



Wales Office

**Memorandum to
Welsh Affairs Committee
Post-Legislative Assessment of the
Transport (Wales) Act 2006**

*Presented to Parliament by the Secretary of State for Wales
by Command of Her Majesty*

September 2011

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MEMORANDUM TO THE WELSH AFFAIRS SELECT COMMITTEE

Post-legislative assessment of the Transport (Wales) Act 2006

1. Introduction

This Memorandum has been prepared by the Wales Office and the Welsh Government for submission to the Welsh Affairs Select Committee and will be published as part of the post-legislative scrutiny process set out in Cm 7320.

2. Summary of the objectives of the Act

The Transport (Wales) Act 2006 (“the Act”) gives effect to the National Assembly for Wales’ (“the Assembly”) request that it be granted powers in relation to transport, which was expressed in a resolution of the Assembly approved in plenary session on 17 March 2004. At the time the Act came into force, the Assembly did not have legislative competence to make primary legislation and accordingly the powers provided to the Assembly by the Act were regulatory in nature. The general effect of the Act is to provide the Assembly with additional powers, creating a coherent statutory framework to enable Welsh Ministers to implement their strategic transport policies

The Act received Royal Assent on 16 February 2006 and makes the development of sustainable public transport in Wales a core task of the Welsh Assembly Government (now known as the Welsh Government).

The Act places statutory duties on the Welsh Ministers to:

- Develop and implement policies for the promotion and encouragement of safe, integrated, sustainable, efficient and economic transport facilities and services;
- Prepare and publish a Wales Transport Strategy setting out the Welsh Government’s vision for the transport system in Wales, as well as focusing on how that vision is to be delivered. The Act also requires local authorities to prepare and implement local transport plans in line with the Wales Transport Strategy.

The Act also confers powers on the Welsh Ministers to:

- Direct joint working arrangements between local authorities and for the establishment by Order of joint transport authorities, so that local authority transport functions can be carried out on regional basis;
- Provide funding for transport services where the need for such services would not otherwise be met, and for financial assistance to joint transport authorities and local authorities to enable them to discharge their transport functions. The Act also gives the Welsh Ministers the power to provide revenue payments to airline operators or capital funding to provide new airport facilities where such services or facilities would not otherwise be provided; and

- Establish by Order a Public Transport Users' Committee for Wales (PTUCW).

3. Implementation

The Transport (Wales) Act 2006 (Commencement) Order 2006 (SI 2006/1403 (W.140)) brought all the operative provisions of the Act into force on 26 May 2006.

There have been a number of amendments to the Act since Royal Assent. For example, various provisions of the Act were amended or repealed by the Government of Wales Act 2006 (GOWA) to reflect the new constitutional arrangements put in place by that Act, in particular the formal separation of the Welsh Assembly Government and the National Assembly for Wales. As a result of these amendments, the general transport duty and the duty contained in the Act to prepare and publish the Wales Transport Strategy became duties of the Welsh Ministers. The additional consequential / transitional changes were:

- The preparation of The Wales Transport Strategy must now be undertaken by the Welsh Ministers rather than the National Assembly for Wales and does not require Assembly approval prior to publication;
- Local transport plans are approved by the Welsh Ministers rather than the National Assembly; and
- Orders establishing Joint Transport Authorities are subject to the affirmative Assembly procedure, whilst the remaining Orders, for example setting up the PTUCW, are subject to negative Assembly procedure.

Other amendments have been made by the Local Transport Act 2008 which include further qualification in relation to the provision of financial assistance for public passenger transport services.

Provisions of the Transport (Wales) Act 2006 not yet used.

The provisions in section 4 have not been used to date. These provisions to direct joint working arrangements between local authorities are intended to be used in the event that joint working does not take place and the problem cannot be resolved through dialogue. In practice there has not been a serious enough breach of joint working arrangements to require these provisions to be used.

The provisions in section 5, which enable the Welsh Ministers to establish Joint Transport Authorities to discharge all or some of the transport functions of two or more local authorities in Wales, have not been used to date. The Welsh Ministers have not been required to establish Joint Transport Authorities, as the existing voluntary consortia and joint working arrangements have been sufficient to deliver the objectives of the Act. However, the Welsh Government has recently stated that it will consider using the provisions to establish one or more Joint Transport Authorities.

4. Secondary Legislation and Guidance

All powers to make secondary legislation under the Act rest with the Welsh Ministers, and are subject to Assembly rather than parliamentary procedure.

