

CYPE(5)-24-19 - Paper to note 23

Comisiynydd
Plant Cymru

Children's
Commissioner
for Wales

To: Ken Skates

Minister for Economy
and Transport

Via email only

28 August 2019

Dear Ken Skates,

Thank you for your letter of 7th May in response to my letter in April regarding Petition P-05-748 School Buses for School Children.

Your letter refers to the current review of the Guidance supporting the Learner Travel Measure (Wales) 2008, noting that this review follows a commitment by the Minister for Education during scrutiny of the Additional Learning Needs and Education Tribunal (Wales) Bill. Your letter also reiterates that despite Government's acceptance in principle of Recommendation 8 of my 2015/6 Annual Report, Government does not presently intend to review the Learner Travel Measure itself.

Subsequent conversations between my staff and with government officials has indicated that a review of the guidance will not be sufficient to alter the scope of the Measure, meaning that it will not apply to young people over the age of 19 and will remain discretionary for young people between 16 and 19. I am therefore greatly concerned that the review to the guidance may not be sufficient to enable local authorities to sufficiently fulfil their duties to enable young people to access Additional Learning Provision up to the age of 25, as laid out in the 2018 Act.

This is despite the ministerial commitment you note in your letter, a commitment made during Stage 2 scrutiny of the Bill in which Alun Davies, then Minister for Lifelong Learning and Welsh Language, and the Member in Charge of the Bill, stated that the Welsh Government would revise the statutory Learner Travel Operational Guidance to address concerns about lack of consideration of children and young people with Additional Learning Needs in provision of transport. The Minister said if he could not achieve this through subordinate legislation (revising the Learner Travel guidance) he would table an amendment at Stage 3 to do it through the Bill.¹

¹ <http://www.assembly.wales/research%20documents/17-032/17-032-web-english.pdf>



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The current Minister for Education subsequently wrote to the Chair of the Children, Young People and Education Committee in November 2017 stating,

*"There is already sufficient legal scope to enable revisions to be made to the Learner Travel guidance so that it properly reflects and takes account of the new statutory ALN system and I am happy to commit the Welsh Government to undertake that work. I am also reassured that the ALN Code will be able to provide an appropriate degree of guidance on the place of transport considerations within individual development plans and the process of producing them, including cross references to the Learner Travel Measure and guidance. On that basis, I do not think it necessary to bring forward a Stage 3 amendment to the Bill in relation to this matter."*²

These commitments have raised the legitimate expectation that the review of Learner Travel guidance properly accounts for the duties of the 2018 Act, an expectation reiterated in consultation on the draft Code for the 2018 Act this spring, which stated the following:

*1.62 The Cabinet Secretary for Education has committed the Welsh Government to revise the Guidance in light of the 2018 Act and this work is underway as part of a wider refresh of the Guidance, which will be consulted on formally in due course. The revised guidance will be published in advance of implementation of the 2018 Act.*³

If the review of guidance is not sufficient to mean that local authorities are fully able to meet their duties to provide Additional Learning Provision to young people up to the age of 25, then the assessment provided during the scrutiny of the Bill from Government has been inaccurate.

Should this be the case, Government must either review the Learner Travel Measure itself, or ensure that specific duties around transport are included in the Additional Learning Needs Code for Wales as it is finalised before implementation. These duties should be sufficient to meet the transport needs of all children and young people to whom the 2018 Act applies.

This is an urgent and important issue. If it is not sufficiently addressed young people with Additional Learning Needs will continue to face discrimination in accessing their education: cases from my Investigation and Advice Service illustrate that transport for children and young people with Additional Learning Needs is a real barrier to enabling children and young people to access education. I have several cases in recent years illustrating the profound effect of insufficient transport for individuals, these include cases where there have

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<http://www.senedd.assembly.wales/documents/s68779/Letter%20from%20the%20Cabinet%20Secretary%20for%20Education%2017%20November%202017.pdf>

³ https://gov.wales/sites/default/files/consultations/2018-12/consultation-document-draft-additional-learning-needs-code_0.pdf

been concerns that a lack of arrangements will cause young people to miss education and have also raised concerns about the safety and wellbeing of young people with additional learning needs when they travel to education.

Prior to the release of the revised learner travel guidance for consultation it would be helpful to ascertain whether or not the revision will be sufficient to take account of and reflect the duties of the 2018 Act. I would also like to see the Children's Rights Impact Assessment (CRIA) or the Integrated Impact Assessment including the CRIA contained with it, to understand how the decisions on revisions to the guidance should be taken forward.

If Government assess the revision to be insufficient I would like to know how Government will meet the expectations that have been raised, and how this will be taken forward in time for the implementation of the 2018 Act. My office would be happy to work alongside officials to provide advice on revisions to the guidance, as part of a Task and Finish group, or directly as required.

I look forward to receiving your full response on this matter. I have copied this letter to the Minister for Education and to the Children, Young People and Education Committee, given their previous involvement.

Yours sincerely,



Sally

Sally Holland
Comisiynydd Plant Cymru
Children's Commissioner for Wales

cc. Kirsty Williams, Minister for Education

Lynne Neagle, Chair of CYPE Committee