



House of Commons
Welsh Affairs Committee

**The Draft Transport
(Wales) Bill:
Government Response
to the Committee's
Fourth Report of
Session 2003–04**

**Fifth Special Report of Session
2003–04**

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The Welsh Affairs Committee

The Welsh Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Office of the Secretary of State for Wales (including relations with the National Assembly for Wales.)

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The Committee is one of the Departmental select Committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/parliamentary_committees/welsh_affairs_committee.cfm.

Committee staff

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Fifth Special Report

The Committee published its Fourth Report of Session 2003–2004 on 19 July 2004. The response from the Wales Office was received on 4 November 2004 and is published as the Appendix to this Report.

Appendix

Introduction

This is the Government's response to the House of Commons Welsh Affairs Committee's report on the draft Transport (Wales) Bill.

Background

The draft Transport (Wales) Bill is the third Wales-only Bill to be the subject of pre-legislative scrutiny by the Welsh Affairs Committee.

The Committee's scrutiny took place in conjunction with scrutiny of the draft Bill by the National Assembly for Wales' Economic Development and Transport Committee, the first time that this has occurred. The Committees' scrutiny took place in parallel with a public consultation undertaken by the Secretary of State for Wales.

The Government's response to each of the Committee's conclusions and recommendations is set out below.

1. This was the first time that a House of Commons Committee has met formally with a Committee of a devolved administration to scrutinise a draft Bill. Those meetings demonstrated an innovative and progressive approach to pre-legislative scrutiny. We were able to mirror the co-operation of the UK Government and the Welsh Assembly Government in their preparation of the draft Bill. Furthermore it avoided the unnecessary duplication of evidence that marked scrutiny of previous "Wales-only" draft Bills. We thank the House of Commons and the National Assembly for Wales for agreeing to our request for joint working and we look forward to further successful joint meetings in the future. (Paragraph 8)

The Government welcomes the new arrangements for joint scrutiny implemented by the Committee.

2. We laud the intention of the Wales Office to have a Transport (Wales) Bill ready for presentation to Parliament at the beginning of the new Parliamentary session. However, that objective should not over-ride the time allotted for pre-legislative scrutiny. Wales-only Bills are important, but modestly sized. With better planning it should be possible to publish Bills in draft form earlier in the Parliamentary year. We recommend that the Government moves forward its timetable for the publication of Wales-only draft Bills so that we and our counterparts in the National Assembly may

be given a suitable period of time within which to undertake pre-legislative scrutiny. (Paragraph 12)

Pre-legislative scrutiny has shown its value in refining the details of legislation by highlighting key concerns at an early stage and we are grateful to the Committee for its recommendations on the draft Transport (Wales) Bill. We recognize the importance of the Committee having a suitable period for its work, and will always aim to publish draft Bills in sufficient time to meet this need.

3. We are aware that the draft Transport (Wales) Bill may need to be amended in the light of the Government's Rail Review. Should that be necessary, we recommend that Ministers consider the review to be an opportunity to use the Transport (Wales) Bill as a vehicle to confer on the National Assembly the broadest appropriate range of powers in the field of transport. (Paragraph 15)

The draft Transport (Wales) Bill would have given the National Assembly powers of direction and guidance over the Strategic Rail Authority for both Welsh and cross-border services provided under the Wales and the Borders franchise. This has been overtaken by the publication of the Government's Rail White Paper and the rail provisions at clauses 8, 9 and 10 will now be removed from the Bill.

However, the Government has agreed alternative arrangements with the National Assembly for Wales which will ensure that the Assembly has an equivalent level of influence over rail services in Wales. In particular the Assembly will take over responsibility for specifying and funding services provided under the Wales and the Borders franchise (except those that operate wholly within England). The Assembly will become a co-signatory to the franchise and the provision for making subsidy payments for the Wales and cross-border services will transfer to the Assembly. These arrangements will be provided for in the proposed new railway legislation announced by the Secretary of State for Transport on 15 July. The detailed working relationship between the Department for Transport and the Assembly will be set out in a published Memorandum of Understanding. There will be one national Rail Passengers Council and the Assembly will be able to appoint a member.

