-3.25, pages 8-10

## ***The fitting of appropriate seat belts***

### *Background*

72. In relation to the fitting of appropriate seat belts, the Explanatory Memorandum states that section 1 of the proposed Measure would enable Welsh Ministers to legislate to require the fitting of seat belts on learner transport, thereby removing the ‘3 for 2’ concession<sup>35</sup>, as “all students would be required to have a seat and a seat belt.”<sup>36</sup>

### *Evidence from consultees*

73. There was general support amongst consultees for the Deputy First Minister’s proposal that vehicles to be used for learner transport must be fitted with seat belts.

74. In their evidence on this point, SNAP Cymru said:

“From the evidence that we have had to date, those who are giving us the information seem keen to see seat belts as quickly as possible, although of course they would want them to be as effective and safe as possible.”<sup>37</sup>

75. In his evidence, the Children’s Commissioner referred to his 2004 report on children’s experiences of dedicated school transport<sup>38</sup>, in which he said that provision of seat belts was a key issue identified by children in relation to school buses. He stated:

“All school buses should be fitted with seatbelts and pupils should wear them, although many may need more than a little encouragement to do so. (...) The *3 for 2 rule* is clearly incompatible with the need to ensure that every child has a seatbelt available to them.”<sup>39</sup>

76. In her evidence, Mrs B Thurstan said she was “pleased to see the issue of safety belts on school buses coming up for consideration” as she had always had concerns about school buses not being fitted with

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<sup>35</sup> Under the *Public Service Vehicles (Carrying Capacity) Regulations 1984*, bus operators may rely on the ‘3 for 2’ concession that permits three children under the age of 14 to occupy a bench designed for two adults, where there are no seat belts fitted on that bench.

<sup>36</sup> Explanatory Memorandum, paragraph 3.19, page 9

<sup>37</sup> RoP, paragraph 35, 14 October 2010, Legislation Committee No.4

<sup>38</sup> *As long as I get there safe*, School Buses: towards safer and better journeys to school, Report of the Children’s Commissioner for Wales, 2004

<sup>39</sup> Written evidence, SLT 12

seat belts and the potential harm this could cause to children using those buses in the event of an accident.<sup>40</sup>

77. In their evidence on the fitting of seat belts, the WLGA and ADEW said:

“According to the data collected by the Assembly Government to inform this Measure, there are currently only 141 buses out of the 3,295 in use for school transport that do not have seat belts fitted. As a principle local authorities would have no objection to this part of the Measure being implemented, subject to appropriate funding being made available.”<sup>41</sup>

78. Both Stuart’s Campaign<sup>42</sup> and SNAP Cymru called for provisions relating to seat belts to be included on the face of the proposed Measure because of their importance. On this point, SNAP Cymru said:

“(…) we believe that it is dangerous practice to have two or three children to a seat, for instance, to not have seat belts fitted, and to use transport when children are standing. (…) we would like to see that considered in the proposed Measure rather than waiting for regulations.”<sup>43</sup>

79. Newport Transport, however, said they believed “that the provision of seat belts on all home-to-school vehicles is not the correct way forward to improving children’s safety aboard buses.” They argued that “a significant number of accidents on school buses were the result of misbehaviour by pupils when aboard. Therefore only by improving behaviour can we best protect children.”<sup>44</sup>

80. Several witnesses, including BUSK and Newport Transport, said they had concerns about the fitting of “appropriate” seat belts on learner transport.

81. In their evidence, BUSK argued that most seat belts were designed for use by adults and were not suitable to be worn by children under the age of eight for “medical and safety reasons.”<sup>45</sup> They suggested that seat belts used on learner transport should be ‘all-generation-

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<sup>40</sup> Written evidence, SLT 15

<sup>41</sup> Written evidence, SLT 5

<sup>42</sup> RoP, paragraphs 111-112, 14 October 2010, Legislation Committee No.4

<sup>43</sup> RoP, paragraph 9, 14 October 2010, Legislation Committee No.4

<sup>44</sup> Written evidence, SLT 2

<sup>45</sup> Written evidence, SLT 1

type' seatbelts, designed to fit children from three or four years of age up to adults.<sup>46</sup>

82. Newport Transport made a similar point in their evidence, stating that “for a significant number of children there will be a concern that a seatbelt does not fit them correctly due to their size. In such a situation it has been proven conclusively by scientific testing that a seatbelt can cause them serious injury or harm in the event of an accident.”<sup>47</sup>

83. They went on to say that, as smaller children were particularly prone to seatbelts not fitting them correctly (due to the size of the children), they provided all children under 10 years of age with a ‘BestVest’ safety vest, which “positions and fits the seatbelt correctly on the child so that it does not harm them in the event of an accident.”<sup>48</sup>

84. Rhondda Cynon Taf County Borough Council<sup>49</sup> and ATCO Cymru also expressed concerns about the appropriateness of seat belts for children. On this point, ATCO Cymru said:

“There is also an issue regarding how a three point belt can be adjusted to accommodate different ages of children where vehicles go from secondary school runs to convey nursery or primary age children as part of an efficiently scheduled network.”<sup>50</sup>

85. BUSK also had concerns about the provision of seat belts for children with special needs, particularly those who were already required to wear a harness. They argued:

“(…) we should be asking for all-generation-type seat belts. That means that they will fit children from three or four years of age up to adults. That would get around the problem in most instances, because you can adjust the belt so that it does not sit across the face or throat. That would be a huge help. If you were looking at giving long-term contracts, for example,

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<sup>46</sup> RoP, paragraph 154, 14 October 2010, Legislation Committee No. 4

<sup>47</sup> Written evidence, SLT 2

<sup>48</sup> Written evidence, SLT 2

<sup>49</sup> Written evidence, SLT 11

<sup>50</sup> Written evidence, SLT 8

the contracts could stipulate all-generation seat belts, rather than requiring a three-point belt.”<sup>51</sup>

86. Several consultees, including Powys County Council, the WLGA and ADEW, Pembrokeshire County Council, CPT Cymru and Mr H. B. Turner, a school bus driver, questioned who would be responsible for ensuring pupils on learner transport wore their seat belts during journeys. In their evidence, Powys County Council said:

“Monitoring and anecdotal evidence strongly indicates that learners very infrequently wear seat belts even when provided, and this can be supported by several witness accounts of school buses leaving schools, with children observed kneeling on their seats facing backwards so that they can talk to their friends.”<sup>52</sup>

87. ADEW also highlighted problems with enforcing the wearing of seat belts on school buses, saying:

“The current regulations stipulate that pupils over the age of 14 are legally required to wear seat belts, but pupils under the age of 14 are not legally required to wear safety belts on school buses. (...) There is always the problem of peer pressure, with youngsters telling the older children, ‘We don’t have to wear them, but you do’.”<sup>53</sup>

88. They did, however, acknowledge that this was an issue for the Department of Transport, rather than the government.

89. Some witnesses, including BUSK, also made the point that not all buses were suitable, structurally, for the retrofitting of seat belts, and that the costs of doing this safely would be “prohibitive”.<sup>54</sup>

#### *Evidence from the Minister*

90. In oral evidence, the Deputy First Minister said that, while the timetable for bringing forward regulations under the proposed Measure would be a matter for a future government as there would be no time to do so before the next Assembly election,

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<sup>51</sup> RoP, paragraphs 151 and 154, 14 October 2010, Legislation Committee No.4

<sup>52</sup> Written evidence, SLT 13

<sup>53</sup> RoP, paragraph 22, 21 October 2010, Legislation Committee No.4

<sup>54</sup> Written evidence, SLT 1

“(…) my priority is to introduce legislation requiring the fitting of seat belts, because that would ensure that every child has a dedicated seat fitted with a seat belt, and it would prohibit the three-for-two seating concession.”<sup>55</sup>

91. He said he had wanted to make provision in relation to the fitting of seat belts on the face of the proposed Measure, but the timeframe within which to do so was limited because of specific requirements under the European technical standards directive:

“Members may be aware that the technical standards directive aims to avoid the creation of new technical barriers within the European community, and it provides for a three-month standstill period between notification of the proposed Measure and bringing the legislation into force to allow other member states and the Commission an opportunity to raise any concerns about potential barriers to trade. If any objections are raised within the three-month standstill period and the Commission issues a detailed opinion, there could be a further three-month standstill period, which may cause difficulties in amending the proposed Measure to include such requirements, given the time constraints.”<sup>56</sup>

92. During our second oral evidence session with the Deputy First Minister, we asked him whether any progress had been made in relation to including provision for the fitting of seat belts on learner transport on the face of the proposed Measure. He said:

“The legal advice that I currently have is that, for that [the fitting of seat belts on learner transport] to be included in the proposed Measure, it would have to be notified to the European Commission because it is an issue of technical standards.”<sup>57</sup>

93. He went on:

“It means that if I were to do that, it would also need to be presented to the European Commission by the Department for Business, Innovation and Skills, because we are not a member state. Under those circumstances, it means that the notification would have to happen, and once the European Commission was

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<sup>55</sup> RoP, paragraph 34, 7 October 2010, Legislation Committee No.4

<sup>56</sup> RoP, paragraph 13, 7 October 2010, Legislation Committee No.4

<sup>57</sup> RoP, paragraph 5, 4 November 2010, Legislation Committee No.4

satisfied about it, it would then require a period of consultation.”<sup>58</sup>

94. He also said he had instructed his officials to give consideration to drafting an amendment to the proposed Measure on this matter, and he gave an undertaking to keep the Committee informed of progress.”<sup>59</sup>

95. Responding to the concerns expressed by consultees about the need for seat belts to be appropriate for the age of the person wearing them, the Deputy First Minister said that, although the Assembly had the legislative competence to require a school bus to be fitted with a seat belt, it did not have competence to specify the type of seat belt to be used.<sup>60</sup>

96. The Deputy First Minister’s official expanded on this point, saying:

“The current seat belt legislation in place is the Road Vehicles (Construction and Use) Regulations 1986, which specify which seat belts should be fitted to which vehicle up to a certain point. They state, for example, that any coach that is used after 1 October 1998 must be fitted with a lap belt, a disabled person’s belt or a child restraint. It does not specify which one must be fitted. Therefore, in effect, the operators are given a choice. That is the position in UK legislation and we do not have competence to amend that. We are restricted by what is already there.”<sup>61</sup>

97. The Deputy First Minister’s official also drew our attention to page 17 of the Guidance on Home to School Transport Risk Assessments<sup>62</sup>, covering the age appropriateness of seat belts within the UK legislation. She said that local authorities could stipulate, as part of their learner transport contracts, that three-point, all-age seat belts should be fitted as standard. She accepted, however, that this

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<sup>58</sup> RoP, paragraph 5, 4 November 2010, Legislation Committee No.4

<sup>59</sup> RoP, paragraph 5, 4 November 2010, Legislation Committee No.4

<sup>60</sup> RoP, paragraph 83, 4 November 2010, Legislation Committee No.4

<sup>61</sup> RoP, paragraph 84, 4 November 2010, Legislation Committee No.4. Also, see RoP, paragraph 86, 4 November 2010, Legislation Committee No. 4

<sup>62</sup> Guidance on Home to School Transport Risk Assessments, Welsh Assembly Government, November 2009

would only be a recommendation by the local authority to the transport operator, not a mandatory requirement.<sup>63</sup>

98. In relation to who would be responsible for enforcing the wearing of seat belts on learner transport, the Deputy First Minister said that the Assembly did not have competence to enforce the wearing of seat belts, only their fitting. He stated:

“The position is that, under the proposed Measure, the requirement is to have buses with seat belts. As a legislature, we do not have the competence to deal with the non-wearing of seat belts, which is covered by UK legislation. (...) The UK legislation deals with the fact that children over the age of 14 have a responsibility to wear a seat belt. So, the two things that are not covered by the proposed Measure are the technical specification of the precise seat belts that could be fitted and the penalty for not wearing a seat belt, which is outwith our competence. The only thing that this proposed Measure can do is ensure that buses have seat belts fitted. The only penalties that we can impose are in relation to the non-provision of seat belts on buses.”<sup>64</sup>

99. He went on to say that the 2008 Measure provided for a travel behaviour code for pupils and that local authorities and schools were able to impose sanctions if the code were not adhered to.<sup>65</sup>

100. The All-Wales Travel Behaviour Code (‘the Travel Code’), setting out the standards of behaviour required of all learners when travelling to and from their school or college, was produced under the 2008 Measure and came into force in January 2010. As part of this code, learners are advised:

“Always wear a seatbelt if one is provided.”<sup>66</sup>

101. Finally, we questioned the Deputy First Minister on the evidence from consultees regarding the suitability of school buses for the retrofitting of seat belts. On this point, the Deputy First Minister

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<sup>63</sup> RoP, paragraph 109-111, 4 November 2010, Legislation Committee No.4

<sup>64</sup> RoP, paragraph 71, 4 November 2010, Legislation Committee No.4

<sup>65</sup> RoP, paragraph 73, 4 November 2010, Legislation Committee No.4

<sup>66</sup> Further information on the Travel Code can be found at:

<http://wales.gov.uk/topics/transport/integrated/learnertravel/travelcode/?lang=en>

argued that, where school buses were unsuitable for retrofitting seat belts, those buses would need to be replaced:

“(…) the best information that we currently have is that, out of a fleet of 3,295 buses, which are contracted buses, we know that 2,894 buses have seat belts. Therefore, the number of buses without seat belts is relatively low in comparison with the total. The proportion is low.”<sup>67</sup>

102. He also said that any buses that were retrofitted with seat belts would be subject to rigorous safety testing.<sup>68</sup>

### *Our view*

103. In relation to the fitting of seat belts on learner transport, we note the broad support expressed by consultees for this proposal.

104. We agree with the evidence from consultees and the Deputy First Minister that providing every child and young person travelling on a school bus with a seat and a seat belt is very important for their safety, and we note that any regulations made under the proposed Measure in order to achieve this objective would effectively bring to an end the ‘3 for 2’ concession. Therefore, **we welcome the Deputy First Minister’s statement that he would prioritise the making of regulations in relation to seat belts on learner transport.**

105. We do, however, acknowledge the evidence we received stating that there is already much good practice in Wales in relation to the provision of seat belts on learner transport and that there are relatively few dedicated school buses that are not fitted with seat belts.

106. In relation to the ‘appropriateness’ of the seat belts, we note the Deputy First Minister’s view that the Assembly does not have the legislative competence to specify the type of seat belt to be fitted on learner transport.

107. However, we consider the fitting of a seat belt that is appropriate for the age of the person wearing it to be extremely important in ensuring those persons are not injured by the seat belt in the event of an accident. **We note the Deputy First Minister’s evidence that the type of seat belt used on learner transport could be a matter to be**

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<sup>67</sup> RoP, paragraph 81, 4 November 2010, Legislation Committee No.4

<sup>68</sup> RoP, paragraph 75, 4 November 2010, Legislation Committee No.4

**considered as part of a home to school transport risk assessment and we strongly recommend that any such risk assessments promote the use of ‘all-generation’ seat belts.**

108. In relation to enforcing the wearing of seat belts on learner transport, we consider this to be an important matter in terms of pupil safety but we note the Deputy First Minister’s view that the Assembly does not have the competence to legislate in this area. However, **we welcome the advice provided to pupils as part of the travel code to always wear a seat belt, where one is provided.**

109. Finally, in relation to the retrofitting of seat belts, we acknowledge the evidence from consultees that most buses are unsuitable for this, structurally. We note the evidence that there are relatively few buses used for dedicated learner transport in Wales that are not fitted with seat belts and we accept the Deputy First Minister’s argument that, where these buses cannot be safely fitted with seat belts, they will need to be replaced. We accept this has resource implications for transport operators, but we believe the benefits of this in terms of pupil safety outweigh the burdens.

### ***The phasing out of double deck vehicles***

#### *Background*

110. In relation to the use of double deck, the Explanatory Memorandum states that section 1 of the proposed Measure would enable Welsh Ministers to phase out the use of double deck buses as vehicles used for dedicated learner transport.<sup>69</sup>

#### *Evidence from consultees*

111. There were mixed views amongst consultees in relation to this proposal. Governors Wales and the Children’s Commissioner were both supportive; with Governors Wales saying they “welcomed” the proposal.

112. In his evidence, the Children’s Commissioner referred to his 2004 report<sup>70</sup>, which stated that a key issue identified by children travelling on dedicated learner transport was in relation to the buses themselves. He stated:

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<sup>69</sup> Explanatory Memorandum, paragraph 3.21, page 9

<sup>70</sup> *As long as I get there safe*, School Buses: towards safer and better journeys to school, Report of the Children’s Commissioner for Wales, 2004

“Single decker vehicles would appear to have much to recommend them over double deckers in terms of both safety and behaviour management.”<sup>71</sup>

113. Other consultees, however, including the WLGA and ADEW, Newport Transport, and CPT Cymru, said they were concerned with this proposal, arguing there was no evidence that double deck vehicles were any less safe than single deck vehicles.