The following secondary legislation has been made under the Act (the full details of which are available at Annex A):

The Regional Transport Planning (Wales) Order 2006 S.I 2006 No. 2993

This Order was made by the National Assembly for Wales on 15 November 2006, in exercise of the powers conferred by sections 108, 109C and 113A of the Transport Act 2000, as amended by the Transport (Wales) Act 2006. It came into force on 23 November 2006.

The Regional Transport Planning (Wales) (Amendment) Order 2008 S.I 2008 No. 1286

This Order was made on 13 May 2008 and laid before the National Assembly for Wales on 14 May 2008, in exercise of powers under section 109C of the Transport Act 2000, as amended by the Transport (Wales) Act 2006. It came into force on 12 June 2008.

The Regional Transport Planning (Wales) (Amendment) Order 2009 S.I 2009 No. 109

This Order was made on 26 January 2009 and laid before the National Assembly for Wales on 28 January 2009, in exercise of powers under section 109C of the Transport Act 2000, as amended by the Transport (Wales) Act 2006. It came into force on 19 February 2009.

The Public Transport Users' Committee for Wales (Establishment) Order 2009 S.I 2009 No. 2816

This Order was made on 20 October 2009 and laid before the National Assembly for Wales on 22 October 2009, in exercise of powers under section 8, 9 and 10 of the Act. It came into force on 16 November 2009.

The Public Transport Users' Committee for Wales (Establishment) (Amendment) Order 2009 S.I 2009 No. 2915

This Order was made on 2 November 2009 and laid before the National Assembly for Wales on 3 November 2009, in exercise of powers under sections 8, 9 and 10 of the Act. It came into force on 25 November 2009.

5. Legal Issues

The Wales Office and the Welsh Government are not aware of any legal issues which have arisen publicly, either in courts or elsewhere, in connection with the implementation or operation of the Transport (Wales) Act 2006.

6. Other Reviews

The Wales Office and the Welsh Government are not aware of any other post-legislative reviews or assessments of the Transport (Wales) Act 2006.

7. Preliminary Assessment of the Act

Most of the provisions of the Act have been used effectively and we have identified no specific failings in the legislation. Some enabling powers conferred on the Welsh Ministers have not yet been exercised (for the reasons set out in section 3).

Taking forward the Wales Transport Strategy

The Act requires Welsh Ministers to prepare and publish a Wales Transport Strategy. The Strategy establishes the framework for an integrated transport system. Proposals for delivering the strategy are set out in a National Transport Plan (though a Plan is not a statutory requirement under the Act). The National Transport Plan sits alongside the Regional Transport Plans in delivering the Wales Transport Strategy. The 22 local authorities are grouped into 4 regional groups (south east Wales, south west Wales, mid Wales and north Wales) for the purpose of preparing a single transport plan for each regional group.

The first Wales Transport Strategy was published in April 2008. It joined together proposals for road, rail and public transport with the aim of enabling people and freight to travel more efficiently and sustainably, whilst being able to access the goods, markets, services, facilities and places they need.

The National Transport Plan, published in March 2010, sets out the detail of how the Wales Transport Strategy would be delivered over the following five years. It builds on previous plans, developing new and better integrated public and community transport, walking and cycling. It sets out solutions to transport issues along the main east-west and north-south movement corridors in Wales. These solutions are linked to the four Local Transport Plans, which were developed on a regional basis and were approved in 2010.

Two orders¹ (described in Annex A attached) were necessary due to delays in the publication of the final Wales Transport Strategy which meant consequential delays in publishing the National Transport Plan and finalising local transport plans. These delays are not attributable to deficiencies in the provisions of the Act itself.

Public transport

Using the power to secure public passenger transport services, the Welsh Ministers established a Strategic Management Advice Board for Trawscambria, a long distance coach service, in 2008. There have been periodic adjustments to the membership to reinforce its effectiveness. The Board has been considering how to deliver improvements to specific services. This has included a public engagement exercise and consultation. Service improvements are being delivered in 2011/12.

¹ S.I. 2008/1286 and S.I. 2009/109

Between November 2007 and February 2008 the Minister for the Economy and Transport consulted on proposals for establishing a Public Transport Users' Committee for Wales. The Public Transport Users' Committee for Wales was established on 16 November 2009 and became operational in March 2011, following the completion of a public appointments exercise to appoint the Committee members. The first meeting of the Committee was held on 24 March 2011.

