

## **Evidence from the Minister for Economy and Transport**

### **Purpose**

1. The purpose of this paper is to provide written evidence to the Economy, Infrastructure and Skills Committee's inquiry into the future development of Transport for Wales.

### **Background**

2. Transport for Wales (TfW) was established under the Companies Act 2006 and is fully accountable to the Welsh Ministers, as a wholly owned subsidiary company limited by guarantee.
3. TfW operates pursuant to the powers and functions provided in Section 1 of the Welsh Development Agency Act 1975 together with Section 60 (1) (a) of the Government of Wales Act 2006. These powers are powers of the Welsh Ministers to do anything they consider appropriate to achieve the promotion or improvement of the economic well-being of Wales. In addition, Section 71 of the Government of Wales Act 2006 states that the Welsh Ministers may form a company (such as an arm's length company) to provide services for them, where that is calculated to facilitate, or is conducive or incidental to, the exercise of any of their functions.
4. The scope of operation of TfW is limited to the activities which the Welsh Ministers may lawfully carry out. It is not possible therefore for TfW to discharge functions which are outside the Welsh Ministers' powers and the Welsh Ministers cannot delegate their functions to TfW.
5. TfW was therefore set up to discharge certain transport functions on behalf of the Welsh Ministers, to:
  - act in a professional advisory and consultancy capacity in connection with transport projects in Wales by providing support and expertise to the Welsh Government;
  - provide compliance with the Welsh Government's requirements for projects in respect of the statutory and administrative stages of preparation, engineering standards, construction, propriety and financial and contractual control by providing support and expertise to the Welsh Government; and
  - provide project management services in connection with transport projects in Wales by providing support and expertise to the Welsh Government.
6. The Company was remitted, in the first instance, to design and undertake the procurement process for the Operator and Development Partner (ODP) for the Wales and Border rail service and the South Wales Metro, and to develop options for the North Wales Metro.
7. On award of the contract, TfW's remit was extended to include the management of the rail services contract, management of the delivery of the South Wales Metro and the development of the North East Wales metro. Section 25 of the Railways

**ECONOMY, INFRASTRUCTURE AND SKILLS COMMITTEE****Written evidence for inquiry into the future development of Transport for Wales**

Act 1993 currently prevents “public sector operators” from running franchises, which limits the Welsh Government and TfW from directly delivering rail services.

8. TfW has an important role in driving integration across the entire transport network and encouraging modal shift. The Welsh Ministers’ aspiration for TfW is for it to exploit the opportunities it has as our transport integrator, and this will require it to take on a much wider range of transport functions.

**Current governance, structure and funding of TfW**

9. As a registered company under the Companies Act 2006, TfW has a clear, legal identity within a robust and well-established framework allowing it to make independent operational decisions.
10. As a wholly owned subsidiary company of the Welsh Ministers the Welsh Government controls the overall goals and performance of TfW at a strategic level, making sure that the Company is behaving efficiently and continues to act in the public interest.
11. Accountability to the Welsh Government is secured by a series of strategic levers. These are listed in the table below. Some elements, such as the Articles of Association, are required by law; others help to guide the interaction between TfW and the Welsh Government:

<b>Articles of Association</b>	Company constitution as required by company law, setting responsibilities of the directors, the Welsh Ministers rights (as sole Guarantor Member) and other administrative matters.
<b>Management Agreement</b>	Agreement between the Welsh Government and TfW setting the broad framework within which TfW operates and details the terms and conditions under which the Welsh Ministers provide funding to the Company.
<b>Statutory Guidance and Standards</b>	Covers key aspects of how the TfW should deal with specific issues or legal requirements, such as environmental standards and planning.
<b>Remit Letter</b>	Sets out the Welsh Government’s capital and revenue funding and TfW’s expected performance and key deliverables for the period covered by the remit letter.

12. The Management Agreement and Remit Letters are available at the Transport for Wales pages of the Welsh Government’s website: <https://beta.gov.wales/transport-wales>

***TfW Company Board***

13. TfW is governed by a board of directors, who are entirely responsible for all aspects of management. The board itself is constituted in line with best practice in corporate governance.
14. The Companies Act 2006 places duties on all company directors, requiring them to act in the interests of the company and to ensure the company maintains full and accurate accounting records.
15. The TfW directors are legally required to abide by the company's articles of association. This ensures that the directors remain accountable to the Welsh Ministers as the sole Guarantor Member.
16. As a Company Act company TfW has an independent board of directors. Two of these (including the Chair) are appointed by Welsh Ministers, with the remainder appointed by the company (albeit with Ministerial consent).
17. The Chair of TfW is responsible for leadership of the board and ensuring its effectiveness in all aspects of its role. The Chair is the link between the TfW Board and the Welsh Government, and is responsible for setting the Board's agenda.
18. The role of the Board is to:
  - provide effective leadership; defining and developing strategic direction and setting challenging objectives;
  - promote high standards of public finance, upholding the principles of regularity, propriety and value for money;
  - ensure that the TfW's activities are conducted efficiently and effectively; and
  - monitor performance to ensure that the TfW fully meets its aims, objectives and performance targets.

