



RESEARCH PAPER 05/04  
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# *The Transport (Wales) Bill*

HC Bill 15 of 2004-05

The *Transport (Wales) Bill* was introduced in the House of Commons on 15 December 2004.

The Bill seeks to introduce a variety of measures pertaining to the provision of transport to, from and within Wales. The general effect of the Bill would be to extend the powers of the National Assembly in the area of transport and to produce a better integrated transport system for Wales.

The Bill extends primarily to Wales with some provisions also affecting England.

Louise Butcher

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## Summary of main points

The *Transport (Wales) Bill* (HC Bill 15 of session 2004-05) includes measures designed to ensure that there is a coherent set of transport powers available to the National Assembly for Wales (NAW) that will allow it to implement effectively an integrated transport system for Wales.

Measures include:

- Placing a ‘general transport duty’ on the NAW to develop and implement policies that will ensure a safe, integrated, sustainable, efficient and economic transport system to, from and within Wales.
- Providing for the preparation of a Wales Transport Strategy by the NAW.
- Ensuring consistency between local transport provision and the NAW’s overall transport strategy.
- Establishing Joint Transport Authorities in Wales which will enable local transport functions and planning to be carried out on a regional basis.
- Empowering the NAW to secure the provision of public passenger transport services where the requirement would not otherwise be met.
- Making financial assistance from the NAW available for air transport services and airport facilities serving Wales that would not otherwise be provided.
- Providing for the establishment of a new Public Transport Users’ Committee for Wales.

Those measures on railways that were previously included in the draft *Transport (Wales) Bill* have been amended and are now part of the *Railways Bill 2004-05*, currently going through Parliament.<sup>1</sup>

The Bill can be downloaded here:

<http://www.publications.parliament.uk/pa/cm200405/cmbills/006/2005006.pdf>

And the Explanatory Notes can be found here:

<http://www.publications.parliament.uk/pa/cm200405/cmbills/006/en/05006x--.htm>

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<sup>1</sup> Library Research Paper 04/86 on the *Railways Bill* can be viewed here: <http://www.parliament.uk/briefing-papers/RP04-86/railways-bill-bill-6-of-200405>



## CONTENTS

<b>I</b>	<b>Background</b>	<b>7</b>
	<b>A. Responsibility for transport in Wales</b>	<b>7</b>
	<b>B. Transport strategy 2001-2004</b>	<b>8</b>
	<b>C. The draft <i>Transport (Wales) Bill</i> and the <i>Railways Bill</i></b>	<b>10</b>
	<b>D. Report by Welsh Affairs Committee</b>	<b>12</b>
<b>II</b>	<b>The Bill</b>	<b>14</b>
	<b>A. General transport functions</b>	<b>14</b>
	<b>B. Local transport functions</b>	<b>15</b>
	<b>C. Public transport</b>	<b>16</b>
	<b>D. Air transport</b>	<b>16</b>
	<b>E. Cost</b>	<b>16</b>



# I Background

## A. Responsibility for transport in Wales

In terms of transport, the National Assembly for Wales (NAW) has similar responsibilities to those of the Secretary of State for Wales in the past. Primary legislation is passed at Westminster but the implementation and the Orders are done within Wales.

The most recent concordat between the Department for Transport (DfT) and the NAW was published in 2003. The aim of the concordat is to “provide the framework to guide the working relationship between the Secretary of State for Transport, other DfT Ministers and officials of the Department for Transport ... and the Welsh Assembly Government, comprising the Assembly First Minister, Ministers and their officials”.<sup>2</sup> The objective of the concordat is to ensure that the roles and responsibilities of DfT and the Assembly Government are effectively translated into practical working arrangements between the two organisations. The aim is to promote the establishment of close and harmonious working relationships and good communications at all levels between the two, and in particular to foster constructive co-operation.<sup>3</sup>

The Concordat sets out where legislative responsibility lies:

### **Primary legislation**

... [The] DfT will, so far as practicable and appropriate, consult the Assembly Government at the earliest opportunity on proposals for legislation which would affect the functions or responsibilities of the Assembly or would be of particular impact in Wales ... Where the Assembly Government proposes to use the Assembly’s own powers to amend, modify or repeal primary legislation in any area within or relevant to DfT’s responsibilities, it will so far as practicable and appropriate consult DfT at the earliest opportunity on its proposals.