4. We recommend that the Government in its response to this report, set out the implications of the proposals contained in the draft School Transport Bill for the Transport (Wales) Bill. (Paragraph 17)

The draft School Transport Bill will give a small number of Local Education Authorities freedom to trial new approaches to school transport, adopting schemes tailored to their locality and which address local priorities. The Bill will also enable Local Education Authorities to charge pupils (except those from lower income families) for school transport which is provided under the new travel schemes. There are no direct implications for the draft Transport (Wales) Bill. Nevertheless the Government hopes that some school travel schemes will explore the scope for closer integration between school transport and public transport, particularly in rural areas where there is less public transport provision.

5. The establishment of a Public Transport Passengers' Committee for Wales has the potential to reflect better an integrated transport policy developed by the National

Assembly for Wales. It would be for the National Assembly to decide on the merits and exact composition of such a committee but we believe that it should be given the necessary powers to establish a committee. Therefore we recommend that the Government includes in the Bill the powers necessary for the National Assembly for Wales to establish a Public Passenger Transport Committee. (Paragraph 19)

The Government accepts this recommendation. We intend to add a new provision to the draft Bill that will enable the Assembly to establish a Public Transport Users' Committee for Wales.

6. Easy access to the Transport Commissioner is an important factor in the development of a Wales Transport Strategy. Whilst we commend the work of the current Transport Commissioner, we believe that Wales would be better served if he was located in Wales. We recommend that the Government relocates the Transport Commissioner from Birmingham to Wales. Should that not be possible, we believe that some of the Transport Commissioner's staff should be based in Wales. (Paragraph 23)

The Government has considered this recommendation very carefully. It does recognise the concerns that have been expressed in Wales about the accessibility of the Traffic Commissioner, despite the fact that a large volume of his work is correspondence based and there is easy access by fax and email. The Government is also conscious that the Assembly, the Traffic Commissioner and the Vehicle and Operator Services Agency (VOSA) have worked closely together where there is a need for extra services, with the Assembly Government funding two additional monitoring officers to work in the regional offices in Wrexham and Llantrisant. The Welsh Traffic Area is though relatively small and there are significant economies of scale to be gained from carrying out the joint administration of more than one traffic area.

We do not consider that it is appropriate to include a reference to the location of the Traffic Commissioner in the Bill. However, we intend to keep under review the location of the Traffic Commissioner for the Welsh Traffic Area. We will work closely with the Assembly to monitor concerns about the accessibility of the Commissioner in Wales.

7. We do not wish to prescribe the way in which the National Assembly pursues its policies in relation to bus franchising. However, we believe that the powers it is given should be broad enough for it to follow a policy of London-style bus franchising should it wish to do so. We recommend that the Government include in the Transport (Wales) Bill powers to enable the National Assembly to grant bus franchises in a form which it feels is most appropriate for Wales. (Paragraph 26)

The Government's view is that the Assembly has considerable flexibility to develop its bus policies within the existing legislative framework and that there is no need to seek further powers at this time. In reaching this view, which is shared by the Assembly, we are conscious of the advice we have received recently from the Commission for Integrated Transport on "The Bus Industry: Encouraging Local Delivery". This makes it clear that bus franchising would be expensive and that a great deal can be done within existing legislation. The Department for Transport are consulting on guidance on implementing the existing Quality Contract regime established under the Transport Act 2000.

8. We recommend that the Government include in the explanatory notes to the Bill, a clear description of the working relationship and obligations of Network Rail to the National Assembly resulting from the Transport (Wales) Bill. (Paragraph 28)

This recommendation has been overtaken by the publication of the Government's White Paper on the Future of Rail and the decision to remove all provisions relating to rail transport from the Transport (Wales) Bill. The relationship between the National Assembly and Network Rail will be set out in the Memorandum of Understanding between the Assembly and the Department for Transport.

9. We agree that cycling should be included in a general transport duty for Wales. We recommend that clause 1(3) of the draft Bill be amended to include cyclists as well as pedestrians. (Paragraph 31)

The Government accepts this recommendation. We will revise the draft Bill in line with the Committee's views.

10. The Government of Wales Act places a duty on the National Assembly to have regard for sustainable development. It may be that the Act covers any subsequent powers conferred on the National Assembly for Wales. Nonetheless, we are surprised that there is no reference to sustainable development on the face of the draft Bill. We recommend that a duty to have regard to sustainable development be included in the General Transport Duty. (Paragraph 33)

The Government accepts this recommendation. We will revise the draft Bill in line with the Committee's views.