114. In their evidence on this point, Newport Transport said:

“The recommendation that only single deck vehicles be used for transporting children is one which has worryingly been made without any evidence or statistical data to prove or even suggest that double deck vehicles are less safe or more prone to endangering the lives of passengers – be they children or adults – or that they are more likely to be involved in an accident.”<sup>72</sup>

115. They went on:

“As a municipal bus operator responsible for transporting tens of thousands of children to and from school for more than 40 years it is Newport Transport’s experience that double deck vehicles are just as robust and safe a form of learner transport as single deck vehicles are. They are subjected to the same stringent testing as single deck vehicles and include a significant number of safety features designed at enhancing the safety of passengers who use them.”<sup>73</sup>

116. ATCO Cymru said that results of the pilot schemes currently being undertaken in relation to the use of CCTV cameras and supervisors on learner transport should be considered being drawing any conclusions about phasing out double deck vehicles. They went on:

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<sup>71</sup> Written evidence, SLT 12

<sup>72</sup> Written evidence, SLT 2

<sup>73</sup> Written evidence, SLT 2

“Each type of vehicle has its strengths and weaknesses when it comes to safety and the appropriate vehicle for each route should be determined by a risk assessment.”<sup>74</sup>

117. Powys County Council made a similar point in their evidence.<sup>75</sup>

118. Some consultees, including the WLGA and ADEW and Newport Transport, also argued that a reduction in double deck vehicles would lead to an increase in the number of single deck vehicles needed to transport the same number of pupils which, in turn, would lead to greater congestion on the roads and an increase in vehicle emissions. On this point, Newport Transport said:

“Their [double deck vehicles] withdrawal systematically increases the number of single deck vehicles required to transport children to and from school on roads and at peak time periods on what in Newport’s case are already extremely congested roads. This significant increase in bus numbers would also result in increased engine emissions doing little to support the necessary efforts by the Welsh Assembly of initiatives such as the Green Travel Plan.”<sup>76</sup>

119. We also heard evidence from a number of consultees, including ATCO Cymru, Newport Transport and the WLGA and ADEW, that, as single deck vehicles were generally longer than double deck vehicles, some schools, as well as some bus depots, may not be able to accommodate larger vehicles or greater numbers of vehicles. In their written evidence on this point, the WLGA and ADEW said:

“The removal of double deck buses would lead to an increase in the number of buses at some school sites which could potentially increase the safety risk to children and young people. Some school sites are landlocked and do not have the capacity to manage additional numbers of single deck vehicles at the start and the end of the school day.”<sup>77</sup>

120. ADEW expanded on this in oral evidence, saying:

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<sup>74</sup> Written evidence, SLT 8

<sup>75</sup> Written evidence, SLT 13

<sup>76</sup> Written evidence, SLT 2

<sup>77</sup> Written evidence, SLT 5

“(...) there is (...) an example from the Vale of Glamorgan of a secondary school with a very constrained site that has pupils travelling to and from school on double-decker buses. There is just not enough space on that school site to increase the number of vehicles (...). The alternative is dropping off on the road, or dropping off elsewhere and walking the children into the school.”<sup>78</sup>

121. CPT Cymru made a similar point in their evidence:

“Replacement of double deck vehicles with higher capacity single deck vehicles, or in some cases several smaller single deck vehicles has implications for operating centres. There are physical size constraints in some of the locations used by CPT members and they may need to resource more parking facilities. This may apply in equal measure to the terminal locations at the schools and colleges being served by these vehicles.”<sup>79</sup>

122. Several consultees also expressed concerns about the cost implications of phasing out the use of double deck vehicles. On this point, Rhondda Cynon Taf County Borough Council said:

“A blanket ban on double deck buses for instance could impose significant additional costs on some local authorities by reducing the efficiency of the network but might not improve safety or quality.”<sup>80</sup>

123. The WLGA and ADEW said that the costs of phasing out double deck buses could be high, “given some of the hidden costs that go above and beyond just replacing vehicles, such as capital costs”. These capital costs could, they suggested, include expanding school embarkation/disembarkation areas where removal of the use of double deckers would increase traffic at the school gates and the ongoing costs of replacing vehicles when they become older vehicles.”<sup>81</sup>

124. Newport Transport was also very concerned about the cost implications of this proposal and the impact that may have on its ability to invest in its fleet and staff. They said:

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<sup>78</sup> RoP, paragraph 26, 21 October 2010, Legislation Committee No.4

<sup>79</sup> Written evidence, SLT 6

<sup>80</sup> Written evidence, SLT 11

<sup>81</sup> Written evidence, SLT 5

“(…) a double deck vehicle seats and transports some 81 children. A single deck vehicle holds around 51 (depending upon the model of bus). By prohibiting the use of double deck vehicles Newport Transport would have to invest around £1.2m in seven new single deck vehicles to ensure it was able to meet its current number of children it transports to and from schools.”<sup>82</sup>

125. They went on:

“Its [Newport Transport’s] ability to continue this programme of investment [into its fleet and its staff] would be called into question if it had to withdraw its double deck fleet from the provision of learner transport and replace these vehicles with single deck buses (…).”<sup>83</sup>

126. CPT Cymru said there was no evidence to suggest there would be enough high-capacity single deck vehicles available to meet demand. In this event, they said that one double deck vehicle would need to be replaced with two ordinary single deck vehicles in order to transport the same number of children. They argued:

“There is almost a doubling of cost on that. You need two drivers, two insurance policies, two lots of fuel and—this is important, given other aspects of policy coming out of here—you have double the amount of carbon emissions, because there are two engines.”<sup>84</sup>

### *Evidence from the Minister*

127. In the Explanatory Memorandum, the Deputy First Minister stated that a policy review of school transport conducted by the Assembly’s Education and Lifelong Learning Committee in 2005 had recommended the use of double deck buses on school contracts be gradually phased out and replaced with single deck coaches or specialist school vehicles.<sup>85</sup>

128. Responding to concerns expressed by consultees about the phasing out of double deck buses, the Deputy First Minister stated

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<sup>82</sup> Written evidence, SLT 2

<sup>83</sup> Written evidence, SLT 2

<sup>84</sup> RoP, paragraph 282, 21 October 2010, Legislation Committee No.4

<sup>85</sup> Explanatory Memorandum, paragraph 3.20, page 9

that the number of double deck vehicles in use for learner transport in Wales was relatively small. He said there were 132 known double deck buses in use, mainly in the Cardiff and Newport areas, and around 3300 single deck buses.<sup>86</sup>

129. He told the Committee that his main concern in relation to the use of double deck vehicles for learner transport was controlling unruly behaviour, which he argued was more difficult to do on a double deck vehicle:

“(...) the concern is not particularly about the newer double-deckers, which are fitted with excellent services such as seat belts and closed-circuit television, but about the older double-deckers. It is more difficult to control unruly behaviour on two decks than one. I looked at the advice and evidence given to a previous Assembly committee that that was an issue that it wanted to be addressed.”<sup>87</sup>

130. He went on:

“The evidence that we have is that where the newer vehicles, particularly double-deckers, are fitted with closed-circuit television and seat belts, the behaviour of the pupils is a lot better.”<sup>88</sup>

131. In relation to the timescale for the making of regulations under the proposed Measure, the Deputy First Minister said that his priority was to regulate for the fitting of seat belts, and that other issues, including the use of double deck vehicles, would follow after that.

132. He said that the introduction of regulations made under the proposed Measure would be “phased”;

“(...) not only according to a timetable that we will set but according to the length of the contracts a local authority has. We want to ensure that we do not impose obligations on local authorities in the middle of a contract with a bus operator or put a duty on a bus operator to do things that are not currently part of its contract. It will also be phased because there are

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<sup>86</sup> RoP, paragraphs 114-116, 4 November 2010, Legislation Committee No.4

<sup>87</sup> RoP, paragraph 116, 4 November 2010, Legislation Committee No.4

<sup>88</sup> RoP, paragraph 125, 4 November 2010, Legislation Committee No.4

cost implications and we need to ensure that those are properly assessed.”<sup>89</sup>

### *Our view*

133. In relation to the phasing out of the use of double deck vehicles for learner transport, we note the mixed views from consultees about the benefits of doing this.

134. We accept that the phasing out of double deck vehicles is a matter that has been considered and reported on by an Assembly Committee and that the Deputy First Minister, in bringing forward legislation on this matter, is responding to the evidence received as part of that report.

135. However, we are conscious that we received strong evidence from consultees that double deck vehicles were no less safe than single deck vehicles for use in transporting children and young people to school, and that discontinuing their use could have implications for capacity, traffic congestion and costs, particularly in those areas where the number of double deck vehicles in use is relatively high.

136. We note the Deputy First Minister’s argument that his main concern in relation to double deck vehicles was the ability to control unruly behaviour and that this was more difficult to do on a double deck vehicle. However, he did acknowledge that this was more problematic on older vehicles and that where newer double deck vehicles were fitted with CCTV cameras, pupil behaviour was better.

137. On the basis of the mixed evidence we have received, **we consider it would be prudent to await the outcome of the pilot schemes currently being undertaken in various parts of Wales in relation to the use of CCTV cameras and supervisors on learner transport before drawing any final conclusions on the desirability of phasing out the use of double deck vehicles, and we recommend this approach to the Deputy First Minister.**

138. **We also consider that risk assessments should determine the use of double deck vehicles for learner transport in relation to individual schools. We recommend that any regulations made under section 1 should enable the retention of double deck**

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<sup>89</sup> RoP, paragraph 190, 4 November 2010, Legislation Committee No.4

**vehicles in cases where a risk assessment had shown that the continuing use of double deck vehicles was necessary for safety reasons, particularly at embarkation and disembarkation points along a learner transport route.**

**139. Further to this, and prior to any future implementation of this policy, we recommend that the Deputy First Minister undertakes an audit of the number of schools in Wales that do not have adequate space on-site to accommodate an increase in the number of single deck vehicles that may be needed as a result of the policy decision to phase out double deck vehicles.**

### *The phasing out of older vehicles*

#### *Background*

140. Buses manufactured before 1 October 2001 were not required to be fitted with seat belts.

141. Section 1 of the proposed Measure would enable the Welsh Ministers to phase out the use of older vehicles for learner transport.

#### *Evidence from consultees*

142. There were mixed views amongst consultees for this proposal, with some saying that newer vehicles had a positive influence on pupil behaviour and others arguing that the age of a vehicle did not necessarily impact on its safety.

143. In their evidence, BUSK argued that the vehicle used for transporting pupils could have a significant impact on behaviour of those pupils. They said:

“If children are not given the best and safest transport, that is reflected to some degree in their behaviour and whether or not they vandalise a bus by putting graffiti on it or whatever.”<sup>90</sup>

144. They quoted an example from the Monmouth area where at least one complaint had been made per day about pupil behaviour on a school transport, but that as part of a 12 month trial undertaken with

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<sup>90</sup> RoP, paragraph 142, 14 October 2010, Legislation Committee No.4

one school using new vehicles designed for school transport, there were only two complaints in that period.<sup>91</sup>

145. However, in their evidence, Rhondda Cynon Taf County Borough Council<sup>92</sup>, ATCO Cymru, ADEW and the WLGA all expressed concerns about the proposal to phase out the use of older vehicles for learner transport, arguing that the proper maintenance of a vehicle to ensure it met safety standards was more important than its age.

146. On this point, ATCO Cymru stated:

“Maintenance, cleanliness and design are more important than age. A well maintained and regularly serviced 10 year old bus could be much safer than a seriously neglected 1 year old bus. The enforcement of higher safety standards by VOSA therefore could have a greater impact than the imposition of an age limit.”<sup>93</sup>

147. The WLGA made a similar point in their evidence, arguing:

“The supporting documentation to the Measure states that the reason for phasing out older vehicles is because they can be less attractive to pupils and thus can impact on the take up of school transport. Although this is an important issue to consider, the overriding principle of this Measure should be to improve safety on school transport. Although the age of the vehicle can have an impact on safety, this is not always the case and the safety specifications of the vehicles should be the primary concern.”<sup>94</sup>

148. They went on to say:

“Given the current financial position of both central and local government, it should be considered whether, in the absence of evidence in relation to safety, the phasing out all older vehicles can be justified for an investment of over £20 million. Many of the issues associated with safety and older vehicles would be covered in other sections of the Measure, such as the fitting of

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<sup>91</sup> RoP, paragraph 143, 14 October 2010, Legislation Committee No.4

<sup>92</sup> Written evidence, SLT 11

<sup>93</sup> Written evidence, SLT 8

<sup>94</sup> Written evidence, SLT 5

seatbelts, which would leave older vehicles to be used where they meet all the necessary safety requirements.”<sup>95</sup>

149. However, they did acknowledge that the appearance of vehicles used for learner transport, particularly older double deck vehicles, had an impact on the behaviour of pupils:

“(…) anecdotal evidence on double-deckers, especially in north Wales, is that the behavioural problems arise because of the condition of the vehicles. Some of those are 30 or 40-year-old ex-London Transport vehicles that leak water, which gives the children no confidence in the vehicle. (...). Having a new vehicle, whether it is a double-decker or not, would probably make a difference.”<sup>96</sup>

#### *Evidence from the Minister*

150. In the Explanatory Memorandum, the Deputy First Minister states that “the age and attractiveness of vehicles has been shown to influence take up of and behaviour on school transport. The phasing out of older vehicles has thus been seen as an important step to improving the image, quality and reliability of contracted school transport.”<sup>97</sup>

151. In response to the concerns raised by consultees about the proposal to phase out the use of older vehicles for learner transport, the Deputy First Minister stated:

“(…) there is no requirement to have a bus of a certain age. It is my understanding that these buses have to be approved, regulated or allowed to be in service through inspections and checks with the Vehicle and Operator Services Agency (...). So, while we are not saying that vehicles have to be of a certain age, it is pretty clear that if we make these requirements, the tendency over time will be to go for newer fleets.”<sup>98</sup>

#### *Our view*

152. In relation to the phasing out of older vehicles, we note the mixed views from consultees for this proposal.

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<sup>95</sup> Written evidence, SLT 5

<sup>96</sup> RoP, paragraph 31, 21 October 2010, Legislation Committee No.4

<sup>97</sup> Explanatory Memorandum, paragraphs 3.22-3.23, page 9

<sup>98</sup> RoP, paragraph 48, 7 October 2010, Legislation Committee No.4

153. We agree that the safety specifications of vehicles used for learner transport should be of primary importance, rather than the age of those vehicles.

154. However, we accept that a vehicle's appearance can have an impact on pupil behaviour and that the use of poorly maintained older vehicles in particular can lead to a greater number of incidents of bad behaviour by pupils.

155. Furthermore, we agree with the Deputy First Minister that the introduction of regulations under the proposed Measure for additional safety features such as the installation of seat belts and CCTV cameras on learner transport will, over a period of time, encourage a move towards the use of newer vehicles by transport operators.

**156. We are content that section 1 of the proposed Measure will enable Welsh Ministers to regulate to phase out the use of older vehicles.**

### *The 'yellow bus' specification*

#### *Background*

157. Section 1 of the proposed Measure would enable Welsh Ministers to regulate for the description of school buses to meet the 'yellow bus' specification.<sup>99</sup>

#### *Evidence from consultees*

158. Whilst we did not receive any evidence arguing against the principle of the 'yellow bus' specification, some consultees, including the WLGA and ADEW and Newport Transport, commented that many of the safety aspects of the yellow bus standard were already being implemented by transport operators in various parts of Wales and would be achieved by other initiatives introduced under the proposed Measure.

159. On this point, the WLGA and ADEW said:

“As there is no current standard of yellow bus specification there is some ambiguity as to the implications for local authorities of this section of the Measure. However, it seems that many of the suggested areas that are outlined in the

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<sup>99</sup> Explanatory Memorandum, paragraph 3.25, page 10

Explanatory Memorandum are already dealt with elsewhere in the Measure, such as seat belts, CCTV and driver training.”<sup>100</sup>

160. ATCO Cymru made a similar point in their evidence, saying that the main difference between the ‘yellow’ bus standard and a bus with all the safety features provided for under the Measure was the use of a register and seat allocations. They said this had been successfully trialled as part of the ‘Zoom’ project in North Wales, but there were “significant cost and additional staffing implications for this for which allowance might not have been made in the measure.”<sup>101</sup>

161. The City and County of Swansea and Powys County Council made similar points in their evidence.<sup>102</sup>

162. There was also some confusion about the standard itself. In their evidence, BUSK commented on the ‘yellow bus’ standard in operation in America, saying:

“I have done a lot of research into the American bus, which is operated in Wrexham, and I have found that those buses do not meet the requirements of much of the transport already in use in Wales and the rest of the UK. I think that we should get away from the idea that we should be following what the US does. It is the other way around; it should be following what we do.”<sup>103</sup>

#### *Evidence from the Minister*

163. In the Explanatory Memorandum, the Deputy First Minister stated:

“Yellow school bus operations represent a standard of quality and safety, and generally include the following common features: dedicated and vetted drivers fully trained in both bus operation and child supervision; a guaranteed seat for every pupil with three-point, all age seat belts; familiarisation and safety training for pupils; on board registers for younger pupils, giving reassurance to parents; measures to support good behaviour ranging from CCTV to use of prefects and codes of conduct, [and] dedicated single deck vehicles

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<sup>100</sup> Written evidence, SLT 5

<sup>101</sup> Written evidence, SLT 8

<sup>102</sup> Written evidence, SLT 10 and SLT 13

<sup>103</sup> RoP, paragraph 132, 14 October 2010, Legislation Committee No.4

designed primarily for the carriage of school children and with the yellow livery in line with US practice.”<sup>104</sup>

### *Our view*

164. In relation to the introduction of a ‘yellow bus’ specification for learner transport in Wales, we note that no consultees expressed opposition to the principle of this specification.

165. We also note the evidence from consultees that many of the safety initiatives employed as part of the ‘yellow bus’ standard were already being implemented by transport operators and local authorities in various parts of Wales.

**166. However, as there was some confusion about the yellow bus specification in operation in the United States and whether this was to be applied in Wales, we believe it would be helpful for stakeholders if the Deputy First Minister were to clarify this point. One way to achieve this could be the insertion of a statement into the Explanatory Memorandum.**

### *Other issues raised by consultees in relation to section 1*

- Application of the Disability Discrimination Act 1995

#### *Evidence from consultees*

167. One consultee, Rhondda Cynon Taf County Borough Council, sought clarification as to whether the Disability Discrimination Act 1995 requirement for all public service buses to be operated using wheelchair-accessible vehicles by 2017 would apply to dedicated school transport.<sup>105</sup>

#### *Evidence from the Minister*

168. Responding to this question, the Deputy First Minister said:

“(…) the Disability Discrimination Act has now been repealed by the Equality Act 2010. The original regulations, the Public Service Vehicles Accessibility Regulations 2000, as amended, remain in force and contain certain requirements as to the changes that must be made to public service vehicles to make them more accessible to disabled people. Those regulations

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<sup>104</sup> Explanatory Memorandum, paragraph 3.24, pages 9-10

<sup>105</sup> Written evidence, SLT 11

apply to public service vehicles that are used for regulated services that are local and scheduled.”<sup>106</sup>

169. He went on:

It is our current understanding that dedicated school transport does not come within that definition. So, on contracted school services, these regulations do not apply, which I must confess is a bit surprising to me.”<sup>107</sup>

#### *Our view*

170. In relation to the applicability of provisions under the Disability Discrimination Act 1995 (‘DDA’) concerning wheelchair accessible vehicles, we note the evidence from the Deputy First Minister that, although this Act has been repealed by the Equality Act 2010, regulations under the DDA remain in force. However these regulations only apply to public service vehicles and not to vehicles used for learner transport, as provided for in the proposed Measure.

**171. We believe that the use of wheelchair accessible vehicles by learner transport operators is something that could usefully be considered as part of any home to school transport risk assessment. We recommend the Deputy First Minister gives consideration to this matter at the appropriate time.**

- Taxis and Private Hire Vehicles and Criminal Records Bureau (CRB) checks

#### *Evidence from consultees*

172. Of those consultees who commented on this matter, there were no objections raised to the inclusion of taxis and private hire vehicles in the scope of the proposed Measure, although some noted there would be implications for costs and funding.