***Accountabilities and Responsibilities***

19. TfW is led by a Chief Executive Officer (CEO) supported by a senior team. The CEO and Finance Director are registered at Companies House as Executive Directors of the Company Board.
20. The Permanent Secretary to the Welsh Government, as the Principal Accounting Officer (PAO), and the Director General ESNR as Additional Accounting Officer (AAO), are accountable to the National Assembly for Wales for the appropriate stewardship of the public money used to fund TfW.
21. The AAO must be assured that the funds that TfW requests from the Welsh Government to deliver their remitted activity is reasonable and that the Company has the necessary governance arrangement and internal controls in place to

**Written evidence for inquiry into the future development of Transport for Wales**

manage the funding. The AAO is responsible for ensuring arrangements are in place within Welsh Government to:

- monitor TfW's activities and its financial position through regular meetings and returns;
- address any significant issues within TfW, making such interventions as are judged necessary;
- periodically carry out an assessment of the risks both to the department and TfW's objectives and activities;
- inform TfW of relevant government policy in a timely manner; and
- bring to the attention of TfW's full board any concerns about the activities of TfW requiring explanations and assurances that remedial action will be taken.

22. The AAO has designated the CEO of TfW as the Company's Accounting Officer (AO). Upon receipt of public funds, the CEO, as TfW's Accounting Officer, is personally responsible to the Welsh Ministers and the National Assembly for Wales for the proper stewardship of the public funds for which he or she has charge; for the day-to-day operations and management of TfW; and for ensuring compliance with the requirements of 'Managing Welsh Public Money.

23. As an Executive Director of TfW, the CEO is bound by the legal responsibilities set out for company directors in the Companies Act 2006, including the overriding responsibility to act in the way they consider, in good faith, would be most likely to promote the success of the Company for the benefit of the Welsh Ministers which, includes responsibility for:

- regularity and propriety;
- ensuring a sound system of internal control;
- safeguarding the resources and assets of the Company;
- protecting the Company from the risk of fraud;
- ensuring the collection of, and bringing to account of, all income and receipts of any kind for which you are responsible.

24. In addition to these responsibilities, as Accounting Officer, the CEO must:

- ensure TfW conforms with the requirements of the Management Agreement;
- ensure, in the consideration of policy proposals relating to the expenditure or income for which they have responsibility, all relevant financial considerations, including feasibility and sustainability, are taken into account, the value for money of the proposal is assessed in accordance with the principles set out in the Treasury guidance "*The Green Book: Appraisal and Evaluation in Central Government*"; and full regard is taken to any issues of propriety and regularity;
- ensure their management of opportunities and risk achieves the right balance commensurate with the business of TfW and the risk appetite they and the TfW Company Board are prepared to bear.

**Written evidence for inquiry into the future development of Transport for Wales**

25. Overall, the governance framework ensures that the Welsh Government retains sufficient power to protect the public interest and hold TfW to account, without the need to intervene directly in the daily activities of the Company, allowing the Company Board to provide direction and decision-making.

**The ambition for the development of TfW**

26. The Welsh Government's vision is for a world-class and sustainable integrated transport system in Wales – one that can drive forward our economy and our communities to greater prosperity.

27. TfW is an expert delivery body, separate to the Welsh Government, with a clear, specialised dedication to a single goal: to support the delivery of a transformational integrated transport system in Wales.

28. The Welsh Government's ambitions for TfW, set out in the Economic Action Plan (EAP), is that TfW will work with the new regional teams, the emerging regional transport authorities and partners to create an integrated public transport network, covering the rail and bus networks, and that these networks will be increasingly directly owned or operated by Transport for Wales.

29. EAP further commits that for the first time, the Welsh Government will establish a five-year programme of transport capital funding through Transport for Wales, for both maintenance and new projects.

**Delivery model for an integrated transport system in Wales**

30. There are a number of different delivery models across the UK including; Transport for London, Transport Scotland, MerseyTravel and Transport for Greater Manchester. How these organisations operate – their constitution, structure, legislative framework and funding – vary and are as a direct result of the legislative framework that they operate within, but they all have a consistent and clear remit; to coordinate the transport system across their respective regions.

31. The current governance framework does not require any legislation to implement, compared to alternative models that require setting TfW up as a statutory authority (where the body's board structure and high-level governance would need to be defined in law).

32. Given the Welsh Government's aspiration for TfW to take on a much wider range of transport functions the current company structure offers significant flexibility to modify these elements in the future. The model is also more familiar to the commercial organisations with which TfW will need to work closely.

**The process for the development of TfW**

33. Developing TfW's functions to support the delivery of the Welsh Government's vision will mean transferring responsibility for the day-to-day management of elements of Wales' transport network to TfW, some of which are currently delivered

**Written evidence for inquiry into the future development of Transport for Wales**

directly by the Welsh Government. The Welsh Government is currently examining the delivery options of the transport functions currently delivered by the Welsh Government through a Business Case. The Business Case will identify possible delivery models and this work is ongoing.

34. This process is not about privatisation, nor is it about out-sourcing. As a wholly owned subsidiary of the Welsh Ministers, TfW is part of the public sector in Wales, therefore both risk and opportunity is retained in the public sector, but within a specialised dedicated delivery organisation.

**Relationship between TfW and Joint Transport Authorities**

35. The White Paper on proposals to legislate for reforming the planning and delivery of local bus services and licencing taxis and private hire vehicles, which was launched in December 2018, will provide a platform to ensure consistency and coordination of public transport planning and delivery. The White Paper notes the intention to use existing powers under the Transport (Wales) Act 2006 to establish Joint Transport Authorities.
36. Two models are proposed in the consultation paper, these being, a national Joint Transport Authority with regional delivery boards or national and regional bodies that deal with strategic and operational activities, respectively.
37. The intention is to develop the further White Paper that sets out greater clarity on the proposed Joint Transport Authority proposal.
38. Whilst the introduction of the Public Transport (Wales) Bill to the Assembly is programmed in February 2020, the work undertaken by TfW to improve bus services across Wales provides an opportunity to build a partnership approach to the delivery of services with local authorities in tandem with developing a new legislative framework. Such an arrangement could inform the best delivery model that would be described in the White Paper to be published in Autumn 2019.