### **Devolved Functions**

In relation to functions exercisable by the Assembly, the parties will:

- share information, analysis and research, where this would be of mutual benefit;
- inform each other of any relevant information which comes to their attention which may require action by or have resource consequences for the other party;
- seek to involve each other, as and when appropriate, in policy formation on topics where there is a reasonable expectation that a policy initiative

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<sup>2</sup> DfT, *Concordat between Department for Transport and Welsh Assembly Government*, 2003, p3

<sup>3</sup> *Ibid*, p3

might affect, the other's responsibilities, or be used or adapted by the other;

- inform each other at the earliest practicable stage of any proposal to change primary or secondary legislation, and to highlight the potential implications, so far as apparent, for the other's responsibilities; and
- inform each other at the earliest practicable stage of substantive new policy announcements which may be relevant to the other's responsibilities.

### **Interface between Devolved and Non-devolved Functions**

There are some areas where there is a close interface between the devolved functions of the Assembly and non-devolved functions of DfT. The parties will maintain close contact on issues where this arises.

### **Non-devolved Functions**

In relation to non-devolved functions of DfT:

- DfT will inform the Assembly Government, as early as practicable, of proposals which are likely to be of interest to the Assembly, and wherever possible before any public announcement is made;

the parties will inform each other of any information which comes to their attention which may require action by the other party.<sup>4</sup>

Within the NAW, transport is managed by the Transport Directorate. The Directorate is responsible for:

1. Transport policy of the National Assembly for Wales
2. Maintenance and improvement of over 1,000 miles of trunk road in Wales and 75 miles of motorway
3. Administration of grants to local authorities and other bodies to fund a range of capital transport schemes and transport services

The Directorate is accountable to Andrew Davies, Assembly Minister for Economic Development and Transport and has an annual budget of approximately £210m. The Directorate works closely with local government and other bodies and Directorate staff are regularly involved with their counterparts in the DfT in the development and review of standards and policy.

## **B. Transport strategy 2001-2004**

In November 2001 the Assembly published its *Transport framework for Wales*. The document set out how the Assembly aimed to "lead and support the delivery of the

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<sup>4</sup> *Ibid*, pp5-7

transport infrastructure and services that we need in Wales both internally and to connect us to the rest of the world”.<sup>5</sup> The framework was not intended to be “a plan setting out funded programmes for delivery”; rather it was “a translation of the aims and themes of the Assembly into what we want from our transport system”.<sup>6</sup> The document went on to set out a vision of what the Assembly wanted by 2006:

Within 5 years Wales should have:

- a much improved sustainable public transport system on all modes with better and safer access, more frequent and better quality services and facilities to an agreed standard;
- better links and interchange with other means of transport;
- better travel information for users of all modes;
- safer and easier cycling and walking;
- a more efficient and socially and environmentally friendly means of moving freight;
- greater access particularly for those who do not have a car;
- more use of sustainable modes of transport;
- an improved and better maintained road network;
- improved journey time reliability on all modes.<sup>7</sup>

The framework was followed in December 2001 by a report from the Environmental, Planning and Transport Committee (EPT). This *Policy review of public transport* looked at issues of short, medium and long-term importance and set out a vision for integrated, accessible and affordable public transport. The review states:

Public transport should enjoy a good reputation, particularly with young people. It should act as a positive lever in improving equality of opportunity - proportionately public transport serves more children and young adults, women, elderly and unemployed people – and significantly improved levels of accessibility for disabled people.<sup>8</sup>

As a December 2002 report by the Welsh Affairs Committee noted, “the vision for public transport set out in the EPT Committee’s report is not radically different from that set out in the Assembly Government’s *Transport Framework for Wales*”.<sup>9</sup> However, the report did praise the framework as “an ambitious document” and further stated that:

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<sup>5</sup> NAW, *Transport framework for Wales*, November 2001, p1