173. In their evidence, ASCL Cymru questioned where the responsibility would lie for ensuring that CRB checks were carried out on drivers of taxis and private hire vehicles as part of a contracted learner transport agreement.<sup>108</sup>

#### *Evidence from the Minister*

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<sup>106</sup> RoP, paragraph 127, 4 November 2010, Legislation Committee No.4

<sup>107</sup> RoP, paragraph 127, 4 November 2010, Legislation Committee No.4

<sup>108</sup> RoP, paragraph 206, 21 October 2010, Legislation Committee No.4

174. In response to this question, the Deputy First Minister stated:

“The employer of a taxi or PHV driver would be responsible for obtaining a CRB check on their staff. There is no provision which would allow a self employed individual to obtain a CRB check on themselves. Instead, if a self employed person requires a CRB check they must obtain one from an Umbrella Body, who are agencies registered with the Home Office that will obtain the necessary check on their behalf.”<sup>109</sup>

*Our view*

175. In relation to ensuring that drivers of taxis and private hire vehicles used for learner transport are appropriately CRB checked, we note the evidence from the Deputy First Minister that this responsibility would lie with the employer on behalf of their staff or with an individual, where that person was self-employed.

176. However, **we believe it is important for there to be a clear line of accountability in relation to CRB checks for drivers of taxis and private hire vehicles used for learner transport. We suggest that one way to achieve this would be by requiring a valid CRB check as part of any contractual arrangement with a taxi or private hire vehicle company (or with an individual driver, where applicable). We recommend the Deputy First Minister gives due consideration to this matter at the appropriate time.**

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## **Section 2: Recording visual images or sound on learner transport**

### *Background*

177. Section 2 of the proposed Measure inserts new section 14B into the 2008 Measure. It provides for Welsh Ministers to make regulations about arrangements for the recording of visual images or sound on learner transport and for the use, storage and retention of those images or sound.

178. The Explanatory Memorandum states that section 2 would allow the Welsh Ministers to require the fitting of closed circuit television

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<sup>109</sup> Letter from the Deputy First Minister, 11 November 2010

(CCTV) on learner transport vehicles, and to set out the operational arrangements, including confidentiality and storage, for its use.<sup>110</sup>

### *Evidence from consultees*

179. The majority of consultees expressed support for the use of CCTV cameras on learner transport, although the evidence we received from children and young people on this point showed their views were mixed.

180. Some consultees, including SNAP Cymru, ATCO Cymru, ASCL Cymru and NAHT Cymru and BUSK, supported the proposal on the basis that it would give pupils and parents greater confidence about school buses and provide strong evidence where an incident had taken place on a school bus. In their evidence, SNAP Cymru said:

“Generally vulnerable young people do welcome this measure [installing CCTV cameras on school buses] as an additional confidence in their safety; families also feel that this is an additional deterrent to disruptive behaviour. Families report that incidents on learner transport are not fairly investigated and sometimes incidents reported are not taken seriously. CCTV may assist staff in gaining a more accurate understanding of incidents reported.”<sup>111</sup>

181. ATCO Cymru said that the CCTV cameras were “now quite widely used and while there is no specific evidence that it has controlled behaviour where fitted as such, it has nevertheless been welcomed by council staff and suppliers in dealing with incidents and in supporting drivers.”<sup>112</sup>

182. ASCL Cymru and NAHT Cymru said that a particular problem for school leaders had been “gaining the evidence to use in exclusion hearings resulting from incidents on the school bus. If CCTV evidence can be made available it would be helpful.”<sup>113</sup>

183. BUSK said they did not think any parent would object to the use of CCTV on school buses as there had been several cases in the UK where CCTV had been used to identify problems with pupils misbehaving on

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<sup>110</sup> Explanatory Memorandum, paragraph 3.27, page 10

<sup>111</sup> Written evidence, SLT 3

<sup>112</sup> Written evidence, SLT 8

<sup>113</sup> Written evidence, SLT 4

school buses and these incidents had then been dealt with. They argued that the use of CCTV on school buses “sends out a clear message to the (...) pupils on the journey that they cannot get away with misbehaving or causing a breach of safety”.<sup>114</sup>

184. BUSK argued that any requirement to install CCTV cameras on school buses would need to be accompanied by a clause ensuring that the CCTV footage was to a high enough standard to enable pupils and drivers to be clearly identified. Similarly, Stuart’s Campaign and CPT Cymru highlighted the need for CCTV footage to be of a sufficient quality.<sup>115</sup>

185. BUSK went on to say that they thought it was equally important that evidence from CCTV cameras on school buses should be used to identify adults (i.e. drivers and supervisors) who behaved badly as well as pupils.<sup>116</sup> Other consultees, including SNAP Cymru, the WLGA and ADEW, ATCO Cymru and CPT Cymru, agreed with this, saying that the use of CCTV cameras on school buses afforded protection to drivers as well as pupils.

186. Pembrokeshire County Council said there were 35 school vehicles in their area fitted with CCTV systems, and the impact of this had been “positive in improving pupil and driver behaviour”. They noted, however, that this improvement had been linked to a school transport project where a programme of pupil training had been undertaken in certain schools.<sup>117</sup> The City and County of Swansea made similar points in their evidence.<sup>118</sup>

187. In their evidence, the WLGA and ADEW referred to two pilot schemes in operation in Wales as part of school transport projects; one in North Wales and one in South West Wales. They said that preliminary reports of these schemes had shown mixed results, with one scheme reporting good results as a combination of CCTV use, driver training and pupil training and the other reporting that the use

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<sup>114</sup> RoP, paragraph 174, 14 October 2010, Legislation Committee No.4

<sup>115</sup> RoP, paragraph 178, 14 October 2010, Legislation Committee No.4 and RoP, paragraph 287, 21 October 2010, Legislation Committee No.4, respectively

<sup>116</sup> Written evidence, SLT 1

<sup>117</sup> Written evidence, SLT 9

<sup>118</sup> Written evidence, SLT 10

escorts was more effective.<sup>119</sup> They did acknowledge that CCTV footage was “powerful in providing evidence for follow-up”.<sup>120</sup>

188. In his evidence, however, the Children’s Commissioner said that the “potential for the widespread use of CCTV to record images and sound on dedicated school transport” was a key concern. He referred to his 2004 report on children’s experiences of dedicated school transport<sup>121</sup>, in which he noted that some companies that provided learner transport had already installed CCTV systems. He said:

“While this might be a useful tool to identify perpetrators of serious incidents the routine monitoring of such tapes is NOT something the Children’s Commissioner would encourage. That would appear to be encouraging the over-surveillance of children and by itself will do little to alter behaviour.”<sup>122</sup>

189. He went on in his evidence to us to argue that, in relation to the use of CCTV on learner transport, “there is clearly a balance to be sought between the right of the child to travel safely and the right of the child to privacy which is provided by Article 16 of the UNCRC [United Nations Convention on the Rights of the Child].”<sup>123</sup>

190. He also said that, “in discussion with a group of sixth form students recently opinion was divided as to the effectiveness of the cameras in terms of improving behaviour. We would suggest that there is a need to scrutinise closely the findings of the pilots of the use of CCTV on school buses when published.”<sup>124</sup>

191. The evidence we received from children and young people showed a majority in favour of the use of CCTV cameras on learner transport, although a number of respondents commented on the implications of the use of CCTV cameras for pupils’ privacy.<sup>125</sup>

192. Some consultees, including SNAP Cymru and ASCL Cymru, had concerns about the storage and use of CCTV footage, particularly who

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<sup>119</sup> RoP, paragraph 48, 21 October 2010, Legislation Committee No.4

<sup>120</sup> RoP, paragraph 51, 21 October 2010, Legislation Committee No.4

<sup>121</sup> *As long as I get there safe*, School Buses: towards safer and better journeys to school, Report of the Children’s Commissioner for Wales, 2004

<sup>122</sup> Written evidence, SLT 12

<sup>123</sup> Written evidence, SLT 12

<sup>124</sup> Written evidence, SLT 12

<sup>125</sup> A summary of evidence from the children and young people’s questionnaire is available at the end of this report.

would 'own' the recordings, who would be able to access them, how long they would be stored for and what purposes they could be used for. In their evidence on this point, ASCL Cymru stated:

“From the school’s perspective, if I am responsible, as head teacher, for the conduct of my students between school and home and vice versa, I would need first call on that [CCTV footage]. However, I could understand it if a bus company felt compromised by some of the evidence and did not want to release it quickly to me. That sort of area would need work.”<sup>126</sup>

193. On this point, some consultees, including ATCO Cymru and Rhondda Cynon Taf County Borough Council, suggested there should be clear guidelines on the use of images and sound from CCTV on school buses.<sup>127</sup>

194. Others, including SNAP Cymru, CPT Cymru and the WLGA and ADEW, drew attention to the cost implications of the proposal. SNAP Cymru said that any requirement to install CCTV on learner transport “should not result in unnecessary additional costs to providers”.<sup>128</sup>

195. In their evidence, CPT Cymru stated that any additional responsibility for their members as a result of the requirements of this section of the proposed Measure would have implications for resources, in terms of both cost and time.<sup>129</sup>

196. The WLGA and ADEW said that many local authorities supported the principle of using CCTV on school buses, but said that “this would be subject to resources being made available to enable a more universal approach.”<sup>130</sup>

#### *Evidence from the Minister*

197. In his evidence, the Deputy First Minister stated that the policy intention behind the proposal to install CCTV cameras on school buses “is that it would probably prevent a lot of unruly behaviour from happening in the first place. The initial evidence that we have from

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<sup>126</sup> RoP, paragraph 201, 21 October 2010, Legislation Committee No.4

<sup>127</sup> Written evidence, SLT 8 and SLT 11

<sup>128</sup> Written evidence, SLT 3

<sup>129</sup> Written evidence, SLT 6

<sup>130</sup> Written evidence, SLT 5

some pilot schemes that have been undertaken is that this is the case. The presence of cameras tends to improve behaviour.”<sup>131</sup>

198. He also said that he had asked the WLGa to work with the government to carry out a number of evaluations on initiatives such as the use of CCTV cameras, and that the WLGa were due to report to the government in March 2011.

199. Section 2 of the proposed Measure refers to “recording visual images or sound of events occurring on learner transport”. We asked the Deputy First Minister to clarify what would constitute an “event” for the purpose of section 2. In response, he confirmed:

“An event would include anything that falls within its natural definition, which is any everyday event. It can be anything that happens during a journey, and so we want to ensure a definition that is broad enough to include anything that can happen on the bus.”<sup>132</sup>

200. He went on:

“We have tried to make it broad enough so that anything that happens on the journey falls within the definition. (...) We believe that it is broad enough to cover the issues that we need to consider, such as misbehaviour and so on.”<sup>133</sup>

201. In relation to evidence from consultees questioning who would ‘own’ any CCTV footage filmed on school buses, at the first evidence session, the Deputy First Minister stated that this was a matter that would need to be addressed in regulations, along with the purposes for which the images and sound would be retained. He said these regulations would be subject to consultation.<sup>134</sup>

202. The Deputy First Minister subsequently confirmed in a later evidence session that transport operators would have ownership of the footage, but there would be an agreement between the operator and the local authority to release the footage to the local authority should a case arise as a result of an incident on a school bus.<sup>135</sup> The Deputy

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<sup>131</sup> RoP, paragraph 69, 7 October 2010, Legislation Committee No.4

<sup>132</sup> RoP, paragraph 59, 7 October 2010, Legislation Committee No.4

<sup>133</sup> RoP, paragraph 61, 7 October 2010, Legislation Committee No.4

<sup>134</sup> RoP, paragraphs 63-64, 7 October 2010, Legislation Committee No.4

<sup>135</sup> RoP, paragraph 138, 4 November 2010, Legislation Committee No.4

First Minister confirmed he intended to issue guidance about such agreements.<sup>136</sup>

203. With regard to the use of images and sound from CCTV recordings, the Deputy First Minister said this would be subject to certain safeguards, as provided for in the Data Protection Act 1998:

“Part II of Schedule 5 to the Government of Wales Act 2006 provides that a provision of an Assembly Measure cannot make modifications of any of the provisions of the Data Protection Act 1998 (“DPA 1998”). Accordingly the Assembly could not legislate in any way which would contravene the DPA 1998.”<sup>137</sup>

204. He went on:

“The proposed Measure allows the Welsh Ministers to make regulations in relation to “the use, storage and retention” of images. This will enable the Welsh Ministers to make regulations in relation to the purposes for which such storage may be used. Such regulations will be subject to consultation with stakeholders and affirmative procedure in the Assembly.”<sup>138</sup>

205. He confirmed that CCTV images could be used as evidence in a court of law<sup>139</sup>, and went on to say that he would encourage the development of a voluntary code about the use of footage from CCTV on learner transport.<sup>140</sup>

### *Our view*

206. In relation to recording visual images or sound on learner transport, we note that most consultees expressed support for the principle of the use of CCTV cameras and their effectiveness.

207. We acknowledge the Deputy First Minister’s policy intention to use CCTV cameras on school transport as a means of improving behaviour and we believe that it will, if used properly, give greater confidence to pupils, parents, drivers and supervisors.

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<sup>136</sup> RoP, paragraphs 160-161, 4 November 2010, Legislation Committee No.4

<sup>137</sup> Letter from the Deputy First Minister, 25 October 2010

<sup>138</sup> Letter from the Deputy First Minister, 11 November 2010

<sup>139</sup> Letter from the Deputy First Minister, 25 October 2010

<sup>140</sup> RoP, paragraphs 162-163, 4 November 2010, Legislation Committee No.4

208. We note the views of consultees who argued that the presence of CCTV cameras on learner transport will deter individuals from behaving badly, and that the footage from these cameras could provide evidence in the event of an incident on a school bus. We agree with consultees that it is important for the quality of CCTV footage to be sufficiently high to enable individuals to be identified.

209. We note the evidence from consultees and the Deputy First Minister that pilot studies about the use of CCTV cameras on learner transport are being undertaken and we trust the Deputy First Minister will take full account of the outcomes of these studies prior to making regulations under this section.

210. However, we are conscious of the evidence from the Children's Commissioner about balancing the need for pupil safety on learner transport with a child's right to privacy. On this point, **we believe there should be robust regulation of the use, storage, retention and access to footage from CCTV cameras on learner transport. We note that section 2 of the proposed Measure makes provision for such regulation and we welcome the Deputy First Minister's commitment to consult on these regulations – we recommend he does so at the earliest opportunity.**

211. **We also recommend that regulations made under section 2 should address whether footage from CCTV cameras on learner transport could be used for training purposes, and if so, how and to what extent.**

212. **We are satisfied that the making of the regulations under section 2 will be subject to the Assembly's affirmative resolution procedure.**

213. In relation to access to CCTV footage from learner transport, we believe it is important that head teachers have such access where there has been an incident involving one of their pupils. **We note the Deputy First Minister's evidence that access arrangements for relevant parties to images and sound recorded on learner transport will be set out in an agreement between the local authority and the transport operator, and we welcome his commitment to issue guidance on these agreements. We recommend he does so at the earliest opportunity.**

214. Notwithstanding our comments above, **we are content with section 2 as drafted.**

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### **Section 3: Safety risk assessments of learner transport**

#### *Background*

215. Section 3 of the proposed Measure inserts new section 14C into the 2008 Learner Travel Measure. It enables the Welsh Ministers to require relevant bodies to carry out safety risk assessments of learner transport, and to set out in detail the requirements of such assessments.

#### *Evidence from consultees*

216. We asked consultees if they were content with the provisions in the proposed Measure regarding safety risk assessments, and for their views on who should be responsible for undertaking risk assessments.

217. Overall, consultees, including Pembrokeshire County Council and the City and County of Swansea, were supportive in principle of the provisions in section 3 regarding the undertaking of safety risk assessments of learner transport.

218. Both Pembrokeshire County Council and the City and County of Swansea, in their written evidence, stated they were “supportive of the requirement to carry out risk assessments”.<sup>141</sup>

219. Pembrokeshire County Council went on to say:

“Contractors are undertaking [risk assessments] at present using the method prepared for WAG as part of the SWITCH School Transport Project.”<sup>142</sup>

220. This point was also made by the City and County of Swansea, Rhondda Cynon Taf County Borough Council, and Powys County Council.<sup>143</sup>

221. In written evidence, the City and County of Swansea said:

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<sup>141</sup> Written evidence, SLT 9 and 10

<sup>142</sup> Written evidence, SLT 9

<sup>143</sup> Written evidence, SLT 10, 11 and 13

“There is currently some resistance from operators to carry out the risk assessments but if they become statutory then local authorities will be able to insist that they are completed.”<sup>144</sup>

222. With regard to who should be responsible for carrying out safety risk assessments on learner transport, a variety of views were presented to us.

223. Governors Wales, whilst making no specific suggestion as to who should be responsible, stated:

“Safety risk assessments of learner transport should be carried out by a competent person with any assessment based on national criteria.”<sup>145</sup>

224. Some consultees, including Stuart’s Campaign, NAHT Cymru, ASCL Cymru and BUSK, argued that the responsibility to undertake safety risk assessments should lie with local authorities.

225. In oral evidence, Stuart’s Campaign said that they were content for the proposed Measure to allow for regulations to be made in relation to the making of safety risk assessments.<sup>146</sup>

226. With regard to who should be held responsible, they stated that the onus should be on the local authority to carry out risk assessments.<sup>147</sup> They went on to say:

“If [a local authority] hands that responsibility to a third party, whether to the bus company or someone else, then it has to have assurances from that company that it will do a full risk assessment and take into account all of the risks. That needs to be considered fully, perhaps in this legislation, in order to ensure that local authorities do that.”<sup>148</sup>

227. They also suggested that local authorities would “contract out such work rather than doing it in-house” and, as such, legislation is

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<sup>144</sup> Written evidence, SLT 10

<sup>145</sup> Written evidence, SLT 7

<sup>146</sup> RoP, paragraphs 183-184, 14 October 2010, Legislation Committee No.4

<sup>147</sup> RoP, paragraph 185, 14 October 2010, Legislation Committee No.4

<sup>148</sup> RoP, paragraph 185, 14 October 2010, Legislation Committee No.4

needed so that the local authority has the ability to ensure that a contracted operator fulfils its legal obligations.<sup>149</sup>

228. Both NAHT Cymru and ASCL Cymru stated that the responsibility for undertaking safety risk assessments should rest with local authorities, and expressed concern that individual school governing bodies could be partly responsible for undertaking this work.<sup>150</sup>

229. In their written evidence, BUSK said:

“To require relevant bodies to carry out risk assessments as set out by the Welsh Ministers may not always be achievable in terms of getting the risk assessment actually carried out by an individual who is qualified to undertake this work. The view of BUSK is, that in order that this is requirement is achievable it should be carried out by the body that contracts the transport.”<sup>151</sup>

230. They added:

“To require a transport company to carry out the risk assessing of school transport is, we believe, removing a local authority or school’s legal obligation. Requiring transport companies to carry out a risk assessment of school transport runs when it is legally the local authority or a school (whichever contracts the service) that has a legal duty to provide a safe journey for the pupils in their care, is wrong.”<sup>152</sup>

231. In oral evidence, BUSK argued that local authorities were best placed to know the roads, footpaths and street conditions in their respective areas<sup>153</sup>, and stated:

“[If] we are going to require transport companies to do these risk assessments [at] what point is the authority going to assess whether that transport company is really equipped to do that risk assessment? (...) You cannot delegate that

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<sup>149</sup> RoP, paragraph 192, 14 October 2010, Legislation Committee No.4

<sup>150</sup> RoP, paragraphs 212 and 214, 21 October 2010, Legislation Committee No.4

<sup>151</sup> Written evidence, SLT 1

<sup>152</sup> Written evidence, SLT 1

<sup>153</sup> RoP, paragraph 185, 14 October 2010, Legislation Committee No.4

[responsibility] to someone unless you know that they can do it.”<sup>154</sup>

232. Other consultees, however, argued that the responsibility for carrying out safety risk assessments should lie with bus operators, who are contracted by local authorities to provide a learner transport service.

