

Response of the Children's Commissioner for Wales : To Legislation Committee 4 Consultation on proposed Safety on Learner Transport (Wales) Measure



November 2010

The Children's Commissioner for Wales is an independent children's rights institution established in 2001. The Commissioner's principal aim is to safeguard and promote the rights and welfare of children.¹ In exercising his functions, the Commissioner must have regard to the United Nations Convention on the Rights of the Child (UNCRC).² The Commissioner's remit covers all areas of the devolved powers of the National Assembly for Wales insofar as they affect children's rights and welfare and he may also make representations to the National Assembly for Wales about any matter affecting the rights and welfare of children in Wales.³

The UN Convention on the Rights of the Child (UNCRC) is an international human rights treaty that applies to all children and young people aged 18 and under. It is the most widely ratified international human rights instrument and gives children and young people a wide range of civil, political, economic, social and cultural rights which State Parties to the Convention are expected to implement. In 2004, the Welsh Assembly Government adopted the UNCRC as the basis of all policy making for children.

In 2004, the Children's Commissioner for Wales published a report *As Long as I get there safe*⁴ which looked at children's experiences of travelling to and from school by dedicated school buses. The Commissioner engaged with the development of the learner travel Measure in 2007-08 and was engaged in discussions relating to the development and introduction of the Learner Travel Behaviour Code in early 2010.

¹ Section 72A Care Standards Act 2000

² Regulation 22 Children's Commissioner for Wales Regulations 2001

³ Section 75A (1) Care Standards Act 2000

⁴ <http://www.childcomwales.org.uk/uploads/publications/66.pdf>

Response

1. Is there a need for a proposed Measure to deliver the stated objectives of: “improving the safety image and travel experiences of dedicated learner transport, and acting to ensure that safety standards are sufficiently high for the public and parents to have confidence in collective learner transport”?

We are aware that this Measure has been developed in response to many of the issues identified during the scrutiny of the Learner Travel Measure in 2008 and also the issues identified in the policy review of Home to School Transport in 2005. We would ask why the confidence of children in collective learner transport is not one of the criteria within the question? Children are the users of such transport and the views of children and young people in relation to a number of issues addressed by this Measure including the use of the 3 for 2 seat concession were reported in our 2004 report⁵.

It is clear that local authorities and transport companies have been working to improve school transport over recent years, however, we are aware that these improvements have not been made consistently across all local authorities in Wales. This has been demonstrated in the evidence provided to the Committee by the Welsh Local Government Association and Association of Directors of Education as well as the Confederation of Passenger Transport. The Deputy First Minister also stated that guidance has not brought about a minimum standard across Wales and this is the reason for the development of this legislative framework.

Children and young people have the right to be safe when travelling under the Learner Travel Behaviour Code and for that reason we support the intention of the Measure to achieve increased safety.

The regulations made under the Measure could potentially improve the travel experience, however, the Measure alone will not achieve that improvement as the crucial aspect of this will be how local authorities and transport companies implement the provisions of the Measure. If all of the regulations were fully implemented, they could address many of the issues identified within the Commissioner’s report *As Long As I get there Safe*.

The key issues that children identified in that report in relation to school buses were:

The buses: The quality and standard of fleets is clearly an issue, but may not be related solely to the age of the buses used for school contracts themselves. School buses should be safe, clean and reliable. Single decker vehicles would appear to have much to recommend them over double deckers in terms of both safety and behaviour

⁵ *As Long as I get there safe* <http://www.childcomwales.org.uk/uploads/publications/66.pdf>

management. Facilities available on newer rather than older vehicles also have impacts which improve safety and behaviour.

Supervision: The provision of appropriate training for school bus drivers and 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. Pupils clearly view their journeys on the bus as 'down time' and it is inevitable that they may wish to relax and even let off steam. When that journey is undertaken on a dilapidated and overcrowded vehicle with no other distractions or adequate escort arrangements, it is almost inevitable that difficulties will arise.

Seatbelts: 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. While the majority of pupils participating appreciated that there were powerful arguments for the wearing of seatbelts, and discouraging walking and moving around the bus while travelling, their responses to other questions indicate that it will have an impact on the freedom which they clearly enjoy after a long day at school. The seatbelts also suffer from an image problem which can be dealt with through public education and the involvement of children and young people in the development of groundrules for behaviour on school buses, and their continuing participation in monitoring and reporting incidents and concerns. The *3 for 2 rule* is clearly incompatible with the need to ensure that every child has a seatbelt available to them.

The report *As Long as I get there Safe* highlighted a number of key recommendations in relation to legislation and guidance that the Commissioner at that time considered needed to be addressed and these were that:

- Welsh Assembly Government should consider whether to pursue the abolition of the concession contained within *Regulation 5 of the Public Service Vehicle Carrying Capacity Regulations 1984* and whether further guidance or legislation is needed to specify the minimum standards for the age and condition of school transport vehicles commissioned by local education authorities.
- Welsh Assembly Government should provide guidance to local education authorities on the nature of the contracts they should seek with school bus providers. Responsibility for the performance monitoring and opportunities for contract review should be clear. Considerations of cleanliness and comfort should be taken into account. Contractors should be encouraged to invest in their fleets, and therefore regularly reviewed and carefully monitored contracts for longer than four years should be considered to make this financially viable.

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- local education authorities and school bus providers should provide training for school bus drivers on areas such as child protection, behaviour management and appropriate communication with children.
- Welsh Assembly Government considers the extension of the Safe Routes to School initiative as a key priority

We note that the Measure is constructed in such a way that the provisions will be brought forward through regulation rather than by being provided on the face of the Measure and the Deputy First Minister has taken the view that this is the most expedient way of introducing the legislation before the end of this Assembly term. A key concern for us is the potential for the widespread use of CCTV to record images and sound on dedicated school transport.