<sup>6</sup> *Ibid*, p1

<sup>7</sup> *Ibid*, pp25-26

<sup>8</sup> National Assembly for Wales EPT, *Policy review of public transport*, December 2001, p3:  
<http://web.archive.org/web/20060221204842/http://www.wales.gov.uk/assemblydata/3C0B8799000AF543000037DE00000000.pdf>

<sup>9</sup> Welsh Affairs Committee, *Transport in Wales* (HC 205, 2 vols, session 2002-03), 17 December 2002, p8

Between the two of them, the two documents point to an integrated transport approach, using public transport investment to influence ‘modal split’ (the distribution of travellers and journeys between different modes of transport such as rail and road) while continuing to make Wales economically competitive through improvements to the rail and core trunk road network. To achieve the best solution in economic and social terms, a set of detailed criteria (covering accessibility, safety, environment, economy and integration) has been developed jointly with the Welsh Transport Forum.<sup>10</sup>

The report went on to recommend that the Government “initiate a consultation exercise on the transfer of further transport powers” to the Assembly in order to fulfil the ideas set out in the framework document and the policy review.<sup>11</sup> However, the Government, in its response to the report, pledged only to “keep under review the transport functions and responsibilities devolved to the NAW” and that “the wide range of powers and responsibilities devolved to the National Assembly for Wales allow it considerable scope to develop an active transport strategy for Wales”.<sup>12</sup>

### **C. The draft *Transport (Wales) Bill* and the *Railways Bill***

The draft *Transport (Wales) Bill* was published on 27 May 2004.<sup>13</sup> The draft Bill provided for a new, more strategic relationship between the NAW and local authorities, with a clear framework of delivery for their transport plans. It made provision for joint working by local authorities, as well as for joint transport authorities, to plan on a regional basis. The draft Bill would have enabled the NAW to support the provision of transport services, such as long distance bus and coach services, where a need would not otherwise be met; and also provided financial backing direct to air services and airport facilities, where such services would not otherwise be provided. All of these provisions are included in the final Bill that was published in December 2004.

However, the draft Bill would also have given the NAW the power to give directions and guidance concerning the pattern of rail services in Wales and enter into binding agreements in respect of particular rail services or facilities to ensure the best possible use of capital investment. The *Railways Bill* (Bill 6 of 2004-05) pre-empted the publication of the *Transport (Wales) Bill* and now contains those provisions related to railway services that were originally part of the draft Wales Bill.

Clause 10 of the *Railways Bill* provides for the role of the NAW in any franchise that is a Wales-only service or includes “Welsh services”. Clause 56 defines the latter as any rail

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<sup>10</sup> *Ibid*, p8

<sup>11</sup> *Ibid*, p28

<sup>12</sup> Welsh Affairs Committee, *Transport in Wales: response of the Government* (HC 580, session 2002-03), p4

<sup>13</sup> Draft *Transport (Wales) Bill* (Cm 6195):  
[http://collections.europarchive.org/tna/20050301193451/http://www.walesoffice.gov.uk/transport\\_bill.pdf](http://collections.europarchive.org/tna/20050301193451/http://www.walesoffice.gov.uk/transport_bill.pdf)

passenger service that starts in Wales, ends in Wales or makes at least one scheduled call in Wales. As a co-signatory to the franchise, the NAW will be responsible for determining the priorities for local and regional services and setting fares for them. It will also have a greater role in developing facilities such as stations and local lines. Transfer of a budget for Wales & Borders to the NAW will provide a degree of additional flexibility in future to choose between rail spending and use of the resources elsewhere in Wales.<sup>14</sup> It was decided to make the NAW a co-signatory to the Wales & Borders franchise in order to ensure that it had a broader range of powers and influence over the provision of services under the franchise. It was considered inadequate to ask the NAW to specify and fund the majority of a franchise to which it was not a co-signatory.