233. The WLGA and ADEW stated that they were broadly supportive of the provisions in the proposed Measure regarding safety risk assessments, and said they expected that the current voluntary risk assessment document, which has been developed in partnership between the Assembly Government and local government, would be used as a template.<sup>155</sup>

234. They suggested that the duty to provide the risk assessment should be placed on the operator. They went on to say that local authorities, as commissioners of school transport, would then have a responsibility to ensure that the bus operators were “(...) doing what they said they were going to do”.<sup>156</sup>

235. The WLGA and ADEW acknowledged that there were grey areas regarding who had responsibility for conducting risk assessments at embarkation points, and highlighted the assessment document that accompanied the Learner Travel (Wales) Measure 2008, which stated that operators were responsible for any activity outside the school premises.<sup>157</sup>

236. They added, however, that as this was not currently a statutory duty, some operators asked “why they should do it”, and therefore the proposed Measure was “an ideal way of making it statutory, by making it a requirement for all transport operators to carry out a school transport risk assessment.”<sup>158</sup>

237. In written evidence, CPT Cymru said that consideration should be given to a common risk assessment policy for home to school

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<sup>154</sup> RoP, paragraph, 186 and 190, 14 October 2010, Legislation Committee No.4

<sup>155</sup> Written evidence, SLT 5

<sup>156</sup> RoP, paragraph 55, 21 October 2010, Legislation Committee No.4

<sup>157</sup> RoP, paragraph 57, 21 October 2010, Legislation Committee No.4

<sup>158</sup> RoP, paragraph 57, 21 October 2010, Legislation Committee No.4

transport services, as many operators were already subject to risk assessment using an existing formal template.<sup>159</sup>

238. They suggested that, with regard to the responsibility for safety risk assessments, a partnership approach should be adopted by local authorities, the individual schools in question, and the contracted bus operator.<sup>160</sup>

239. In oral evidence, CPT Cymru went on to say:

“There are aspects of the risk assessment of the entire home-to-school journey that would be best carried out by the bus operator, some bits of it that would be best carried out by the local authority, and there are certainly some bits of it that would be best carried out by the third partner in this trio, namely the school, because some of the greatest risks occur with vehicle movement around schools.”<sup>161</sup>

240. CPT Cymru also stated that thought needed to be given to how small bus operators would manage any new responsibilities regarding the carrying out of risk assessments, particularly as the process could be unfamiliar to them. They added:

“(…) we would hope that the Government would allow sufficient time for them, and offer some sort of guidance, whether that comes in the form of training courses, or whatever. There will be a resource implication for operators as regards time, but we also need to get these smaller operators on board, so that they are part of the culture, and know what is expected of them when risk assessments are needed.”<sup>162</sup>

241. ATCO Cymru expressed similar views to those of CPT Cymru regarding a partnership approach, and stated that current practice had involved the requirement for a risk assessment to be written into an operator’s contract with the local authority. They went on to suggest that bus operators could be responsible for carrying out risk assessments, with local authorities acting in a supervisory role, as part

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<sup>159</sup> Written evidence, SLT 6

<sup>160</sup> Written evidence, SLT 6

<sup>161</sup> RoP, paragraph 304, 21 October 2010, Legislation Committee No.4

<sup>162</sup> RoP, paragraph 296, 21 October 2010, Legislation Committee No.4

of which they would “carry out ‘checks and comment on any assessment presented to them.”<sup>163</sup>

### *Evidence from the Minister*

242. In relation to the carrying out of safety risk assessments on learner transport, the Deputy First Minister said the primary purpose for including this provision in the proposed Measure was in order for local authorities:

“(…) to satisfy themselves that all the possible risks on a particular journey have been covered by the bus operator [so] that they are satisfied that appropriate action will be taken by the bus operator to reduce the risks identified.”<sup>164</sup>

243. The Deputy First Minister said that such assessments would encompass bus routes, pick-up and drop-off points, school sites, driver and passenger assistance, and type of vehicle in use.<sup>165</sup>

244. He went on to say that the undertaking of safety risk assessments was “an important part of building trust between the bus operators, schools, pupils and parents.”<sup>166</sup>

245. With regard to who would be responsible for carrying out a risk assessment, the Deputy First Minister’s official said:

“It is envisaged that the regulations would place a duty on local authorities to ensure that the risk assessment is carried out.”<sup>167</sup>

246. The official went on to say that the Deputy First Minister anticipated the undertaking of a risk assessment would be imposed on a bus operator as a condition of contract and, as such, the legal responsibility would lie with the local authority.<sup>168</sup>

247. In later evidence to the Committee, the Deputy First Minister said that, although overall responsibility would have to rest with local

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<sup>163</sup> RoP, paragraph 299, 4 November 2010, Legislation Committee No.4

<sup>164</sup> RoP, paragraph 95, 7 October 2010, Legislation Committee No.4

<sup>165</sup> RoP, paragraph 90, 7 October 2010, Legislation Committee No.4

<sup>166</sup> RoP, paragraph 95, 7 October 2010, Legislation Committee No.4

<sup>167</sup> RoP, paragraph 100, 7 October 2010, Legislation Committee No.4

<sup>168</sup> RoP, paragraph 100, 7 October 2010, Legislation Committee No.4

authorities, “part of that responsibility could be shared by the bus companies and the schools.”<sup>169</sup>

248. In relation to concerns raised by consultees regarding “grey areas” of responsibility, the Deputy First Minister confirmed that any regulations made under this proposed Measure would require the safety risk assessment to stipulate who is responsible for incidents at drop-off and pick-up points.<sup>170</sup>

249. The Deputy First Minister also said that regulations could require an operator to identify, as part of the safety risk assessment, any potential risks with using a particular type of seatbelt fitted on an individual vehicle.<sup>171</sup>

250. The Deputy First Minister’s official added that the current non-statutory risk assessment guidance “covers the age appropriateness of seat belts within the UK legislation.”<sup>172</sup>

251. However, the Deputy First Minister later clarified that:

“No remedial action could be forced upon a bus operator following such a risk assessment if the seatbelts met current UK legislation specifications.”<sup>173</sup>

#### *Our view*

252. In relation to the undertaking of safety risk assessments of learner transport, we note that, overall, consultees supported the principle of the provisions contained in section 3.

253. In relation to who should be responsible for carrying out a safety risk assessment, we note the conflicting views from consultees on this point and acknowledge the clear reasoning behind each of their arguments.

254. On this matter, we agree with the Deputy First Minister that responsibility for carrying out safety risk assessments could be shared between interested parties, but that, overall, legal responsibility

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<sup>169</sup> RoP, paragraph 167, 4 November 2010, Legislation Committee No.4

<sup>170</sup> RoP, paragraph 97, 7 October 2010, Legislation Committee No.4

<sup>171</sup> Letter from the Deputy First Minister, 11 November 2010

<sup>172</sup> RoP, paragraph 109, 4 November 2010, Legislation Committee No.4

<sup>173</sup> Letter from the Deputy First Minister, 11 November 2010

should lie with local authorities as they have a role in contracting learner transport on behalf of schools.

255. We acknowledge the evidence that responsibility for assessing embarkation and disembarkation points has, in the past, been a 'grey area' and, as such, we welcome the Deputy First Minister's confirmation that regulations made under this section would require a safety risk assessment to specify who would be responsible for all aspects of such an assessment, thus minimising the potential for grey areas.

**256. In view of the evidence we have received, we recommend that, in making regulations under this section, the Deputy First Minister pays particular attention to ensuring there is clarity, as part of the risk assessment process, as to who has responsibility for embarkation and disembarkation points on a learner transport route.**

257. Notwithstanding this, **we are content with section 3 as drafted.**

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## **Section 4: Driver training**

### *Background*

258. Section 4 of the proposed Measure inserts new section 14D into the 2008 Learner Travel Measure. It provides the Welsh Ministers with the power to propose regulations requiring drivers to receive national standards of training. The Explanatory Memorandum states that this training could include working with children, child protection, seatbelt legislation, and dealing with challenging behaviour.

### *Evidence from consultees*

259. We asked consultees who should be responsible for ensuring drivers were appropriately trained, and should there be specific training offered for drivers working with children with additional learning needs.

260. Generally, consultees were supportive of the provisions in section 4 of the proposed Measure regarding driver training, with some, including the WLGA, Stuart's Campaign, SNAP Cymru, Governors Wales, Rhondda Cynon Taf County Council, and the Children's

Commissioner, welcoming the improvements to driver training standards that this provision would bring about.

261. In written evidence, Governors Wales said they welcomed the proposal within section 4 of the proposed Measure which would require drivers to receive national standards of training.<sup>174</sup>

262. Rhondda Cynon Taf County Council noted that driver training was a requirement of contracts currently awarded by their Council but that “more work is recognised as being necessary to help drivers.”<sup>175</sup>

263. In his written evidence, the Children’s Commissioner said that, during discussions with children regarding their experiences on learner transport, children had identified “the importance of the driver and the consistency of their approach to customer service”. He went on to say:

“(…) we would suggest that child protection and safeguarding will need to form a crucial part of this training as well as training in how to work with children and young people. Such training should be underpinned by equality awareness training (…).”<sup>176</sup>

264. This was supported by the evidence we received from children and young people, which showed an overwhelming majority of pupils were in favour of training being provided to drivers of learner transport.<sup>177</sup>

265. Stuart’s Campaign said that, although driver training standards had improved in the last ten years, if there was a comprehensive training package for all drivers of school buses, “we would be in a better situation than we sometimes are at the moment”.<sup>178</sup>

266. In written evidence, the WLGA and ADEW confirmed their support for section 4 of the proposed Measure, and noted:

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<sup>174</sup> Written evidence, SLT 7

<sup>175</sup> Written evidence, SLT 11

<sup>176</sup> Written evidence, SLT 12

<sup>177</sup> A summary of evidence from the children and young people’s questionnaire is provided at the end of this report.

<sup>178</sup> RoP, paragraph 197, 14 October 2010, Legislation Committee No.4

“There are currently pilot projects underway which could provide a sound evidential base for national standards of training (...).”<sup>179</sup>

267. In oral evidence, they added that a driver training programme similar to that currently operating in the South West Wales Integrated Transport Consortium (SWITCH) could be used as a template.<sup>180</sup>

268. With regard to who should be responsible for ensuring drivers are appropriately trained, the WLGA stated the responsibility “must be the transport operators because they employ the drivers.”<sup>181</sup>

269. They went on to suggest that local authorities should include driver training as a contractual requirement<sup>182</sup>, and that the delivering of training should be done on a “collaborative basis across authorities rather than having individual authorities do it.”<sup>183</sup>

270. The WLGA and ADEW also suggested that school pupils could play a role in driver training as it could help “get the message across.”<sup>184</sup>

271. They went on:

“There has been a lot of work on driver training in the past couple of years, and the transport group sponsored by the Assembly Government to develop initiatives has looked at a number of areas to do with pupil training as well as driver training.”<sup>185</sup>

272. ATCO Cymru also expressed support for the principle of training for pupils, and made reference to a pupil training programme which has been delivered in collaboration with SWITCH and the WLGA School Transport Project Team, which, in their opinion, had yielded “exceptionally good” results.<sup>186</sup>

273. Some consultees, including ASCL Cymru, NAHT Cymru, SNAP Cymru, BUSK, WLGA and ADEW, suggested that specific training was

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<sup>179</sup> Written evidence, SLT 5

<sup>180</sup> RoP, paragraph 69, 21 October 2010, Legislation Committee No.4

<sup>181</sup> RoP, paragraph 68, 21 October 2010, Legislation Committee No.4

<sup>182</sup> RoP, paragraph 69, 21 October 2010, Legislation Committee No.4

<sup>183</sup> RoP, paragraph 76, 21 October 2010, Legislation Committee No.4

<sup>184</sup> RoP, paragraph 70, 21 October 2010, Legislation Committee No.4

<sup>185</sup> RoP, paragraph 75, 21 October 2010, Legislation Committee No.4

<sup>186</sup> Written evidence, SLT 8

needed so that drivers were appropriately equipped to deal with pupils with additional learning needs.

274. In oral evidence, SNAP Cymru said:

“Driver training on managing aggression, managing challenging behaviour, understanding disability, and general disability awareness is important.”<sup>187</sup>

275. NAHT Cymru said that training to enable drivers to deal with pupils who have additional learning needs would be different to any mainstream training and that, with regard to this, the proposed Measure should be very specific, as “it will make a huge difference to safety in the additional learning needs section.”<sup>188</sup>

276. ASCL Cymru stated that, with regard to pupils who had additional learning needs, “the training would need to be specific to the needs of [those] individuals.”<sup>189</sup>

277. BUSK expressed similar views, and suggested that the training required would depend on whether a child had a behavioural, physical or mental disability.<sup>190</sup>

278. In their evidence, the WLGA and ADEW said the training requirements for drivers transporting secondary school pupils would be different to those drivers who are working closely with pupils who have additional learning needs, and stated that different modules of training would be needed.<sup>191</sup>

279. They went on to say that they would support the inclusion of a statement in the proposed Measure to the effect that driver training should be as inclusive as possible, particularly in relation to pupils with additional learning needs.<sup>192</sup>

280. ATCO Cymru said that while general training should be the responsibility of the bus operator, any specialised training regarding

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<sup>187</sup> RoP, paragraph 65, 14 October 2010, Legislation Committee No.4

<sup>188</sup> RoP, paragraph 217, 21 October 2010, Legislation Committee No.4

<sup>189</sup> RoP, paragraph 216, 21 October 2010, Legislation Committee No.4

<sup>190</sup> RoP, paragraph 196, 14 October 2010, Legislation Committee No.4

<sup>191</sup> RoP, paragraph 83, 21 October 2010, Legislation Committee No.4

<sup>192</sup> RoP, paragraphs 86-87, 21 October 2010, Legislation Committee No.4

interaction with pupils who had additional learning needs could be organised by local authorities.<sup>193</sup>

281. In their evidence, BUSK, WLGA and ADEW, and CPT Cymru argued that improved driver training did not necessarily mean the introduction of a new training regime.

282. BUSK suggested that specific modules, including transporting school children, could be added to the current Certificate of Professional Competence (CPC) training, as all drivers had to complete this training and it would avoid the need to “bring in additional training.”<sup>194</sup> The WLGA and ADEW agreed with this suggestion.<sup>195</sup>

283. In written evidence, CPT Cymru noted that school and learner travel modules were currently available within the CPC programme and that there was, therefore, no point in duplicating the training process.<sup>196</sup>

284. In oral evidence, they went on to say:

“(...) it would be helpful to say the least for all bus drivers who take children to school to take these modules as part of their overall 35 hours of CPC training.”<sup>197</sup>

#### *Evidence from the Minister*

285. In relation to the provisions in the proposed Measure relating to driver training, the Deputy First Minister said:

“The proposed Measure will enable Welsh Ministers to set up additional standards of driver training to cover skills such as working with children, compliance with seat-belt legislation and dealing with challenging behaviour.”<sup>198</sup>

286. The Deputy First Minister confirmed that these new standards would be in addition to the basic training which drivers currently undertake.<sup>199</sup>

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<sup>193</sup> RoP, paragraph 305, 4 November 2010, Legislation Committee No.4

<sup>194</sup> RoP, paragraph 194, 14 October 2010, Legislation Committee No.4

<sup>195</sup> RoP, paragraph 68, 21 October 2010, Legislation Committee No.4

<sup>196</sup> Written evidence, SLT 6

<sup>197</sup> RoP, paragraph 312, 21 October 2010, Legislation Committee No.4

<sup>198</sup> RoP, paragraph 106, 7 October 2010, Legislation Committee No.4

<sup>199</sup> RoP, paragraph 106, 7 October 2010, Legislation Committee No.4

287. With regard to who would be responsible for ensuring drivers were appropriately trained, the Deputy First Minister confirmed that primary responsibility would rest with the transport operator, and could be imposed as a condition of contract by the local authority.<sup>200</sup>

288. He went on to say that he would not expect local authorities to be directly responsible for training drivers, but that local authorities would “need to make sure that its contract with the operator is fully adhered to.”<sup>201</sup>

289. We asked the Deputy First Minister for his views on including a provision in the proposed Measure relating to pupil training. The Deputy First Minister suggested that, as a voluntary exercise, it was good practice.<sup>202</sup>

290. The Deputy First Minister’s official also noted that the current statutory behaviour code was delivering successful and encouraging results, in terms of improvements in pupil behaviour.<sup>203</sup>

291. However, the Deputy First Minister went on to say:

“(…) there would be no regulations under this proposed Measure that would put [pupil training] on a statutory footing.”<sup>204</sup>

292. In relation to the suggestion that drivers should receive specific training to manage pupils with additional learning needs, the Deputy First Minister said that he wanted to ensure that any requirements in the proposed Measure were wide enough to capture interaction with pupils who had additional learning needs.<sup>205</sup>

293. With regard to comments that any new training requirements could be delivered within existing training programmes, the Deputy First Minister’s official noted that the South West Wales Integrated Transport Consortium (SWITCH) had created a module that fitted the needs of school children and children with additional learning needs, and that the Deputy First Minister wanted to put the approach

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<sup>200</sup> RoP, paragraph 171, 4 November 2010, Legislation Committee No.4

<sup>201</sup> RoP, paragraph 171, 4 November 2010, Legislation Committee No.4

<sup>202</sup> RoP, paragraph 185, 4 November 2010, Legislation Committee No.4

<sup>203</sup> RoP, paragraph 186, 4 November 2010, Legislation Committee No.4

<sup>204</sup> RoP, paragraph 185, 4 November 2010, Legislation Committee No.4

<sup>205</sup> RoP, paragraph 113, 7 October 2010, Legislation Committee No.4

currently adopted by SWWITCH onto a statutory footing, ensuring it was kept within the CPC framework.<sup>206</sup>

### *Our view*

294. In relation to the requirement for drivers to receive national standards of training, we note that, in general, consultees supported the principle of the provisions contained in section 4.