11. We welcome proposals to enable the National Assembly to establish a Wales Transport Strategy. In the preparation of that strategy we believe that the duty of consultation to be placed on the National Assembly requires some amendment. We recommend that clause 2 (5) of the draft Bill be amended to place an explicit duty on the National Assembly to consult Welsh local authorities and English local authorities whose boundaries lie on the Welsh border, in addition to "any persons it considers appropriate", in the preparation of the Wales Transport Strategy. (Paragraph 41)

The Government accepts this recommendation. We will revise the draft Bill in line with the Committee's views.

12. Local transport plans will play an integral part in the Welsh Transport Strategy. Therefore it is appropriate for the National Assembly to have an element of control over their content. However, the draft Bill does give the appearance, if not the intention, of an overbearing National Assembly influence over Local Transport Plans. The powers of approval to be conferred on the National Assembly should be accompanied by an active duty to take a partnership approach to those Plans. Clearly, the UK Government and the Welsh Assembly Government have further work to do to convince local government that a partnership approach will be at the heart of that process. We look to both the UK Government and Welsh Assembly Government to reassure local authorities that the National Assembly will play an active role from the outset in the preparation of Local Transport Plans. The draft Bill may need to be

amended to reflect the culture of partnership to which both parties subscribe. (Paragraph 49)

The Government welcomes the Committee's overall views on the proposals.

The National Assembly has developed a unique partnership approach in its relations with local government and this will continue. Welsh local authorities will be given a unique role in the development of the Wales Transport Strategy and we will make this clear in the explanatory notes to the Bill. This will help inform the development of Local Transport Plans.

The Assembly will also provide guidance to local authorities to help them develop their Local Transport Plans. Any potential disagreements between the Assembly and local government are likely to be resolved by dialogue at an early stage in the planning process. However, to cater for the unlikely event of the Assembly and a local authority failing to reach agreement over the content of a local transport plan, the Government proposes to amend Schedule 1, Section 4 of the draft Bill to ensure that any decision to refuse a Local Transport Plan would be taken by the National Assembly in plenary.

13. The proposals to establish joint transport authorities will offer the potential to enact a Wales Transport Strategy at a regional level. For that reason we welcome the proposals. However the current wording of the draft Bill makes the appointment of members to those authorities unclear. Despite reassurances from Government that the intention is for local authorities to appoint the majority of the members of a joint transport authority, the Welsh Local Government Association remains unconvinced. We therefore recommend that clause 5(4)(a) be redrafted to make explicit the role of local authorities in the appointment of the majority of members of joint transport authorities. (Paragraph 63)

The Government accepts this recommendation. We will revise the draft Bill in line with the Committee's views.

14. Clause 6 would allow the National Assembly to provide financial assistance to newly created joint transport authorities. It would also allow similar assistance to be given to local authorities which had been directed to work together on transport. We consider that the power to provide financial assistance to bodies established by the National Assembly for Wales is an appropriate power. Should the provisions of the draft Bill be enacted, the administration and allocation of those funds would be a matter for the National Assembly. (Paragraph 65)

The Government welcomes the Committee's support.

15. We conclude that clause 7 is a sensible proposal that would enable the National Assembly to provide financial assistance for the provision of public transport services. Detailed discussion on where and under what circumstances that assistance would be given will be a matter for the National Assembly in conjunction with other interested bodies. However, we recommend that the Government set out any impact that the School Transport Bill would have on the clause. (Paragraph 67)

The Government welcomes the Committee's support for this clause, which will enable the Assembly to secure the provision of any public transport service which meets a requirement that would not otherwise be met. This will fill an important gap in the transport powers available to the National Assembly. It will enable the Assembly to provide support for bus and rail services which cross local authority boundaries, for example.