The RIA to the *Railways Bill* sets out some of the benefits that might arise:

A role for the NAW, which has access to its own funds, as a co-signatory could make the Welsh franchise more attractive to future bidders. It would also permit greater certainty for bidders that they are able to deliver both the Welsh and UK administrations' objectives, since both would be involved in specifying the franchise. This could have a beneficial impact on competition. The NAW will have more flexibility to invest its own resources in developing the Welsh network, and greater certainty about reaping the future benefits. This may generate more investment, with a beneficial impact on industry inside and outside the rail sector who may be involved in the construction work, as well as bringing benefits to the public and local businesses through improved journey opportunities.<sup>15</sup>

It also sets out the likely costs:

The government will agree with the NAW how much of the existing contractually committed franchise costs should fall to the Assembly so that it is able to provide franchise payments in respect of the majority of the services provided by the franchise operator. In 2006/7, when the full transfer of responsibility is expected to take effect, the subsidy cost of the Wales & Borders franchise will be some £122 million, gradually reducing to £102 million in the last full year of the franchise, 2017/18. The vast majority of the annual subsidy requirement will transfer to the NAW.

It will be necessary to separate the costs of the Wales-only, cross-border and England-only services for the purposes of transferring resources to the NAW. The NAW will become responsible for the first two service groups, while the secretary of state will remain responsible for the last group, which account for three of the services currently operated by Wales & Borders. The amount of funding agreed with the NAW as accruing to the Wales-only and cross-border services will set the baseline for future years. It will be for the NAW to decide

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<sup>14</sup> The present franchise was awarded for 15 years in December 2003.

<sup>15</sup> *Regulatory Impact Assessment, Bill 6 2004-05*, p28

whether it wishes to add further funding to this baseline level from its own resources.

In terms of administrative costs on the NAW as a consequence of the additional devolved responsibility, the NAW had envisaged that implementation of the devolution package provided for in the *Transport (Wales) Bill* would involve the creation of four additional posts within a new administrative branch of the Assembly at a cost of around £100,000 per annum. It will be necessary to determine whether, and if so, to what extent the role of the NAW as a co-signatory to the franchise requires additional staff resources. It is possible that the transfer of some responsibility for the franchise to the NAW may result in staff savings within the SRA/Department for Transport.<sup>16</sup>

## **D. Report by Welsh Affairs Committee**

In July 2004, the Welsh Affairs Committee published the results of its joint scrutiny of the draft Bill with the Economic Development and Transport Committee of the Welsh Assembly.<sup>17</sup> This was the first time that a House of Commons committee had met formally with a committee of a devolved administration to scrutinise a draft Bill. As the report states:

Those meetings demonstrated an innovative and progressive approach to pre-legislative scrutiny. We were able to mirror the cooperation 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.<sup>18</sup>

The joint committee was generally supportive of the provisions in the draft Bill. However, the report did focus on what the committee considered to be the ‘major omissions’ from the draft Bill: provision for a public transport passenger committee in Wales; the relocation of the Transport Commissioner from Birmingham to Wales; and powers to prescribe bus services (like London, for instance):

### **Public Transport Passenger Committee**

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

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<sup>16</sup> *Ibid*, p29

<sup>17</sup> Welsh Affairs Committee, *Draft Transport (Wales) Bill* (HC 759, session 2003-04), 19 July 2004: [http://collections.europarchive.org/tna/20090824153304/http://new.wales.gov.uk/docrepos/40382/4038231141/403821125/403821125/639095/639672/HoC\\_Report.pdf;jsessionid=01B4KFcCt1jSmGyy1Ln1xjPjL1dlcL7hGjblqn2DBTHTWnv33vqc!2092468695?lang=en](http://collections.europarchive.org/tna/20090824153304/http://new.wales.gov.uk/docrepos/40382/4038231141/403821125/403821125/639095/639672/HoC_Report.pdf;jsessionid=01B4KFcCt1jSmGyy1Ln1xjPjL1dlcL7hGjblqn2DBTHTWnv33vqc!2092468695?lang=en)

<sup>18</sup> *Ibid*, p7

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 include in the Bill the powers necessary for the National Assembly for Wales to establish a Public Transport Passengers Committee.