295. We welcome the Deputy First Minister's assurances that any regulations made under this section will require drivers to be trained in areas such as working with children and compliance with seat belt legislation.

296. In relation to who should be responsible for ensuring that drivers of learner transport are appropriately trained, we note the Deputy First Minister's evidence that primary responsibility for driver training would rest with the transport operator, but that this could be imposed as a condition of contract with the relevant operator by local authorities, who would be responsible for ensuring compliance. We are content with this.

297. We recognise the value of pupil training and agree this is a subject that warrants further consideration. We note the Deputy First Minister's view that the statutory travel behaviour code has resulted in an improvement in pupil behaviour, and that the proposed Measure does not make provision for pupil training. However, **we recommend the Deputy First Minister gives consideration to taking forward training initiatives for pupils about safety standards and behaviour on learner transport.**

298. In relation to the need for specific training for drivers working with pupils with additional learning needs, we note the extensive evidence from consultees on this point and welcome the Deputy First Minister's commitment to capture interaction with pupils who have additional learning needs when drafting the requirements for driver training.

299. Having considered the evidence received, we believe that specific training is required in this area and, as such, **we strongly recommend that, when making regulations, the Deputy First Minister ensures**

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<sup>206</sup> RoP, paragraphs 174-176, 4 November 2010, Legislation Committee No.4

**that specific provision is made for drivers who work with children with additional learning needs to receive special training.**

300. With regard to the issue of how any new driving training standards are delivered, we note the evidence from consultees regarding the current training programmes, and are content with the Deputy First Minister's evidence that new training modules could be incorporated into the existing Certificate of Professional Competence training.

301. Notwithstanding our comments above, **we are content with section 4 as drafted.**

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## **Section 5: Supervisors on learner transport**

### *Background*

302. Section 5 of the proposed Measure inserts new section 14E into the 2008 Measure. It provides for Welsh Ministers to make regulations about the provision of supervisors on learner transport, and for the training of such supervisors.

### *Evidence from consultees*

303. While the proposals relating to the provision of supervisors on learner transport were generally welcomed by consultees, views differed on the most appropriate routes to have supervisors and many of those responding identified possible problems with recruiting people to be supervisors. Some suggested that evidence from pilot schemes should be evaluated before proceeding with these proposals.

304. In his evidence, the Children's Commissioner said that one of the key issues identified by children in relation to school buses was supervision, and that "having trained, vetted and adequately supported escorts on all school buses would have many advantages. The prevention of incidents of bad behaviour is far more desirable than harsh sanctions after the event."<sup>207</sup>

305. Stuart's Campaign also supported the use of supervisors on learner transport:

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<sup>207</sup> Written evidence, SLT 12

“Stuart’s Campaign has always believed that escorts are far better than CCTV, that you would use both if you can afford to use both, that escorts, for all the population, are a better single control element, and that CCTV is for use when you cannot, for one reason or another, provide a trained escort.”<sup>208</sup>

306. Mr H. B. Turner, a school bus driver, said in his evidence that school bus drivers has been calling for supervisors to be used on learner transport “for many years”, but questioned “who is going to pay for them and will the children take any notice of them?”<sup>209</sup>

307. In their evidence, the WLGA and ADEW referred to two pilot schemes running under school transport projects; one in North Wales and one in South West Wales. They said evidence from these pilot schemes was mixed, with the severity of incidents in one area being dramatically reduced following the installation of CCTV cameras, whilst pupils in the other area said they preferred the use of escorts.<sup>210</sup>

308. In relation to the routes one which supervisors may be used, the WLGA and ADEW explained:

“Local authorities currently use escorts where they have made an assessment that they would be beneficial to pupil safety and behaviour on school transport and the majority of routes currently do not use escorts regularly. Escorts are usually only used for more vulnerable groups of pupils, such as those with special educational needs or younger children. They are also used, sometimes on a temporary basis, on routes that are having a particular issue with behaviour.”<sup>211</sup>

309. They went on to say:

“It would not be ideal for all routes to have escorts and it is the opinion of the local authorities they are best placed to make an assessment as to whether an escort is needed on a particular route.”<sup>212</sup>

310. In their evidence, both Stuart’s Campaign and SNAP Cymru said they believed that supervisors were necessary on learner transport for

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<sup>208</sup> RoP, paragraph 179, 14 October 2010, Legislation Committee No.4

<sup>209</sup> Written evidence, SLT 14

<sup>210</sup> RoP, paragraph 48, 21 October 2010, Legislation Committee No.4

<sup>211</sup> Written evidence, SLT 5

<sup>212</sup> Written evidence, SLT 5

all age groups, travelling to and from school. In their evidence, Stuart's Campaign said:

"(...) we believe that there are different requirements of different age groups. The [Deputy] First Minister has been talking about escorts for younger children, and I would say 'yes', because they are vulnerable in different ways, but there is also a requirement to escort older children, to stop them doing an awful lot of things. They are vulnerable in other ways. So, our approach would be to have everybody escorted."<sup>213</sup>

311. On this point, SNAP Cymru argued that:

"Children and young people who are most vulnerable and their families would have more confidence with a trained escort present. A higher number of pupils may benefit from the opportunity of more independent travel. This may also help with the increasing transport costs for children and young people with SEN."<sup>214</sup>

312. BUSK supported the use of supervisors on learner transport for "children who are more vulnerable than others, such as younger children and children with special needs." They said it was often difficult to recruit the "right calibre" of person for that role.<sup>215</sup>

313. In their evidence, ASCL Cymru suggested that flexibility might be needed when allocating supervisors to bus routes:

"There may well be occasions where, knowing the individuals who use a bus, a school would be in a position to say "We really feel that there should be an escort on this bus because these children with these specific needs are there", whereas on other buses, again knowing the children who travel on them, the school may say "CCTV is a perfectly acceptable risk for this bus"."<sup>216</sup>

314. NAHT Cymru said the other aspect to consider with regard to the use of supervisors on learner transport was the desire to be reactive or proactive:

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<sup>213</sup> RoP, paragraph 200, 14 October 2010, Legislation Committee No.4

<sup>214</sup> Written evidence, SLT 3

<sup>215</sup> RoP, paragraph 202, 14 October 2010, Legislation Committee No.4

<sup>216</sup> RoP, paragraph 224, 21 October 2010, Legislation Committee No.4

“CCTV will only ever be reactive, and it will be a bit late if we have another tragedy. It is a question of whether the presence of an escort on a bus can prevent a tragedy rather than looking at CCTV coverage afterwards. I would prefer to see escorts on all buses, to have an individual who is not the driver and is able to respond to pupils on buses.”<sup>217</sup>

315. There was some confusion amongst consultees about the wording used in section 5, namely “Regulations may make provision for a member of staff of a relevant body to supervise learners using learner transport (...)”.

316. BUSK were unclear whether this would involve teachers undertaking the role of supervisors on school buses.<sup>218</sup> CPT Cymru called for a “clear indication [of] whether this includes operator’s own staff, local authority officials and/or school officials etc.”<sup>219</sup>

317. Several consultees, including BUSK, the WLGA and ADEW, Pembrokeshire County Council and the City and County of Swansea identified possible problems with recruiting, retaining and funding people to undertake the role of supervisor, particularly in rural areas. In their evidence, the City and County of Swansea said this was “because of the part time nature of their role, the responsibility they have and also the low wages they are paid.”<sup>220</sup> The other consultees made similar points.

318. SNAP Cymru also referred to the importance of being able to retain supervisors once employed, particularly in order to provide continuity for pupils with autism and other additional learning needs who did not respond well to change. SNAP Cymru argued that, for this reason, retention levels should be closely monitored.<sup>221</sup>

319. ATCO Cymru, Rhondda Cynon Taf and Powys County Council said that evidence from pilot schemes should be evaluated before drawing any conclusions as to the effectiveness of using supervisors on learner transport.<sup>222</sup> ATCO Cymru said that this evidence had been “broadly

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<sup>217</sup> RoP, paragraph 223, 21 October 2010, Legislation Committee No.4

<sup>218</sup> Written evidence, SLT 1

<sup>219</sup> Written evidence, SLT 6

<sup>220</sup> Written evidence, SLT 10

<sup>221</sup> RoP, paragraph 73, 14 October 2010, Legislation Committee No.4

<sup>222</sup> Written evidence, SLT 8, SLT 11 and SLT 13

positive, even on a roving or rotational basis, with suppliers and head teachers welcoming this aspect.”<sup>223</sup>

320. In their evidence, Rhondda Cynon Taf County Council gave an example of a pilot scheme carried out in their area in conjunction with the police, which involved police officers and police community support officers travelling on contracted school transport routes where behavioural issues had been experienced.<sup>224</sup>

321. All three organisations said there was a “need for clear guidelines regarding when learners need to be supervised and the training required.”<sup>225</sup>

#### *Evidence from the Minister*

322. In evidence, the Deputy First Minister stated that his policy priority was for learner transport for primary school children to have escorts, and not to widen that policy any further.<sup>226</sup> He said:

“(…) when you consider priorities, it seems appropriate to us that priority should be given to the youngest children rather than the oldest children.”<sup>227</sup>

323. When questioned on the appropriateness of this policy priority, he argued that the use of supervisors on learner transport routes for primary school children would give parents more confidence in allowing their child to travel on the school bus. He said:

“(…) we want to promote safe routes to schools. (…) the majority of journeys to primary schools could be undertaken by parents in their own cars. We want to persuade parents that it is better to allow children to travel by bus, if they can. It is much easier to persuade parents that travelling by bus is safe and secure if there is an escort on the bus. Therefore, we would expect the proportion of children who are taken to school by bus to increase if parents felt that the journey was safe.”<sup>228</sup>

324. In relation to controlling behaviour on school buses, the Deputy First Minister said that initial evidence he was getting showed that the

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<sup>223</sup> RoP, paragraph 279, 4 November 2010, Legislation Committee No.4

<sup>224</sup> Written evidence, SLT 11

<sup>225</sup> Written evidence, SLT 8, SLT 11 and SLT 13

<sup>226</sup> RoP, paragraph 118, 7 October 2010, Legislation Committee No.4

<sup>227</sup> RoP, paragraph 204, 4 November 2010, Legislation Committee No.4

<sup>228</sup> RoP, paragraph 206, 4 November 2010, Legislation Committee No.4

use of CCTV on a bus was a better way to ensure good behaviour than having an escort because CCTV footage provided more conclusive evidence where an incident had taken place on a school bus. He did, however, say that once he had been able to see all the evidence, if it showed that the use of supervisors should be extended, “it would be foolish not to”.<sup>229</sup>

325. He also said it was necessary to be mindful of the cost implications of making supervisors a requirement for all secondary school children, and that this was a burden he did not feel could be passed to local authorities at this stage.<sup>230</sup>

326. We asked the Minister whether he had any views as to who should take the role of supervisors on learner transport. He said that they would be “dedicated supervisors, employed by the local authority specifically to supervise children during the school journey”, but would not be teachers, teaching assistants or bus drivers<sup>231</sup>. He went on to say:

“We want to make sure that all supervisors are appropriately managed and trained, and that checks are undertaken. I do not think that we have a specific view on who the supervisors should be. That would be a matter for the bus operators and local authorities to determine. Provided that they are appropriately managed, trained and checked, who these people are is not a matter for us to decide.”<sup>232</sup>

### *Our view*

327. In relation to the provision of supervisors on learner transport, we note that this proposal was generally welcomed in principle by consultees, although there was conflicting evidence about the Deputy First Minister’s proposal to provide escorts on transport for primary school pupils.

328. We agree with the Deputy First Minister that the provision of supervisors on learner transport is largely about enabling parents to have confidence in collective learner transport. On this basis, **we are content in principle that the Deputy First Minister’s policy priority**

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<sup>229</sup> RoP, paragraphs 118 and 122, 7 October 2010, Legislation Committee No.4

<sup>230</sup> RoP, paragraph 198, 4 November 2010, Legislation Committee No.4

<sup>231</sup> RoP, paragraph 116, 7 October 2010, Legislation Committee No.4

<sup>232</sup> RoP, paragraph 196, 4 November 2010, Legislation Committee No.4

**for the provision of supervisors is in relation to transport provided for primary school aged children.**

329. However, **we are conscious that a number of pilot studies are currently being undertaken across Wales and that, depending on their respective outcomes, there may be a need for this policy to be extended in some cases to include supervisors on learner transport for other groups, such as secondary school aged pupils or pupils deemed to be vulnerable. We trust the Deputy First Minister will take full account of the evidence from these pilot schemes before making regulations under this section of the proposed Measure.**

330. **We have some concerns that prioritising primary school aged pupils could have a greater financial impact in those local authority areas where greater numbers of primary school aged children travel to school on learner transport, particularly in rural areas. We draw the Deputy First Minister's attention to this point, and urge him to take full account of it when implementing the provisions of this section of the proposed Measure.**

331. We note the evidence from consultees that there have been difficulties in recruiting supervisors, particularly because of the part-time nature of the role and the level of responsibility and salary. We agree with consultees that it is important for supervisors to be retained, once employed, to allow relationships to be established with pupils travelling on learner transport, and particularly to provide continuity for pupils with additional learning needs.

332. We are concerned that requiring a supervisor to be a "member of staff of a relevant body" may restrict the ability of local authorities or governing bodies to use volunteers, including parents or retired family members, who would be available at the necessary times during the day but not looking for monetary reward.

333. We do, however, recognise the importance of any person acting as a supervisor on learner transport having been appropriately trained and checked prior to undertaking that role, regardless of whether they are formally employed or volunteering.

334. **On this basis, we recommend the Deputy First Minister amends the proposed Measure to enable any person trained, insured and CRB checked by a relevant body to act as a supervisor**

**on learner transport, without necessarily having to be a “member of staff” of the relevant body, as currently required in section 5.**

## 5. Enforcement: Sections 6 to 11

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### Section 6: Civil sanctions

#### *Background*

335. Section 6 of the proposed Measure inserts new section 14F into the 2008 Learner Travel Measure. It provides the Welsh Ministers with the power to impose civil sanctions alongside the regulations which relate to the description of vehicles that may be used for learner transport (section 1), and the recording of visual images or sound on learner transport (section 2).

#### *Evidence from consultees*

336. We asked consultees for their views on whether the imposition of civil sanctions for failure to comply with regulations made under the proposed Measure was appropriate, and if they were content with the levels and types of civil sanctions proposed.

337. The majority of consultees, including SNAP Cymru, Stuart's Campaign and BUSK, were supportive of the provisions in section 6, and agreed with the introduction of a civil sanction regime where a relevant body failed to comply with relevant regulations made under the proposed Measure.

338. In written evidence, SNAP Cymru said they agreed that imposing sanctions for breaching safety regulations made under this proposed Measure was appropriate.<sup>233</sup>

339. In their evidence, Stuart's Campaign suggested:

“The sanctions proposed would give real teeth to the proposed Measure. (...) They are the deterrent that wakes people up to ensure that they have the procedures in place.”<sup>234</sup>

340. They went on to say:

“The scale of the sanctions in the proposed Measure is for someone else to decide.”<sup>235</sup>

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<sup>233</sup> Written evidence, SLT 3

<sup>234</sup> RoP, paragraphs 226 and 228, 14 October 2010, Legislation Committee No.4

<sup>235</sup> RoP, paragraph 228, 14 October 2010, Legislation Committee No.4

341. Whilst supportive of the provision for civil sanctions in the proposed Measure, BUSK noted that, if sanctions were to be imposed on individual schools, steps would need to be taken to ensure that schools understood their legal obligations.<sup>236</sup>

342. Other consultees, including the WLGA and ADEW, NAHT Cymru and ASCL Cymru, although supportive of the principle of civil sanctions, voiced concerns regarding the application of any such sanctions.