Air transport

The Act allows the Welsh Government to give financial assistance for air services and airport facilities where they would not otherwise be provided, although these provisions are subject to state aid guidelines. The Welsh Government's Route Development Fund (RDF) was designed to work with the market to support new air services between Wales and European cities by sharing risk during the start-up period. The RDF was governed by the National Protocol for UK Route Development Funds, which reflected a range of policy and legal principles developed at European, national and regional level and drew them together in a framework for RDF operators. The Welsh Ministers signed up to the Protocol in the summer of 2006. The Fund supported new routes by offering up to 50% of the cumulative aeronautical and marketing costs for up to three years. This provided an incentive to start up routes from Cardiff International Airport.

The Welsh Route Development Fund closed to new services that commenced after 31 May 2007, following the publication of European Commission guidelines, in December 2005, on the financing of start up aid to airlines departing from regional airports. The guidelines reduced the aid that could be offered from 50% to 30%. The conditions and restrictions contained in the new RDF Protocol made the scheme unattractive because of the disproportionate work required to obtain a 30% contribution. The European Commission have recently been consulting on the appropriateness of the 2005 guidelines.

In relation to other air services, the Welsh Ministers established the Intra Wales Air Service in May 2007 which operates two flights daily between Cardiff and Anglesey. The European Commission approved a Public Service Obligation (PSO) on the route, under which a member state of the European Union can subsidise an air route to a peripheral or development region if it can be shown that surface transport does not provide a viable alternative.

The Regional Transport Planning (Wales) Order 2006 S.I 2006 No. 2993

The Order exercised the power of the National Assembly for Wales under section 113A of the Transport Act 2000 to modify sections 108 to 111 of that Act. Specifically, it allowed the National Assembly for Wales to permit local transport plans to be made on a regional rather than individual authority basis and specified the date by which local transport plans which fulfilled the requisite criteria should be replaced.

The Order does not make provision for the way in which the local transport authorities should work together. This is a matter for the relevant authorities. Neither does the Order make provision for the preparation and implementation of the new regional transport plans as this was dealt with separately in guidance published by the National Assembly for Wales in accordance with section 112 of the Transport Act 2000.

Article 3 of the Order provided for the 22 Welsh local authorities to be assembled into four groups for the purpose of preparing a single transport plan for each group. The groups are based upon four regional areas: South East Wales, South West Wales, Mid Wales and North Wales.

Article 4 exercised the power of the National Assembly for Wales under section 113A(1)(a) of the Transport Act 2000 to permit a local transport plan to be prepared in respect of part only of a local transport authority's area. In this article, the local transport authority of Gwynedd was to contribute to two separate local transport plans covering or including the district of Meirionnydd and the remainder of the county of Gwynedd respectively.

Article 5 required the replacement of local transport plans, which fulfill the requisite criteria, by no later than 30 June 2008.

The Schedule to the Order lists the four groups and their constituent local authorities.

The Regional Transport Planning (Wales) (Amendment) Order 2008 S.I 2008 No. 1286

The Regional Transport Planning (Wales) (Amendment) Order 2009 S.I 2009 No. 109

This Order further amended the Regional Transport Planning (Wales) Order 2006 (“the 2006 Order”). The 2006 Order, was previously amended by the Regional Transport Planning (Wales) (Amendment) Order 2008 (S.I. 2008/1286 (W.135) (“the 2008 Order”).

Specifically, this Order amended article 5 of the 2006 Order, amending the date upon which the Welsh Ministers required all qualifying local transport plans to be replaced, from 30 June 2009 to 31 December 2009.

The amendment was necessary due to delays in the publication of the Wales Transport Strategy and consequential delays in publication of the National Transport Plan.

The Public Transport Users' Committee for Wales (Establishment) Order 2009 S.I 2009 No. 2816

This Order established the Public Transport Users' Committee for Wales. The Committee is an independent advisory body to the Welsh Ministers on public transport issues.

Article 4 sets out the constitution and membership of the Committee and article 5 enables the members to be paid such allowances and expenses as are determined by the Welsh Ministers.

Article 6 enables the Committee, with the consent of the Welsh Ministers, to appoint staff.

Article 7 enables the Committee to establish such sub-committees as it thinks fit.

Article 8 allows the Committee to regulate its own proceedings and provides that the validity of proceedings will not be affected by defective appointment of members or vacancies within the Committee.

Article 9 provides for the presentation of annual Committee reports to the Welsh Ministers.

The Public Transport Users' Committee for Wales (Establishment) (Amendment) Order 2009 S.I 2009 No. 2915

This Order amended the Public Transport Users' Committee for Wales (Establishment) Order 2009.

Specifically this Order amends articles 7(1)(ch) and 8(1) in respect of the Welsh text only, replacing the word “gweithdrefnau” (meaning “procedures”) with the word “gweithdrefn” (meaning “procedure”).



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