The definition of "Public Passenger Transport Services" in this clause is based on that in the Transport Act 1985. The reference to school transport does not pre-judge the outcome of any of the current work that is ongoing in relation to the draft School Transport Bill

16. We welcome the proposals to confer on the National Assembly powers of direction and guidance over the Strategic Rail Authority. We further recommend that the Government explore avenues to enhance the influence that the National Assembly can bring to bear over intercity services within Wales. (Paragraph 76)

17. Sub-clause 9 (6) reflects the need for the Secretary of State to hold the final authority on the priorities of the UK rail network. Its intention is to ensure that the policies of the National Assembly do not adversely impact on services in England. Whilst this appears to be sensible, it raises the question of the influence that can be exerted by the National Assembly over a service in England that adversely impacts upon services in Wales. We look to the Government to reassure us that in having regard for the protection of English rail services, a similar protection is available to Welsh rail services. (Paragraph 79)

The Government welcomes the Committee's support for devolving further decision-making powers to the National Assembly for Wales in relation to rail services. These provisions will now be taken forward in the context of the Government's White Paper on the Future of Rail. The other points in this recommendation will be addressed in the Memorandum between the Assembly and the Department for Transport.

18. We recommend that the Government include in the Transport (Wales) Bill provision for the National Assembly for Wales to appoint one or more members of the Strategic Rail Authority. (Paragraph 82)

19. We conclude that a Welsh office of the Strategic Rail Authority would be beneficial to the management of the Wales and Borders franchise. It would also facilitate dialogue between the National Assembly and the Strategic Rail Authority. We recommend that the Government set out, in the explanatory notes that will accompany the Transport (Wales) Bill, the administrative arrangements necessary for the establishment of such an office. (Paragraph 85)

Recommendations 18 and 19 have been overtaken by the Government's White Paper on the Future of Rail, including the abolition of the Strategic Rail Authority.

20. The draft Bill provides a framework with which the National Assembly may pursue its integrated transport strategy. The Committee concludes that clause 10 is a sensible part of that framework. Detailed discussion on those financial arrangements would be a matter for the National Assembly and the Strategic Rail Authority. (Paragraph 87)

The Government welcomes the Committee's support. As indicated above, Clause 10 will be removed from the draft Bill as a consequence of the rail review. Many of the functions of the Strategic Rail Authority will in future be carried out by the Department for Transport. Relationships between central Government and devolved bodies are usually set out in memoranda of understanding and concordats. As also indicated above, we intend that there should be a Memorandum of Understanding between the Department for Transport and the Assembly which will govern their relationship as regards the exercise of franchising functions in Wales.

21. We welcome the proposal for the National Assembly to have the power to appoint the Chairman of the Rail Passengers Committee. We agree with the Rail Passengers Committee that due care and attention needs to be placed upon the principle of independence. We recommend that the Government enshrine that independence on the face of any Transport (Wales) Bill. (Paragraph 90)

The Government's White Paper on the Future of Rail contains proposals to reform the structure of the Rail Passengers' Council so that it becomes a single national body reporting to the Secretary of State. The regional committee structure, including the Rail Passengers' Committee for Wales, will be dissolved. The National Assembly will be able to appoint a member to the new Council to ensure that a clear voice will be provided for Welsh passengers at the Great Britain level.

As indicated above, the Government intends to add a new provision to the draft Bill to enable the Assembly to establish a Public Transport Users' Committee for Wales.

22. We welcome the provision in the draft Bill to grant the National Assembly the power to give financial assistance to people providing air transport or airport services. Whether there are sufficient additional resources for that financial assistance to be successful remains to be seen. Therefore, we recommend that the Government set out clearly what funds, if any, will be transferred to the National Assembly as a result of this provision in the draft Bill. (Paragraph 98)

This provision gives the National Assembly the power to make payments to provide revenue funding for air services which start or end at an airport in Wales and capital funding to provide new airport facilities. The Department for Transport will continue to be responsible for aviation policy in Wales. There will not be a transfer of funding to the Assembly; any support which the Assembly wishes to give to air transport or air services will have to be found within the Assembly's existing budgetary provision.

23. The true cost of the financial assistance given by the National Assembly will be a matter for detailed assessment and negotiation for that institution should the draft Bill become law. (Paragraph 100)

24. We welcome the additional information provided by the Government on the costs of additional Welsh Assembly staff and the joint transport authorities. We recommend that the Government includes in the explanatory notes to the Transport (Wales) Bill detailed information on those costs. (Paragraph 105)

The Government accepts recommendations 23 and 24. It will provide a full breakdown of all costs associated with the Bill in the Regulatory Impact Assessment that will accompany the final draft of the Bill.