343. The WLGA and ADEW said they supported the principle of civil sanctions for breaches of safety-related regulations. However, they felt that sanctions should not be imposed for issues relating to the quality of school transport.<sup>237</sup>

344. In written evidence, they said:

“Many of the proposals are concerned with the stated aim of the Measure to improve the image and quality of the transport provisions, not primarily the safety of pupil. There needs to be clear evidence that the provisions within parts 1 and 2 of the Measure have a direct correlation to safety in order to justify the use of criminal sanctions for breaches of the regulations.”<sup>238</sup>

345. In oral evidence, the WLGA and ADEW added:

“If the proposed Measure seeks to have a general intent to improve the quality of the buses and encourage more people to travel by school bus, [we] would be really anxious if there is a criminal liability attached to our failure to deliver in those areas.”<sup>239</sup>

346. The WLGA and ADEW also expressed concerns about the “ambiguity regarding who would be criminally liable in certain circumstances”, as they felt it was not clear whether a local authority would be liable alongside a contracted bus operator if a breach of regulations occurred.<sup>240</sup>

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<sup>236</sup> RoP, paragraph 227, 14 October 2010, Legislation Committee No.4

<sup>237</sup> RoP, paragraph 107, 21 October 2010, Legislation Committee No.4

<sup>238</sup> Written evidence, SLT 5

<sup>239</sup> RoP, paragraph 107, 21 October 2010, Legislation Committee No.4

<sup>240</sup> Written evidence, SLT 5

347. In oral evidence, they said they would expect that, if local authorities were clear about the contractors' obligations regarding risk assessments, and undertook appropriate monitoring of those contracted obligations, then local authorities would not be at risk of sanctions being imposed upon them.<sup>241</sup>

348. They went on:

“The issue is whether this is made clear in the proposed Measure itself or in the documentation supporting the proposed Measure [as] there is a lack of clarity.”<sup>242</sup>

349. The WLGA and ADEW also suggested that a different approach to the tribunal model, suggested in the Schedule to the proposed Measure, should be considered. They said:

“The Assembly Government are currently setting up a passenger transport forum which could be an existing body through which complaints could be heard.”<sup>243</sup>

350. Both the NAHT Cymru and ASCL Cymru, although noting that it was appropriate for there to be civil sanctions for non-compliance with the safety regulations, said that their support was offered on condition that overall responsibility rested with local authorities and not governing bodies.<sup>244</sup>

351. In oral evidence, NAHT Cymru said:

“It would be strange to be legally liable for something over which you have no control, for example, with regard to the contract, enforcement, quality assurance, risk assessments and the guarantee of training and so on of the individuals who are providing that service.”<sup>245</sup>

352. ASCL Cymru stated:

“[Civil sanctions] should apply to the [local education authority], as it is the organisation that has the overall responsibility, deals with the contractors and is issuing contracts to those

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<sup>241</sup> RoP, paragraph 112, 21 October 2010, Legislation Committee No.4

<sup>242</sup> RoP, paragraph 113, 21 October 2010, Legislation Committee No.4

<sup>243</sup> Written evidence, SLT 5

<sup>244</sup> RoP, paragraph 232-233, 21 October 2010, Legislation Committee No.4

<sup>245</sup> RoP, paragraph 238, 21 October 2010, Legislation Committee No.4

people. It is in a much better position, legally, to deal with that.”<sup>246</sup>

353. ASCL Cymru added that recruitment of head teachers and governors would be “extremely hard” if personal liability could be attached to them in these circumstances.<sup>247</sup>

354. CPT Cymru, however, were not supportive of the introduction of civil sanctions. In their written evidence, they said:

“CPT Cymru is firmly of the view that this is a disproportionate penalty for breaches of the requirements. Existing contract regimes ultimately allow for termination of a contract. CPT members recognise this as a sufficiently strong sanction for such breaches.”<sup>248</sup>

355. In oral evidence, CPT Cymru suggested that the regulatory regime already in existence, which involved both the Vehicle and Operator Services Agency (VOSA) and the traffic commissioners, was “enough of a stick for any company that goes against the regulations.”<sup>249</sup>

356. With regard to publicising the imposition of a sanction, despite agreeing that it was fair and appropriate for the public to be made aware when a safety regulation had been breached, CPT Cymru suggested that a publicity notice should not be published until any appeal had been heard.<sup>250</sup>

#### *Evidence from the Minister*

357. In relation to the imposition of civil sanctions for failure to comply with the regulations, the Deputy First Minister explained that this particular provision in the proposed Measure had been drafted “in the spirit of” the Regulatory Enforcement and Sanctions Act 2008 (‘the 2008 Act’).<sup>251</sup>

358. He said the 2008 Act marked a change in approach to the regulation of business, and provided regulators with:

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<sup>246</sup> RoP, paragraph 236, 21 October 2010, Legislation Committee No.4

<sup>247</sup> RoP, paragraph 235, 21 October 2010, Legislation Committee No.4

<sup>248</sup> Written evidence, SLT 6

<sup>249</sup> RoP, paragraph 327, 21 October 2010, Legislation Committee No.4

<sup>250</sup> RoP, paragraphs 341 and 347, 21 October 2010, Legislation Committee No.4

<sup>251</sup> RoP, paragraph 124, 7 October 2010, Legislation Committee No.4

“(…) an extended toolkit of alternative civil sanctions, which were seen as more proportionate and flexible in its response to cases of regulatory non-compliance.”<sup>252</sup>

359. He went on to say there were occasions where it would be more appropriate to impose civil rather than a criminal sanctions, which was why the proposed Measure provided for both such occasions, and that it would be for the regulatory authority to consider which was the most appropriate in the specific circumstances.<sup>253</sup>

360. In relation to concerns raised by the WLGA regarding who could be deemed liable in incidences where safety regulations were breached, the Deputy First Minister said:

“The proposed Measure would enable regulations to be made that provide for the local authority and the transport provider, in certain circumstances, to be guilty of a criminal offence. So, it could be both (...) It depends on the circumstances (...).”<sup>254</sup>

361. If civil sanctions were to be imposed on a body, the Deputy First Minister confirmed that the provisions within the Schedule would enable an enforcement authority to issue a publicity notice to the person on whom a civil sanction had been imposed, requiring them to publicise that fact.<sup>255</sup>

362. He further clarified:

“I would expect that any publicity around that would have to be such that people would become aware of it. How they would become aware of it is a matter for us to decide in regulation. I think that there would be a requirement that the publicity would be such that people would become immediately aware of it.”<sup>256</sup>

363. We asked the Deputy First Minister for his views on the suggestion that the recently established passenger transport forum could deal with complaints made in relation to the imposition of civil sanctions. The Deputy First Minister said:

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<sup>252</sup> RoP, paragraph 124, 7 October 2010, Legislation Committee No.4

<sup>253</sup> RoP, paragraph 125, 7 October 2010, Legislation Committee No.4

<sup>254</sup> RoP, paragraphs 208 and 210, 4 November 2010, Legislation Committee No.4

<sup>255</sup> RoP, paragraph 136, 7 October 2010, Legislation Committee No.4

<sup>256</sup> RoP, paragraph 140, 7 October 2010, Legislation Committee No.4

“I do not think that the passenger transport forum would be appropriate because it was never intended as a body that would handle complaints. There are procedures that need to be followed that would be difficult for that body to deal with.”<sup>257</sup>

364. The Deputy First Minister went on to say:

“We are happy to look at various ways of doing it. One way would be to set up your own enforcement authority and tribunal. We could see whether there is another enforcement authority that we could contract and whether there is an existing tribunal that could be adapted for the purpose. We are perfectly open-minded on that.”<sup>258</sup>

#### *Our view*

365. In relation to the imposition of civil sanctions for failure to comply with regulations relating to the description of vehicles that may be used for learner transport or the recording of visual images or sound on learner transport, we note that the majority of consultees supported the principle of the provisions contained in section 6.

366. We do, however, acknowledge that some concerns were raised by consultees regarding the application of such civil sanctions.

367. In relation to who could be considered liable in incidences where safety regulations were breached, we note and are content with the evidence from the Deputy First Minister that both local authorities and transport providers could be deemed liable, depending on the circumstances surrounding the particular breach.

368. We note the evidence from consultees regarding transport operators having to publicise a notice where a sanction had been imposed for a breach of a safety regulation, and acknowledge their concerns about such publicity in the event of the imposition of a sanction. We note that paragraph 19 of the Schedule to the proposed Measure relates to this.

369. However, we are persuaded by the Deputy First Minister’s argument that, if a breach of safety regulations occurs on learner

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<sup>257</sup> RoP, paragraph 214, 4 November 2010, Legislation Committee No.4

<sup>258</sup> RoP, paragraph 214, 4 November 2010, Legislation Committee No.4

transport, the public should be made aware of this as soon as reasonably practicable.

370. With regard to the provision contained in the Schedule to the proposed Measure which relates to a tribunal-led mechanism for complaint handling, we note the evidence from consultees which identifies the existing passenger transport forum as an appropriate body to undertake this role.

371. However, we are content with the Deputy First Minister's evidence that the passenger transport forum would not be the appropriate forum to deal with complaints made as a result of the imposition of a civil sanction, and therefore welcome the Deputy First Minister's commitment to be "open-minded" when making a decision on which body, existing or otherwise, should be responsible for dealing with complaints.

372. On this basis, **we are content with section 6 as drafted.**

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## **Section 7: Enforcement authority**

### *Background*

373. Section 7 of the proposed Measure inserts new section 14G into the 2008 Learner Travel Measure. It provides Welsh Ministers with the power to appoint an enforcement authority to enforce any regulations made under sections 1 and 2 of the proposed Measure.

### *Evidence from consultees*

374. We asked consultees for their views on the appropriateness of this section and whether they thought a new or existing body should be responsible for enforcing the safety provisions in the proposed Measure.

375. Although supportive in principle of the need for a body to enforce the safety provisions in the proposed Measure, the majority of consultees were not supportive of any plans to create a new enforcement authority.

376. In their evidence, Stuart's Campaign expressed support for the principle of an enforcement authority, stating:

“If you are going to impose rules and sanctions, you need someone to police them. It goes without saying.”<sup>259</sup>

377. SNAP Cymru and the Children’s Commissioner were both equally supportive, with the latter commenting:

“We note the proposal to establish an enforcement authority to ensure effective implementation of this legislation. The Commissioner has highlighted in recent years the implementation gap between the intended policy outcome and the actual experience of children on a daily basis. It is therefore welcome to see that there will be a clear regime for enforcing these regulations.”<sup>260</sup>

378. In oral evidence, SNAP Cymru said:

“We understand that there will need to be a body to ensure compliance and to carry this forward, but we worry about the cost of that. However, we are in agreement that it is needed.”<sup>261</sup>

379. With regard to who should be responsible for enforcing the safety provisions, two distinct views were presented to us.

380. A number of consultees, including Stuart’s Campaign, NAHT Cymru, ASCL Cymru and BUSK, suggested that responsibility to ensure compliance with the safety regulations of the proposed Measure should be given to local authorities.

381. ASCL Cymru said that local authorities would be best placed to undertake this role as they already had safety and transport officers in place, and had to “answer to the Health and Safety Executive [and] the Royal Society for the Prevention of Accidents”.<sup>262</sup>

382. In their evidence, NAHT Cymru said:

“It is probably not the best time to be supporting the establishment of new quangos, and experience shows that these things tend to take on a life of their own. I am not sure

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<sup>259</sup> RoP, paragraph 232, 14 October 2010, Legislation Committee No.4

<sup>260</sup> Written evidence, SLT 12

<sup>261</sup> RoP, paragraph 80, 14 October 2010, Legislation Committee No.4

<sup>262</sup> RoP, paragraphs 252 and 254, 21 October 2010, Legislation Committee No.4

why it would not be done by the local authorities, which already have enforcement powers in a huge number of areas.”<sup>263</sup>

383. BUSK also made the point that many local authorities currently monitor their contracted transport.<sup>264</sup>

384. Stuart’s Campaign advocated the need for local authorities to be given this enforcement role, and said:

“Local authorities have the responsibility, at the end of the day. They are the ones issuing the contracts. If a contract that states these requirements is breached, the onus is on the local authority to do something about it.”<sup>265</sup>

385. When asked if they had any concerns that this could result in local authorities policing themselves, they went on to say:

“They would be policing the people contracted to do the work, rather than themselves. The contract itself is their standard; they would be policing the upholding of that standard.”<sup>266</sup>

386. Other consultees however, including the WLGA, ADEW, ATCO Cymru and CPT Cymru, suggested that the responsibility should be given to the Vehicle and Operator Services Agency (VOSA).

387. In written evidence, the WLGA and ADEW stated:

“In terms of enforcement the current body with powers in this area is the Vehicle and Operator Services Agency (VOSA). It would seem to be a sensible approach to allow them to enforce regulation should this Measure be passed, rather than create a new inspection body.”<sup>267</sup>

388. In oral evidence, they added:

“We would certainly like to see, as a principle, that bodies already in existence, if they can be used, should be used for regulations and inspections.”<sup>268</sup>

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<sup>263</sup> RoP, paragraph 251, 21 October 2010, Legislation Committee No.4

<sup>264</sup> RoP, paragraph 241, 14 October 2010, Legislation Committee No.4

<sup>265</sup> RoP, paragraph 238, 14 October 2010, Legislation Committee No.4

<sup>266</sup> RoP, paragraph 240, 14 October 2010, Legislation Committee No.4

<sup>267</sup> Written evidence, SLT 5

<sup>268</sup> RoP, paragraph 115, 21 October 2010, Legislation Committee No.4

389. The WLGA and ADEW went on to say that VOSA “already has the capabilities” to undertake this task, but does not necessarily have adequate staff numbers.<sup>269</sup>

390. However, they said:

“[We] would have thought that it would have been less costly to employ extra staff at VOSA than to set up another complete authority to look at safety. (...) The extra staffing there would be a far cheaper and far better option than setting up a new body.”<sup>270</sup>

391. In oral evidence, ATCO Cymru supported the view that VOSA should be identified as the enforcement authority in order to avoid duplication, as VOSA already carried out safety checks on vehicles.<sup>271</sup>

392. They went on to say:

“(...) we think that it would be more cost-effective to pay VOSA to employ more inspectors and for it to inspect to a higher standard. Our discussions with VOSA and the traffic commissioner have shown that that is a desirable thing to do. We think that that would be a very cost-effective way of dealing with it, in the same way that the Assembly already pays VOSA to provide three bus compliance officers for bus punctuality.”<sup>272</sup>

393. In relation to the establishment of a new enforcement authority under section 7, CPT Cymru said:

“The explanatory memorandum states that a sum of nearly £0.25 million is being earmarked for this. We believe that it would be better for that to go to VOSA for its activities in Wales in this field. There is no point in trying to reinvent the wheel.”<sup>273</sup>

394. CPT Cymru also noted that VOSA already have the expertise to carry out this role, and currently have “pretty strict” powers.<sup>274</sup>

395. In the event of a new body being established, CPT Cymru said:

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<sup>269</sup> RoP, paragraph 116, 21 October 2010, Legislation Committee No.4

<sup>270</sup> RoP, paragraph 116, 21 October 2010, Legislation Committee No.4

<sup>271</sup> RoP, paragraph 309, 4 November 2010, Legislation Committee No.4

<sup>272</sup> RoP, paragraph 309, 4 November 2010, Legislation Committee No.4

<sup>273</sup> RoP, paragraph 329, 21 October 2010, Legislation Committee No.4

<sup>274</sup> RoP, paragraph 329, 21 October 2010, Legislation Committee No.4

“CPT Cymru’s concern would be that machinery should exist for the operators to be consulted over the creation of such a body and any changes made to the term and conditions under which those powers are to be utilised.”<sup>275</sup>

### *Evidence from the Minister*

396. In relation to enforcing the safety provisions of the proposed Measure, the Deputy First Minister said he envisaged any enforcement body would actively enforce the regulations by utilising such methods as vehicle spot checks. He added that the body’s specific powers and duties would be set out in regulations.<sup>276</sup>

397. When asked who would be responsible for providing the enforcement role, the Deputy First Minister, in correspondence to the Committee, initially suggested that a new enforcement body would be established, based within the government’s Department for Economy and Transport, which would be staffed by approximately 5 civil servants, who each had a background in bus safety standards and regulations.<sup>277</sup>

398. However, during a later evidence session, the Deputy First Minister said that he had been unsure whether the VOSA would continue to exist following the UK Government’s cull of quangos, but “now that we know that VOSA is likely to survive, it is an option that we have to consider.”<sup>278</sup>

399. He went on to say:

“(…) one option is to set up your own enforcement authority and tribunal; the other option is to use an existing enforcement authority and tribunal system. We are happy (...) to look at both options.”<sup>279</sup>

### *Our view*

400. In relation to the principle of appointing an enforcement body to enforce any regulations made under sections 1 and 2 of the proposed

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<sup>275</sup> Written evidence, SLT 6

<sup>276</sup> Letter from the Deputy First Minister, 25 October 2010

<sup>277</sup> Letter from the Deputy First Minister, 25 October 2010

<sup>278</sup> RoP, paragraph 216, 4 November 2010, Legislation Committee No.4

<sup>279</sup> RoP, paragraph 218, 4 November 2010, Legislation Committee No.4

Measure, we note that the majority of consultees expressed support for this.

401. We do, however, acknowledge that concerns were raised by consultees regarding the possibility of a new body being established by the Deputy First Minister to undertake this role.

402. We believe, in principle, that it is sensible for an existing body to be allocated these new functions, and note that the Vehicle and Operator Services Agency currently provides enforcement services within the vehicle and transport sector.

403. Therefore, **we recommend that, when bringing forward regulations under section 7 of the proposed Measure, the Deputy First Minister identifies the Vehicle and Operator Services Agency (VOSA) as the relevant enforcement body, as VOSA has considerable experience and expertise in this area.**

404. **If, however, the Vehicle and Operator Services Agency is unable to undertake this role, we recommend that the Deputy First Minister should first consider using another existing organisation to fulfil this role, before establishing a new body.**

405. Notwithstanding our comments above, **we are content with section 7 as drafted.**

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## **Sections 8, 9 and 10: Power of entry, power of inspection, power to require provision of information**

### *Background*

406. Sections 8, 9 and 10 of the proposed Measure insert new sections 14H, 14I and 14J into the 2008 Learner Travel Measure, relating to powers of entry, powers of inspection, and powers to require provision of information.

### *Evidence from consultees*

407. We asked consultees whether they considered the powers contained in sections 8, 9 and 10 were appropriate for inclusion in the proposed Measure.

408. Overall, consultees were supportive of the provisions contained in sections 8, 9 and 10 regarding powers of entry, powers of inspection, and powers to require provision of information.

409. SNAP Cymru, NAHT Cymru and ASCL Cymru all said they thought the powers were appropriate to be included in the proposed Measure.<sup>280</sup>

410. With regard to the powers of entry, some consultees, including ASCL Cymru, CPT Cymru and SNAP Cymru, expressed concerns regarding the term “at any reasonable time” in relation to when an inspector could detain or enter a vehicle or premises.

411. Both SNAP Cymru and CPT Cymru said that “any reasonable time” should be interpreted as being within normal office working hours.

412. In oral evidence, SNAP Cymru said:

“I do not see that powers would be needed outside office hours to inspect vehicles and so forth, as that could be done within the working day (...).”<sup>281</sup>

413. They did, however, go on to say that there may be occasions when the enforcement authority may wish to enter premises outside office hours, and, as such, it should be possible for them to do so.<sup>282</sup>

414. In their oral evidence, CPT Cymru stated that, with regard to an enforcement authority using the power of entry under section 8, they believed that “operating within working hours would be reasonable.”<sup>283</sup>

415. ASCL Cymru, whilst acknowledging the need for the power to enter premises, suggested that a head teacher should have the authority to refuse entry to an inspector in the event of an emergency in the school, such as a fire evacuation.<sup>284</sup>

416. In written evidence, they said:

“The power to enter premises, as detailed in Section 8, is understandable in terms of commercial premises and reflects

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<sup>280</sup> RoP, paragraph 82, 14 October 2010, Legislation Committee No.4, and Written evidence, SLT 4

<sup>281</sup> RoP, paragraph 90, 14 October 2010, Legislation Committee No.4

<sup>282</sup> RoP, paragraphs 86 and 90, 14 October 2010, Legislation Committee No.4

<sup>283</sup> RoP, paragraph 337, 21 October 2010, Legislation Committee No.4

<sup>284</sup> RoP, paragraph 256, 21 October 2010, Legislation Committee No.4

the powers of the officers of the Health and Safety Executive. However, there could be the rare circumstance where the headteacher, in fulfilling his/her duty of care for students and staff, has to restrict the access of anyone to the school site.”<sup>285</sup>

417. ASCL Cymru expanded on these concerns whilst giving oral evidence to the Committee and said they would be concerned if the power was “absolute” and gave no opportunity for a head teacher to refuse entry to an inspector during an emergency on school premises.<sup>286</sup>

#### *Evidence from the Minister*

418. In relation to the provisions contained in sections 8, 9 and 10 of the proposed Measure, the Deputy First Minister said:

“We believe that the enforcement authority will need the powers of entry, inspection and the power to require the provision of information to enable it to establish whether a breach of the regulations has occurred, and enforce effectively.”<sup>287</sup>

419. With regard to the words “at any reasonable time”, contained in section 8 and relating to when an inspector may detain or enter a vehicle or premises, the Deputy First Minister said that the term ‘reasonable’ represented an “objective standard against which any individual’s conduct can be measured”, and was a legal term which had “been tested many times in a court of law.”<sup>288</sup>

420. He suggested that what would be deemed to be reasonable would be very much dependent on the individual circumstances and, as such:

“Each case will therefore be decided on its merits and any challenge to what the inspector would consider a “reasonable time” would be made through the courts.”<sup>289</sup>

421. In relation to any potential cross border issues, the Deputy First Minister confirmed that the enforcement body (appointed under section 7 of the proposed Measure) would have powers and duties in relation to vehicles provided or contracted by Welsh local authorities

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<sup>285</sup> Written evidence, SLT 4

<sup>286</sup> RoP, paragraph 257, 21 October 2010, Legislation Committee No.4

<sup>287</sup> Letter from the Deputy First Minister, 25 October 2010

<sup>288</sup> Letter from the Deputy First Minister, 25 October 2010

<sup>289</sup> Letter from the Deputy First Minister, 25 October 2010

or by governing bodies of maintained schools in Wales for the purpose of learner transport.