### **Transport Commissioner 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 be based in Wales.

### **Bus Franchising**

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.<sup>19</sup>

The report also outlined the committee's concerns about a possible "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.<sup>20</sup>

In total, the report made 24 conclusions and recommendations. Ten related to the drafting of the Bill, rail matters (subsequently legislated for in the *Railways Bill*) and other issues outside of the remit of the final Bill. Of the remaining 14, The Government responded positively to eight of them in its response to the report, published on 17 November 2004:<sup>21</sup>

- A new provision enabling the NAW to establish a Public Transport Users' Committee for Wales;
- Cycling and sustainable development to be included in a general transport duty for Wales;

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<sup>19</sup> *Ibid*, p36

<sup>20</sup> *Ibid*, p37

<sup>21</sup> Welsh Affairs Committee, *Draft Transport (Wales) Bill: Government Response* (HC 1252, session 2003-04), 17 November 2004:  
<http://www.publications.parliament.uk/pa/cm200304/cmselect/cmwelaf/1252/1252.pdf>

- An explicit duty placed on the NAW to consult Welsh local authorities and English local authorities with boundaries on the Welsh border, as well as "any persons it considers appropriate" in preparation for the Welsh Transport Strategy;
- Schedule 1, section 4 of the draft Bill to be amended to ensure that any decision to refuse a Local Transport Plan would be taken by the NAW in plenary;
- Clause 5(4)(a) to be redrafted to make explicit the role of local authorities in the appointment of the majority of members of joint transport authorities; and
- A full breakdown of all costs associated with the Bill would be published in a Regulatory Impact Assessment.

The Government rejected the joint committee's recommendation to move the Transport Commissioner from Birmingham to Wales and stated explicitly that it would not be providing additional funding for the aviation measures to be included in the Bill. The Government's response indicated that it was already taking action on the remaining suggestions made by the committee.

## **II The Bill**

The Government believes that the *Transport (Wales) Bill* will achieve significant economic, social and environmental benefits and that the overall effect will be to produce a better integrated transport system for Wales. In terms of a wider strategy, it is hoped that the measures in the Bill will contribute to an efficient public transport system which will attract people away from the car, thereby reducing congestion and thus improving journey times, allowing for the more efficient transportation of people and goods. It is further hoped that less congestion will mean less pollution and that considerable benefits will be accrued to socially and geographically isolated people and communities.

The Bill is divided into four main sections dealing with general transport functions, local transport, public transport and air transport. The information in this section mirrors the structure of the Bill.

### **A. General transport functions**

**Clause 1** imposes a general transport duty on the NAW to develop and implement policies that will ensure a safe, integrated, sustainable, efficient and economic transport system to, from and within Wales. The duty will provide a clear statement of the principles which will govern the NAW's exercise of its powers in the field of transport. Clause 1 is intended to address concerns previously expressed about the inadequacy of the NAW's transport powers and their lack of statutory authority. The Bill will therefore make the exercise of the general duty an express statutory function of the NAW and permit expenditure by the NAW in connection with the discharge of that duty under section 85 of the *Government of Wales Act 1998*.

**Clause 2** requires the NAW to prepare and publish a Transport Strategy for Wales. In the preparation of the strategy, Assembly Ministers will be required to obtain approval of the

document by the full Assembly in a plenary session. **Clause 2(5)** requires the NAW to consult with all Welsh local authorities and English local authorities with boundaries on the Welsh border in the preparation of the strategy, as recommended by the joint committees in their report.

## **B. Local transport functions**

**Clause 3** and **Schedule 1** make provision to ensure consistency between local transport plans (LTP) and the overall strategic plan for Wales. Schedule 1 amends the *Transport Act 2000* to require local authorities in Wales to submit their LTPs to the NAW for approval. Assembly Ministers will be able to approve individual LTPs but any refusal of an LTP will have to be agreed by the NAW in plenary session. The NAW will also have the power to modify LTPs in order to accommodate regional patterns of travel rather than local authority boundaries.