In 2004, in his report *As Long as I get there Safe* the then Commissioner stated that:

Some school bus companies have installed CCTV systems. 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. Since the cost of purchasing, monitoring, maintaining and consumables for CCTV systems may be significant, a cost comparison with the cost of employing an additional adult escort should be considered. For larger vehicles this might be more appropriate, and a more positive step. Where there have been persistent serious incidents, it is acknowledged that CCTV may well be an appropriate option.

We would therefore wish to engage with the Government in relation to their specific regulation on the use of CCTV when they bring that provision forward and such discussions need to be held alongside the discussions relating to the provision of escorts. Children and young people using dedicated learner transport also need to be engaged in those discussions as the regulations are developed.

We note the evidence already provided by the Deputy First Minister that the intention is that escorts will be provided on buses transporting primary aged pupils. Other witnesses have identified that primary and secondary aged pupils travel on the same bus in some areas and that local authorities provide escorts based on risk assessments.

In relation to CCTV, 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. Concerns have been raised in relation to the use of CCTV in and around school toilets. We would suggest that guidance is sought from the Information Commissioner's Office in relation to the issues in relation to the use and monitoring of images captured by CCTV cameras on school buses and to ensure that their use is in line with the provisions of the Data Protection Act 1998.

We note the evidence from the Welsh Local Government Association that the installation of such devices in one of their pilot projects across a number of schools has produced mixed results in terms of behaviour. Clearly this is an issue that requires considerable discussion as to the finer issues in relation to the use of such systems. 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

There is a clear need for there to be a focus on increasing pupil safety and the most appropriate method of increasing that safety needs to be considered.

We welcome the fact that the Welsh Government will seek to bring forward regulations to describe the vehicles that may be used for learner transport and in relation to driver training and safety risk assessments of learner transport.

We will also seek to engage with Government in relation to the training provided to drivers of learner transport, as 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 and this has been identified by children and young people themselves previously. This was in the report by the Equality of Opportunity Committee report entitled *Service Provision for Disabled Young People* "Why is it that disabled young people are always left until last?"⁶ The young people in that group made the following recommendation in relation to public service buses and it may be useful to consider whether a similar requirement should be required for dedicated learner transport drivers.

Recommendation 25: The Welsh Assembly Government to issue new guidelines for the tendering process that require local authorities to only offer tenders or contracts to operators who have undergone approved training disability awareness training.

Children who we have discussed learner transport with clearly identified the importance of the driver and the consistency of their approach to customer service is of crucial importance to the experience of children and young people on learner transport. This has also been identified as a crucial part of the training by other witnesses who have appeared before the committee.

We therefore conclude that 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

⁶ <http://www.assemblywales.org/1a5bcc909715a364eea66e40f026e033.pdf>

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.

2. How will the proposed Measure change what organisations do currently and what impact will any such changes have?

The Commissioner does not deliver learner transport on a daily basis therefore is not best placed to answer this question.

3. Are the sections of the proposed Measure appropriate in terms of achieving the stated objectives?

The sections of the proposed Measure cover the major issues that have been raised with the Commissioner in relation to improving the safety and the experience of children on learner transport. 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. A further critical element relating to the realisation of the stated objective will be the funding made available to make and implement the Regulatory changes.

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, however, we note that this will be limited to a small number of officers and note the evidence provided by other witnesses that VOSA could provide this function. The Deputy First Minister noted that there is a need for there to be staff with experience and expertise in school transport issues.

We would therefore 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.

4. What are the potential barriers to implementing the policy provisions set out in the proposed Measure (if any) and does the proposed Measure take account of these?

The major barriers relate to the funding of the changes to the regulatory regime. We note that the Explanatory Memorandum identifies that Government will, *where required, provide additional financial support towards the introduction of specific safety features, which are affordable within existing budgets.* However there are questions in relation to the costs of the proposed changes and whether the Welsh Government will

be able to provide financial support to introduce all of the specified safety features. We note from the Deputy First Minister's evidence to the Committee that the Minister is minded that seatbelts will be the first of the changes to be introduced.

We would hope that as the Government plans to introduce the regulatory changes that they consider the issue of children's rights and prioritise the areas where the greatest breaches exist in terms of children's safety.

5. What are the financial implications of the proposed Measure for organisations, if any? In answering this question you may wish to consider Part 2 of the Explanatory Memorandum (the Regulatory Impact Assessment), which estimates the costs and benefits of implementation of the proposed Measure.

There are no financial implications for the Children's Commissioner for Wales as a result of this proposed Measure.

6. Are there any other comments you wish to make about the proposed Measure?

We would seek clarification as to the meaning of learner transport within the Measure. Section 13 (3) defines this as 'transport to facilitate the attendance of a child at any relevant place where he or she receive education or training.' We are aware that there has been a subject of discussion from witnesses in relation to whether the provisions of the Measure would apply to public service routes which can be used to transport a child to a relevant place of education or training.

The Explanatory Memorandum at page 6 however states that the main aim of the proposed Measure is to address the Welsh Assembly Government's objective of improving the safety image and travel experiences of dedicated school transport. The Memorandum continues on page 8 to state that the competence enables the Assembly to legislate over the description of motor vehicle used for dedicated learner transport and over the security features of those vehicles and that the exclusion of public services buses from the competence of the Assembly reflects the current structure of the law in the area of learner travel rather than the policy position of the Welsh Assembly Government.

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