422. He went on to say:

“This is the case regardless of whether those vehicles are owned by companies based in England or Wales.”<sup>290</sup>

### *Our view*

423. In relation to sections 8, 9 and 10, we note that, overall, consultees supported the provision of powers of entry, powers of inspection, and powers to require provision of information in the proposed Measure.

424. We do, however, acknowledge that concerns were raised by consultees regarding the words “at any reasonable time”, relating to when an inspector from the relevant enforcement authority may detain or enter a vehicle or premises.

425. We note and accept the Deputy First Minister’s reasons for including powers of entry, inspection and provisions of information on the face of the proposed Measure. We are content with his explanation of the phrase “at any reasonable time”, and accept that this is a well-tested style of drafting.

426. On this basis, **we are content with sections 8, 9 and 10 as drafted.**

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## **Section 11: Offences: liability of officers and partners**

### *Background*

427. Section 11 of the proposed Measure inserts new section 14K into the 2008 Measure. It provides for Welsh Ministers to make regulations for officers of a body corporate or partnership to be personally liable for offences committed under the proposed Measure by the body corporate or partnership, as well as the body corporate or partnership itself.

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<sup>290</sup> Letter from the Deputy First Minister, 25 October 2010

### *Evidence from consultees*

428. In their evidence, the NAHT Cymru and ASCL Cymru expressed concern that individual school governors and head teachers could be personally liable for failures to comply with regulations made under the proposed Measure. They suggested this could lead to a loss of school governors in Wales. They went on:

“This section [section 12] seems more intended for the providers of contractual home to school transport and perhaps needs clarification that it does not apply to school governors.”<sup>291</sup>

### *Evidence from the Minister*

429. We asked the Deputy First Minister to clarify the meaning of “officer” and “partner” for the purposes of section 12, and whether it was his intention that all school governors be caught by the provisions of this section.

430. In response to these questions, he said:

“(…) the proposed Measure provided for regulations to make provision in certain circumstances (to be determined by the Welsh Ministers) for individual partners or officers to be personally liable for offences committed in relation to descriptions of vehicles permitted for learner transport and in relation to the recording of visual images and sound on learner transport, as well as the partnership or corporate body itself.”<sup>292</sup>

431. He went on to say that the circumstances to be specified under this section were “something that the Welsh Ministers will need to decide upon.”<sup>293</sup>

432. In relation to the meaning of “officer”, the Deputy First Minister stated that there was no definition provided in the proposed Measure “as there is no absolute definition in any other legislation. The reason for this is, no doubt, that it would be unwise to exclude any particular

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<sup>291</sup> Written evidence, SLT 4. Also, see RoP, paragraphs 241-247, 21 October 2010, Legislation Committee No.4

<sup>292</sup> Letter from the Deputy First Minister, 11 November 2010

<sup>293</sup> Letter from the Deputy First Minister, 11 November 2010

individual who had a significant decision making role in a body corporate regardless of that person's actual title."<sup>294</sup>

433. In relation to the definition of "partnership", he said that such a definition was provided in the Partnership Act 1890, so it would not be necessary to include another definition in the proposed Measure.

434. In response to a request from the Committee for further clarity on this point, he suggested a list of persons that would be caught by the provisions of section 11:

"Director or a company/corporate body; Manager of a company/corporate body/Secretary of a company/corporate body; Individual partner within a partnership."<sup>295</sup>

435. In relation to head teachers, the Deputy First Minister stated:

"Persons appointed to governing bodies are considered to be "members" of the governing body rather than "officers". Accordingly personal liability will not attach to individual members, including head teachers."<sup>296</sup>

436. In relation to individual governors, he confirmed that:

"Individual governors within a governing body are "members" of the governing body, not "officers" or "partners" and as such do not fall within the ambit of section 11."<sup>297</sup>

437. Finally, the Deputy First Minister confirmed that, in cases where a school owned its own transport and contracted with a local authority to provide learner transport for its pupils, "depending on the detail of the Regulations it would be possible for both the governing body of the school and the local authority to be liable."<sup>298</sup>

### *Our view*

438. In relation to the provisions for offences in section 11, we note the evidence from the Deputy First Minister about the meaning of

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<sup>294</sup> Letter from the Deputy First Minister, 11 November 2010

<sup>295</sup> Letter from the Deputy First Minister, 24 November 2010

<sup>296</sup> Letter from the Deputy First Minister, 11 November 2010

<sup>297</sup> Letter from the Deputy First Minister, 24 November 2010

<sup>298</sup> Letter from the Deputy First Minister, 24 November 2010

“officers” and “partners” in this section, and the lack of any definition of these terms on the face of the legislation.

439. However, we do not believe the Deputy First Minister has provided the necessary clarity about those persons who will be personally liable under the provisions of section 11.

**440. As section 11 relates to the creation of offences and personal liability for failure to comply with statutory duties under the proposed Measure, we recommend the Deputy First Minister amends the proposed Measure to provide absolute clarity about where this personal liability would lie, particularly in relation to local authorities, schools, head teachers and governors.**

## 6. Section 12: Regulations: consultation

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### *Background*

441. Section 12 of the proposed Measure inserts new section 14L into the 2008 Measure. It places a duty on Welsh Ministers to consult “each local authority and such other persons as they consider appropriate” before making regulations under the proposed Measure.

### *Evidence from consultees*

442. We asked consultees whether they thought the consultation provisions in section 12 were broad enough and whether there were any other persons or bodies that should be listed in this section.

443. There were mixed responses from those consultees who responded to these questions. The WLGA and ADEW welcomed the consultation provisions in section 12.<sup>299</sup>

444. NAHT Cymru and ASCL Cymru noted that section 12 referred only to local authorities and suggested that, if school owned transport were to come within the scope of the proposed Measure, then, as some schools owned and operated their own bus fleet, school governing bodies should be specifically mentioned on the face of the Measure.<sup>300</sup>

445. In their evidence, CPT Cymru that suggested bus operators should be mentioned, arguing that:

“(...) operators, most of whom are good, reputable people, can bring experience to the table of what happens day in, day out on the buses, as people from schools can bring their experience of what happens outside the school as vehicles are moving. We would push for operators to be included.”<sup>301</sup>

446. Others, including BUSK, Stuart’s Campaign and ASCL Cymru<sup>302</sup>, suggested that pupils should be consulted as users of the services.

447. The Children’s Commissioner also highlighted the need to consult with children as part of the implementation of the proposed Measure, stating that:

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<sup>299</sup> Written evidence, SLT 5

<sup>300</sup> Written evidence, SLT 4

<sup>301</sup> RoP, paragraphs 349-351, 21 October 2010, Legislation Committee No.4

<sup>302</sup> RoP, paragraph 265, 21 October 2010, Legislation Committee No.4

“We would (...) see the need for children and young people to be enabled to feedback on the new standards as they are introduced and to be able to highlight when practice does not meet the standards. This would mean that they would need to be provided with clear information as to expected standard as provided under Article 17 of the UNCRC and how to report practice that falls below that standard.”<sup>303</sup>

### *Evidence from the Minister*

448. In his evidence, the Deputy First Minister said:

“We would intend to consult with all stakeholders who would be affected by the proposals, for example bus operators; pupils and teaching unions.”<sup>304</sup>

449. He did not agree with those consultees who suggested that other persons or bodies should be listed in section 12, arguing that:

“The term “such other persons” has been left deliberately wide to ensure that any organisation or individual whom the Welsh Ministers feel may have relevant input into any future consultation can be included. If the proposed Measure listed all the organisations or individuals who are required to be consulted, this may cause difficulties in the future if, for example, organisations are disbanded or if new organisations are created which cannot be consulted as they are not listed in the legislation.”<sup>305</sup>

### *Our view*

450. In relation to the consultation provisions set out in section 12, whilst we note the evidence from some consultees that other persons or bodies could be named in this section, we believe that the wording of section 12 is sufficiently broadly drawn to enable Welsh Ministers to consult with any persons who may be affected by the provisions of the proposed Measure.

451. On this point, we welcome the Deputy First Minister’s commitment to consult all relevant stakeholders in this policy area.

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<sup>303</sup> Written evidence, SLT 12

<sup>304</sup> Letter from the Deputy First Minister, 25 October 2010

<sup>305</sup> Letter from the Deputy First Minister, 25 October 2010

452. Therefore, **we are content with section 12 as drafted.**

## 7. Section 13: Interpretation

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### *Background*

453. Section 13 of the proposed Measure inserts new section 14M into the 2008 Measure. Amongst other things, it defines “learner transport” for the purposes of the proposed Measure:

“Learner transport” means transport to facilitate the attendance of a child at any relevant place where he or she receives education or training; but it does not include transport provided for the purpose of travel during the day between relevant places or between different sites of the same institution.”

454. The evidence we received from consultees regarding section 13 of the proposed Measure related to two matters:

- The definition of “learner transport”;
- Provision for pupils with additional learning needs.

455. These matters are discussed in more detail in the following paragraphs.

### ***Definition of “learner transport”***

#### *Evidence from consultees*

456. The definition of ‘learner transport’ in Section 13 excludes transport provided during the school day. A number of consultees argued that the provisions of the proposed Measure should be extended to provide for this.

457. Other consultees asked for clarity as to the meaning of ‘dedicated learner transport’, used in the Explanatory Memorandum and whether this included school-owned transport (including as part of school trips) and public service routes which were extended to encompass school pick-up and drop-off points.

458. In relation to the exclusion of travel during the school day from the definition of ‘learner transport’, a number of consultees, including the WLGA and ADEW, BUSK and SNAP Cymru, said they could see no justification for differentiating between transport provided at the start

and end of the day, and transport provided during the school day. In their oral evidence, ADEW said:

“If they [pupils] are away from school and are out in buses on the road, we should have equal regard to their safety.”<sup>306</sup>

459. In their evidence, SNAP Cymru said:

“We feel that the Measure should also make clear safe learner travel to all places of learning for children and young people, including those children and young people (...) attending more than one educational site during the day.”<sup>307</sup>

460. They went on:

“Whilst we understand that the Measure does not consider school based transport or school trips we recommend that this is further considered and recommendations made. Families, children and young people need confidence in safe travel to and from school, and whilst participating in planned activities within school or education/training. Families will expect the same standards for all learner travel, not just from home to school (...).”<sup>308</sup>

461. The evidence from the questionnaires completed by children and young people showed a majority of those who responded were in favour of the provisions of the proposed Measure applying to learner travel during the school day.<sup>309</sup>

462. Stuart’s Campaign, however, said:

“In an ideal world, yes, we would like to see it cover everything, but we have to be realistic. Yes, there has to be an element of phasing, and therefore the first step is definitely to cover home-to-school transport. That makes up the majority of journeys, and that is where we need to start.”<sup>310</sup>

463. In relation to whether school owned transport was encompassed in the definition of ‘learner transport’, NAHT Cymru and ASCL Cymru

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<sup>306</sup> RoP, paragraph 16, 21 October 2010, Legislation Committee No.4

<sup>307</sup> Written evidence, SLT 3

<sup>308</sup> Written evidence, SLT 3

<sup>309</sup> Summary of evidence from the children and young people’s questionnaire

<sup>310</sup> RoP, paragraph 118, 14 October 2010, Legislation Committee No.4

said they had concerns about the possible implications of the proposed Measure. They said this transport was:

“(…) an important resource and the costs associated with conforming to regulations intended for commercial firms may prove to be prohibitive.”<sup>311</sup>

464. They queried whether the proposed Measure covered “transport organised as part of the arrangements for educational visits of 2 or more days duration” and vehicles, such as school mini-buses, used to transport pupils home following a school activity such as a sporting fixture.<sup>312</sup>

465. Several witnesses, including the WLGA and ADEW and ATCO Cymru, queried whether the provisions of the proposed Measure were intended to cover those routes of public service buses extended specifically to encompass school drop-off and pick-up points.<sup>313</sup>

#### *Evidence from the Minister*

466. We asked the Deputy First Minister why he had chosen to exclude travel during the school day from the definition of ‘learner transport’ in section 13.

467. The Deputy First Minister confirmed this had been a policy decision, rather than a question of legislative competence.<sup>314</sup> He said:

“(…) journeys made during the day are normally made by buses or vehicles owned by the school rather than a traditional bus operator, although that may be the case on certain occasions. Therefore, you would require a totally different set of regulations concerning, for example, teachers who might be on the buses. A duty would have to be imposed on head teachers and schools. That would take us in a different direction, and the imperative was to create a legislative framework that dealt with the aspect that had caused most concern, which is the journey to school.”<sup>315</sup>

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<sup>311</sup> Written evidence, SLT 4

<sup>312</sup> Written evidence, SLT 4

<sup>313</sup> Written evidence, SLT 5 and SLT 8, respectively

<sup>314</sup> RoP, paragraphs 21-22, 7 October 2010, Legislation Committee No.4

<sup>315</sup> RoP, paragraphs 19 and 24, 7 October 2010, Legislation Committee No.4

468. Further to this, the Deputy First Minister's official provided some detail on the legislative context:

"In relation to the home-to-school transport element, the proposed Measure is one that will introduce an amendment to the existing Learner Travel (Wales) Measure 2008. Section 5 of the existing Learner Travel Measure places a duty on local authorities only in relation to home-to-school transport. In legal terms, that is the reason why this is restricted to that area, because that is the scope of the learner travel Measure as it stands at the moment."<sup>316</sup>

469. We asked the Deputy First Minister whether he would consider including a provision in the proposed Measure for transport during the school day, which could be implemented at the appropriate point in the future, rather than immediately. The Deputy First Minister said he did not agree with such an approach as:

"(...) the policy driver from the beginning, going back to the original Learner Travel (Wales) Measure 2008, was to deal with issues relating to home-to-school transport. That is the way in which we have drafted the proposed legislation, and we have no intention of taking it further under the current proposed Measure. (...) we still want to limit this to home-to-school-transport because of the way in which the proposed Measure has been drafted, and because of the relationship between local authorities and contractors. Currently, we have no plans to extend this to the school day, because of the new regulatory framework."<sup>317</sup>

470. We sought clarification from the Deputy First Minister as to whether routes of public service buses, extended specifically to encompass school drop-off and pick-up points, were caught by the provisions of the proposed Measure. He confirmed this would not be the case as the Assembly's legislative competence did not extend to public service vehicles and, as such, the proposed Measure provided only for contracted services between a local authority and a transport operator.<sup>318</sup>

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<sup>316</sup> RoP, paragraph 23, 4 November 2010, Legislation Committee No.4

<sup>317</sup> RoP, paragraph 13, 4 November 2010, Legislation Committee No.4

<sup>318</sup> RoP, paragraph 7, 4 November 2010, Legislation Committee No.4

471. The Deputy First Minister also confirmed that journeys made in a school-owned mini-bus would not be covered by the provisions of the proposed Measure<sup>319</sup>, and neither would a school to home journey as part of an educational visit.<sup>320</sup>

### ***Provision for pupils with additional learning needs***

#### *Evidence from consultees*

472. While several witnesses commented generally on the implications of the proposed Measure for pupils with additional learning needs, NAHT Cymru in particular said they had concerns as to whether it adequately addressed the needs of young people with additional learning needs, as it seemed to be “strongly biased toward the main stream.”<sup>321</sup> They went on:

“We are also concerned about whether the proposed Measure in its detail recognises that learners in special schools are often young, vulnerable adults, up to the age of 19, who would not necessarily come within the definition of a child as set out in section 13.”<sup>322</sup>

473. In their evidence, SNAP Cymru made a similar point, stating:

“Some young people with additional learning needs now attend colleges at the age of 14. Times are changing, so we need to consider the 14-19 learning pathways when we are looking at the proposed Measure to ensure that we are covering the most vulnerable young people.”<sup>323</sup>

#### *Evidence from the Minister*

474. Responding to the concerns of consultees that the proposed Measure did not make adequate provision for children and young people with additional learning needs, the Deputy First Minister said that statutory guidance was already in place under the 2008 Measure that identified the consideration needed to be given to pupils with

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<sup>319</sup> RoP, paragraphs 28 and 31, 4 November 2010, Legislation Committee No.4

<sup>320</sup> Letter from the Deputy First Minister, 11 November 2010

<sup>321</sup> RoP, paragraph 171, 21 October 2010, Legislation Committee No.4

<sup>322</sup> RoP, paragraph 171, 21 October 2010, Legislation Committee No.4

<sup>323</sup> RoP, paragraph 29, 14 October 2010, Legislation Committee No.4

additional learning needs. He argued it was not necessary to replicate this in the proposed Measure.<sup>324</sup>

475. In view of the evidence from consultees that learners in special schools are often young, vulnerable adults, up to the age of 19, we asked the Deputy First Minister to confirm the age range of pupils to be caught under the proposed Measure. He said:

“The proposed Measure applies to a “child” up to the age of 16. The proposed Measure does not include a definition of “child” as it amends the Learner Travel (Wales) Measure 2008. Section 24(3) of the 2008 Measure has the effect of applying defined terms in the Education Act 1996 to the 2008 Measure and amendments to it by the proposed Measure. Section 579(1) of the Education Act 1996 defines a “child” as a person who is not over compulsory school age.”<sup>325</sup>

476. We asked the Deputy First Minister whether he intended to make specific provision for learners in special schools up to the age of 19. On this point, he stated:

“(…) the legislation can only apply up to the age of 16, and the statutory guidance covers how you should deal with people with special educational needs with regard to their travel to school. So, provided that the bus complies with this legislation, the guidance deals with what extra arrangements need to be in place for children with special educational needs. So, a trip to the special school is covered by two things: the Measure and the guidance.”<sup>326</sup>

### *Our view*

477. In relation to travel during the school day, we note the evidence from the Deputy First Minister that the policy objective behind the introduction of the proposed Measure was to create a legislative framework for home to school travel. We support this objective.