**Clause 4** will give the NAW the power to direct (with the consent of those involved and following consultation) two or more local authorities to enter into an arrangement in order to better discharge their transport functions. It is hoped that this will bring many benefits, for example, by ensuring some kind of uniformity in the provision of bus services. This could lead to co-ordinated timetables, more Quality Bus Partnerships and Quality Bus Contracts with local bus operators and standardised bus lanes across local authority boundaries.<sup>22</sup> In order to do this, **Clause 5** of the Bill enables the NAW to establish, by order, Joint Transport Authorities. The precise functions of a Joint Authority would be set out in regulations, but it is envisaged that any Joint Authority would have responsibility for the full range of public transport responsibilities and certain traffic management functions (e.g. ability to make Traffic Regulation Orders). The Explanatory Notes to the Bill give an idea of how a Joint Authority will be set up:

A joint transport authority will be a corporate body with a remit to discharge particular transport functions. These authorities will be able to be funded by levies on constituent authorities as well as by direct financial assistance from the Assembly. An order establishing a joint transport authority will be able to include detailed provisions as to how it is to be constituted. An order may provide for some of the members of a joint transport authority to be appointed by other persons but a majority must always be appointed by the local authorities concerned, thereby ensuring that any joint authority which is established will continue to be accountable to the communities which it serves.<sup>23</sup>

The requirement that local authorities should appoint the majority of members of Joint Authorities was included following the recommendation of the Welsh Affairs Committee.

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<sup>22</sup> For more information on Quality Partnerships and Quality Contracts, see Library Note SN/BT/1523, sections 1.1 and 1.2: <http://hcl1.hclibrary.parliament.uk/notes/bts/snbt-01523.pdf>

<sup>23</sup> HC Bill 15-EN, session 2004-05, para 23

**Clause 6** gives the NAW the power to provide direct financial assistance to those authorities discharging transport responsibilities in Wales. This will provide financial support for Joint Authorities as well as individual local authorities.

### **C. Public transport**

**Clause 7** empowers the NAW to secure the provision of public passenger transport services where the requirement would not otherwise be met. In order to do so, the NAW will be able to enter into direct agreements with the providers of such services.

**Clauses 8, 9 and 10** provide for the establishment of a new Public Transport Users' Committee for Wales. The basic function of the Committee will be to advise the NAW, from the users' perspective, on issues relating to public transport in Wales. Under Clause 9 there is the scope to add functions to the Committee's remit such as investigating complaints or liaising with service operators, transport regulators and local authorities on behalf of the consumer.<sup>24</sup> The NAW will be able to give directions and guidance to the Committee as to how it is to discharge its functions.

### **D. Air transport**

**Clause 11** of the Bill empowers the NAW to give financial assistance to those who provide - or propose to provide - air transport services which start or end at an airport in Wales and to those who provide - or propose to provide - airport facilities or services in Wales. The power will be subject to the condition that such assistance may only be given if the services or facilities would not, in the Assembly's view, be provided without that assistance.

### **E. Cost**

The regulatory impact assessment predicts no real net spending increase as the result of the Bill other than for the setting up of a Joint Transport Authority and a Public Transport Users' Committee. The running costs of a Joint Authority are assumed to be approximately £1 million per annum in addition to £100k to £200k in setting up costs. It is expected that the Assembly would meet these costs from within its existing budget. The RIA estimates that the cost of setting up a Committee (based on current costs for the existing Rail Passengers' Committee for Wales and the Welsh representative of the National Federation of Bus Users) as being £305k per annum with an additional £50k in setting up costs.<sup>25</sup>

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<sup>24</sup> In effect, the Committee could assume a role similar to that undertaken by the London Transport Users' Committee.

<sup>25</sup> *Regulatory Impact Assessment*, Bill 15 2004-05, pp10-11

Plaid Cymru have criticised the lack of any additional funding from Government to support the new responsibilities proposed for the NAW in the Bill. A party press notice states: “When we get extra responsibilities in any way, we must have funding to go with them. It is not a new or clever trick to give Wales new powers and expect them to be funded from the block grant”.<sup>26</sup>

Further detailed analyses of costs would be undertaken through separate RIAs to support any specific proposals for a Joint Authority and a Transport Users’ Committee.

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<sup>26</sup> Plaid Cymru press notice, “Train travellers should expect longer waits”, 1 December 2004