478. However, the evidence we have received during the course of our consideration of the proposed Measure has led us to believe that there should be no distinction made between learner transport provided for

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<sup>324</sup> RoP, paragraph 35, 4 November 2010, Legislation Committee No. 4

<sup>325</sup> Letter from the Deputy First Minister, 25 October 2010

<sup>326</sup> RoP, paragraph 37, 4 November 2010, Legislation Committee No. 4. Also, see RoP, paragraph 39, 4 November 2010, Legislation Committee No. 4

home to school travel and learner transport provided for travel during the school day. It is our view that pupils travelling on contracted school transport should be afforded the same safety standards, regardless of the time of day that they are travelling.

479. We note the Deputy First Minister's evidence that the decision to exclude transport provided during the school day from the scope of the proposed Measure was one of policy, rather than being a matter of legislative competence.

480. Therefore, on the basis of the evidence received, **we recommend the Deputy First Minister amends the proposed Measure to include a provision that would enable a future Minister to make regulations applying the provisions of the proposed Measure to transport provided for pupils during the school day. We recognise that, before making any such regulations, the relevant Minister would need to consult fully with stakeholders.**

481. **Two members of the Committee did not support this recommendation. Although they agreed that the evidence we received demonstrated a need for the safety standards provided for in the proposed Measure to apply to learner transport during the school day, they believed this was a matter more appropriate for a future Measure.**

482. In relation to provision for pupils with additional learning needs, we note the evidence from the Deputy First Minister that statutory guidance, in place under the Learner Travel (Wales) Measure 2008, already covers this and, as such, there is no need to make separate provision in the proposed Measure.

483. However, we acknowledge the evidence from consultees that learners in special schools can often be young, vulnerable adults, up to the age of 19 and that, as such, they would not necessarily be provided for by the proposed Measure, in that it only extends to children up to the age of 16.

484. We believe it is important that the additional safety standards introduced under the proposed Measure for pupils up to the age of 16 apply to all children and young people with additional learning needs, particularly because they are often the most vulnerable. We believe the lack of provision in the proposed Measure for pupils with additional learning needs, aged 17 to 19, is a clear issue that needs to be

addressed. However, we realise that further work would need to be undertaken by the Deputy First Minister before legislating in this area and, as such, we do not believe the proposed Measure is the appropriate vehicle to achieve this.

**485. On this basis, we recommend the Deputy First Minister brings forward a Measure at the appropriate point in the future to apply the safety standards provided for in this proposed Measure to pupils with additional learning needs, aged 17 to 19, travelling on learner transport.**

## Summary of evidence from the children and young people's questionnaire

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486. As the proposed Measure related to the safety of children and young people on school transport, the Committee decided to issue a questionnaire aimed at children and young people.

487. The questionnaire was made available on the Assembly's website and in hard copy. The Assembly's education and outreach officers used the questionnaire in discussions with school children from around Wales and we are grateful to them for their work on this.

488. The Committee received a total of 559 responses to the questionnaire.

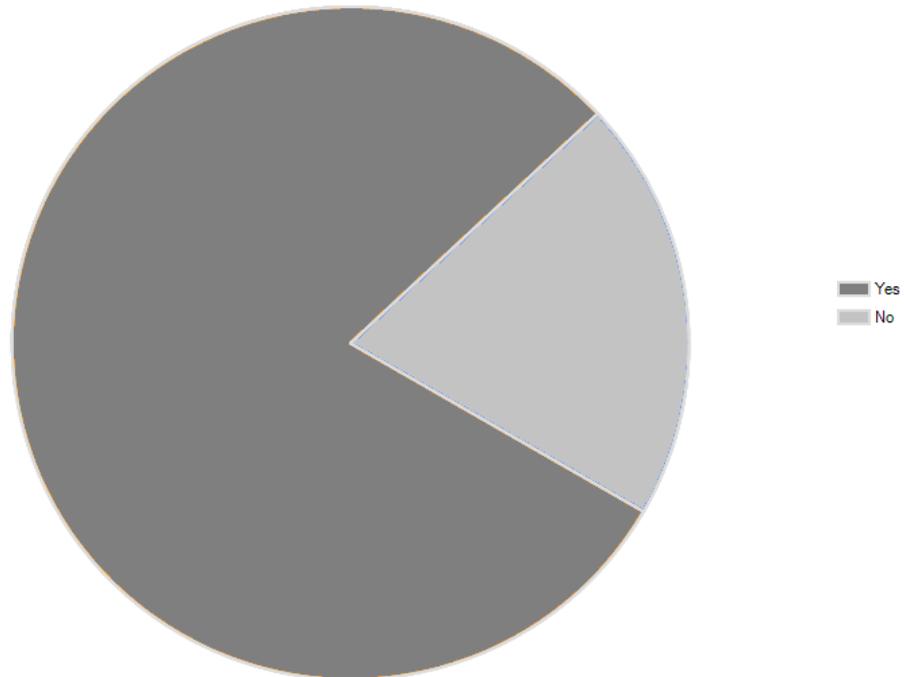
### *Summary of responses*

489. As part of the questionnaire, we asked children and young people for their views on the key provisions in the proposed Measure. A summary of responses is provided below. Full responses are available [here](#).

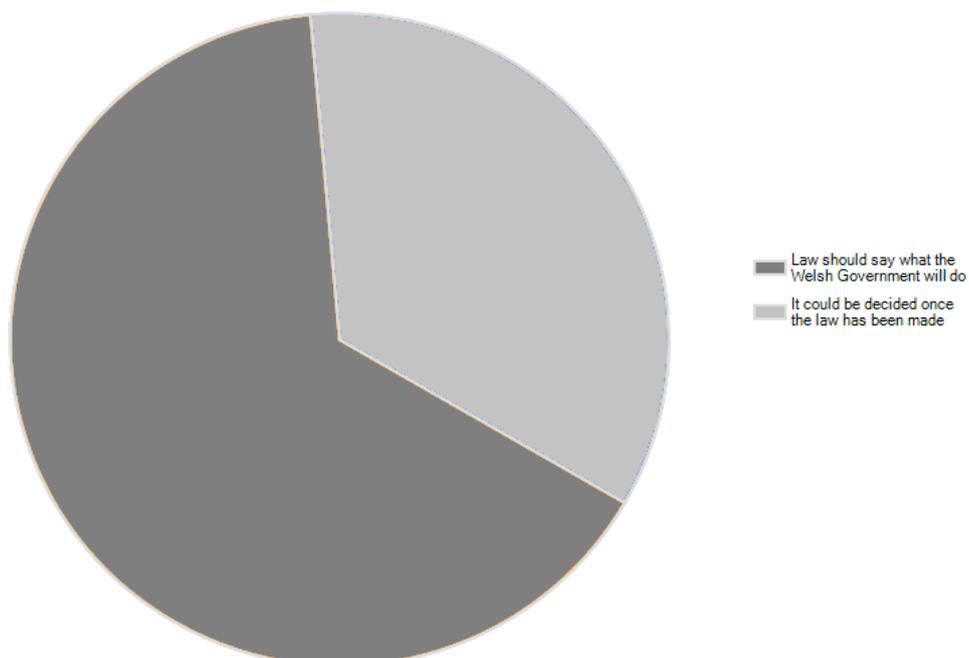
490. In question 1, we asked children and young people how they travelled to school. 30 per cent said they travelled on dedicated learner transport. The remaining children and young people travelled to school by a variety of modes, including public service bus or car.

491. The results from the other questions are set out below.

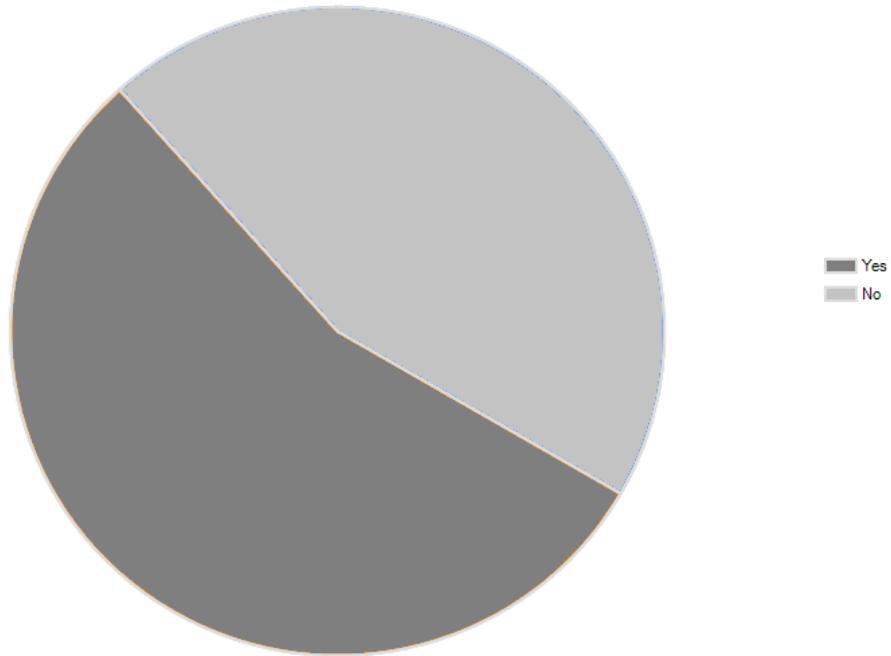
Question 2: Should the National Assembly pass a law in Wales to try to improve the safety of children and young people on transport to school?



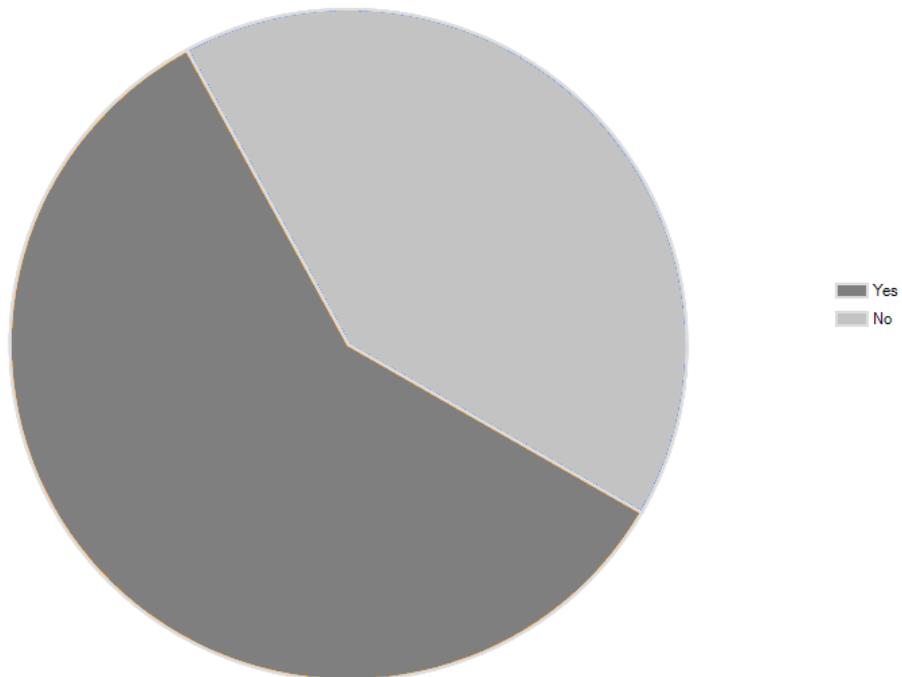
Question 3: The new law will allow the Welsh Government to make decisions in the future on how to improve safety on transport to and from school. This could include getting seat belts fitted on buses and only using single deck buses. Do you think the law should say exactly what sorts of things will be done to improve safety on school transport or could the Welsh Government decide what to do once the law has been made?



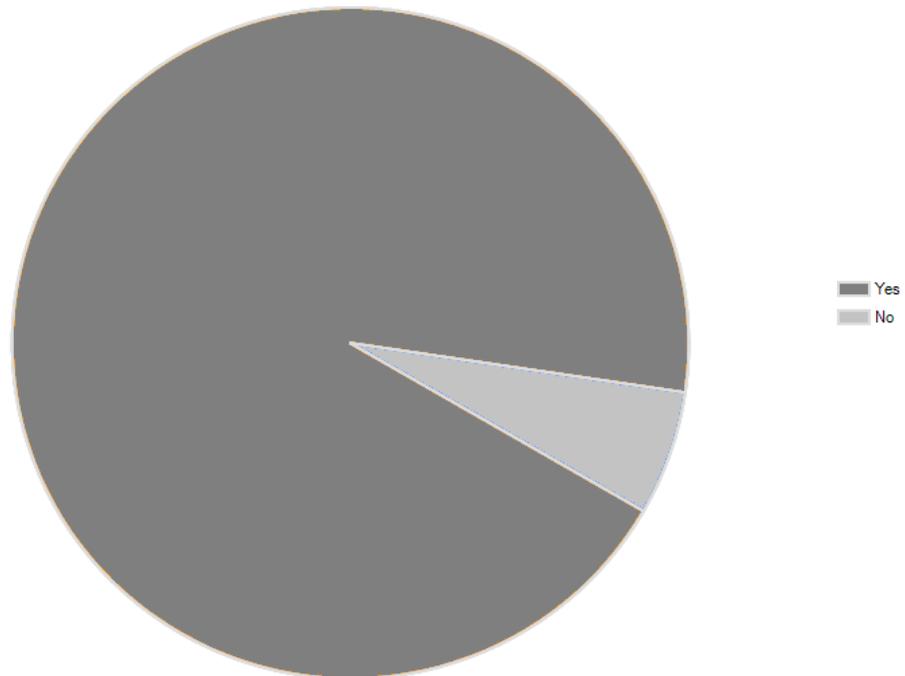
Question 4: The new law will cover travel from home to school, and from school to home. It will not cover travel during the day, for example on school trips. Do you think the new law should apply to travel during the day?



Question 5: The new law will allow cameras to be fitted on school buses to record what happens on bus journeys. Do you think this is a good idea?



Question 6: The new law will make sure that bus drivers are trained about safety on buses and working with children. Do you think this is a good idea?



## Witnesses

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The following witnesses provided oral evidence to the Committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed in full at [http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/bus\\_legislation\\_measure\\_learnertransport.htm](http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/bus_legislation_measure_learnertransport.htm)

### *7 October 10*

Ieuan Wyn Jones AM Deputy First Minister and Minister for Economy and Transport, Welsh Assembly Government

### *14 October 10*

Denise Inger SNAP Cymru

Pat Harris Belt Up School Kids (BUSK)

David Cunningham-Jones Stuart's Campaign for Safer School Buses

Dr Chris Howard Stuart's Campaign for Safer School Buses

### *21 October 10*

Daisy Seabourne Welsh Local Government Association

Brian Kemp Welsh Local Government Association

Tomi Jones Welsh Local Government Association

Bryan Jeffries Association of Directors of Education in Wales (ADEW)

Chris Britten National Association of Head Teachers (NAHT) Cymru

Tim Pratt Association of School and College Leaders (ASCL) Cymru

Elaine Keeble Association of School and College Leaders (ASCL) Cymru

John Pockett Confederation of Passenger Transport Wales (CPT Cymru)

### *4 November 10*

Ieuan Wyn Jones AM Deputy First Minister and Minister for Economy and Transport, Welsh Assembly Government

## List of written evidence

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The following people and organisations provided written evidence to the Committee. All written evidence can be viewed in full at [http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/bus\\_legislation\\_measure\\_learnertransport.htm](http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/bus_legislation_measure_learnertransport.htm)

<i>Organisation</i>	<i>Reference</i>
Belt Up School Kids (BUSK)	SLT 1
Newport Transport	SLT 2
SNAP Cymru	SLT 3
Joint response from the Association of School and College Leaders Cymru (ASCL) and National Association of Head teachers (NAHT) Cymru	SLT 4
Joint response from the Welsh Local Government Association (WLGA) and the Association of Directors of Education in Wales (ADEW), Supplementary evidence	SLT 5, 5A
Confederation of Passenger Transport Wales (CPT Cymru)	SLT 6
Governors Wales	SLT 7
Association of Transport Coordinating Officers Cymru (ATCO)	SLT 8
Pembrokeshire County Council	SLT 9
City and County of Swansea	SLT 10
Rhondda Cynon Taf County Borough Council	SLT 11
Children's Commissioner for Wales	SLT 12
Powys County Council	SLT 13
Individual Response – Mr H. B. Turner	SLT 14
Individual Response – Mrs B. Thurstan	SLT 15

**Written evidence received from the Member in Charge, Ieuan Wyn Jones AM, Deputy First Minister and Minister for Economy and Transport.**

[Letters from the Deputy First Minister and Minister for Transport and Economy, 25 October 2010, 11 November 2010 and 24 November 2010.](#)

## **Legislation Committee No 4**

**Concise minutes (LC4(3)-19-10) Date: 2 December 2010**

**Time: 09:31 – 11:20**

**Venue: Committee Room 4**

### **Assembly Members in Attendance**

Peter Black AM, South Wales West

Brian Gibbons AM, Aberavon

Dai Lloyd AM, South Wales West

Val Lloyd AM, Swansea East

Jonathan Morgan AM, Cardiff North

Jenny Randerson AM, Cardiff Central

### **Legislation Office**

Sarah Beasley, Clerk

Sarah Sargent, Deputy Clerk

### **Others in Attendance**

Gwyn Griffiths, Legal Adviser

### **Item 1: Introduction, Apologies and Substitutions**

1.1 Apologies were received from Christine Chapman. Val Lloyd attended as a substitute.

### **Item 2: Proposed Safety on Learner Transport (Wales) Measure – Stage 1: consideration of draft report**

2.1 The Committee considered the draft report.

2.2. An amendment was proposed, by Jonathan Morgan AM, to line 2 of paragraph 470 (Chapter 7), as follows:

Leave out “considers amending” and insert “amends”, so that the paragraph reads:

Therefore, on the basis of the evidence received, we recommend the Deputy First Minister **amends** the proposed Measure to include a provision that would enable a future Minister to make regulations applying the provisions of the proposed Measure to transport provided for pupils during the school day.

Following discussion the amendment was voted on by a show of hands.

For: Jonathan Morgan, Peter Black, Bethan Jenkins

Against: Brian Gibbons, Val Lloyd

**Amendment agreed**