



Comisiynydd Plant Cymru Children's Commissioner for Wales

Keith Towler

Ymateb i Ymgynghoriad / Consultation Response

Date/Dyddiad

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Subject/Subject

Active Travel (Wales) Bill

Background information about the Children's Commissioner for Wales

The Children's Commissioner for Wales is an independent children's rights institution established in 2001. The Commissioner's principal aim, under the Care Standards Act 2000, is to safeguard and promote the rights and welfare of children. In exercising his functions, the Commissioner must have regard to the United Nations Convention on the Rights of the Child (UNCRC), as stipulated in regulation 22 of the Children's Commissioner for Wales Regulations 2001. 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.

The UNCRC is an international human rights treaty that applies to all children and young people up to the age of 18. 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 and young people and in 2011, Welsh Government passed the Rights of Children and Young Persons (Wales) Measure.

This response is not confidential.

1. Is there a need for a Bill aimed at enabling more people to walk and cycle and generally travel by non-motorised transport? Please explain your answer.

As Children’s Commissioner for Wales I welcome the introduction of the Active Travel (Wales) Bill. Making changes that will support walking and cycling as a real option for children, young people and their families in their day to day lives is likely to have a positive impact. The provision of safe routes through communities has the potential to benefit their general health and well-being, tackle childhood obesity, provide safer routes to schools and greater access to play areas. In this way children and young people will have their opportunities to realise their right to the best possible health. The impact assessment accompanying the Bill in relation to the application of the Minister’s duty to have due regard to the UNCRC sets out the ways in which the Bill will give greater effect to:

Article 24: Children have the right to good health care and to clean water, nutritious food and a clean environment so that they will stay healthy.

I concur with this assessment and welcome the decision to publish the Child Rights Impact Assessment (CRIA) undertaken in relation to this Bill. I would also like to commend the general quality of the CRIA that has been provided. However as the rest of my response evidences I believe that the CRIA has omitted a key issue and the Recommendations section of the CRIA could be usefully amended to reflect this.

2. What are your views on the key provisions in the Bill, namely –

- the requirement on local authorities to prepare and publish maps identifying current and potential future routes for the use of pedestrians and cyclists (known as “existing routes maps” and “integrated network maps”) (sections 3 to 5);

- the requirement on local authorities to have regard to integrated network maps in the local transport planning process (section 6);

- the requirement on local authorities to continuously improve routes and facilities for pedestrians and cyclists (section 7);

- the requirement on highway authorities to consider the needs of pedestrians and cyclists when creating and improving new roads (section 8)

While I welcome the key provisions in the Bill I am calling for a change on the face of the Bill in relation to the considerations that local authorities must take into account in deciding whether it is suitable for a route to be regarded as an active travel route. I wish to see the addition of ‘personal safety’ as a material consideration in Section 2, paragraph 4 (b) of the Bill which currently reads:

(b) whether the location, nature and condition of the route makes it suitable for use by walkers or cyclists (or both) for making such journeys.

I would like to see inclusion of a statement which reads:

In making a decision on the suitability of a route a consideration of the degree to which the route has been assessed as affording walkers or cyclists (or both) a reasonable level of personal safety should be a material consideration.

The rationale for making this call is set out in response to the answers that follow.

3. Have the provisions of the Bill taken account of any response you made to the Welsh Government’s consultation on its White Paper? Please explain your answer.

The provisions of the Bill do not take full account of the response I submitted to the Welsh Government’s consultation on its White Paper. In that response I set out the case for a consideration of the issue of personal safety in the identification of routes as appropriate for active travel.

The Learner Travel (Wales) Measure (2008) is clear that in relation to the provision of transport for learner travel, stress levels, safety and time taken to complete a journey are considerations:

For the purposes of subsection (2), transport arrangements are not suitable if—

(a) they cause unreasonable levels of stress for the child,

(b) they take an unreasonable amount of time, or

(c) they are unsafe.

However there appears to be no application of the suitability of a walked route in relation to unreasonable levels of stress for the child or because they are unsafe. Clearly where a child or young person regards themselves as unsafe on a

walked route, and suffers anxiety or stress as a result of this, their ability to engage in and benefit from active travel routes will be curtailed.

This omission runs contrary to the application of article 19 paragraph 1 of the UNCRC through which:

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

4. To what extent are the key provisions' the most appropriate way of delivering the aim of the Bill?

The key provisions contained in the Bill provide an appropriate way of delivering the aims of the Bill. However in order that these aims be realised in relation to the benefits that they will afford children and young people and in order that the Articles of the UNCRC contained in the CRIA are given greater effect there is a need to make the changes to the face of the Bill that I have called for. I also note that the Bill provides for Welsh Ministers to give local authorities guidance about disabled walkers or cyclists and those using mobility aids. I believe that the implementation of the aims set out in the Bill could be more effectively delivered for children and young people if the Bill provided for supplementary guidance about the application of the provisions of the Act as they apply to children.

5. What are the potential barriers to the implementation of the key provisions and does the Bill take account of them?

I would contend that the promotion of active travel routes to children and young people where the suitability of such a route does not take account of issues of personal safety as a material consideration does not respect the best interests principle contained in article 3 of the UNCRC:

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all legislative and administrative measures.

The fact that the Bill does not include personal safety as a material consideration in assessing an active travel route as suitable is likely to act as a barrier to implementation of the Bill in relation to children and young people.

6. What are your views on the financial implications of the Bill (this could be for your organisation, or more generally)? In answering this question you may wish to consider Part 2 of the Explanatory Memorandum (the Impact Assessment), which estimates the costs and benefits of implementation of the Bill.

Article 4 of the UNCRC provides that States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources. I would expect that in order to exercise their duty of due regard to the UNCRC Welsh Ministers will ensure that a child's rights impact assessment is conducted to evaluate how the allocation of budget is proportionate to the realisation of the legislation introduced through the Bill as it applies to children.

7. To what extent has the correct balance been achieved between the level of detail provided on the face of the Bill and that which will be contained in guidance given by the Welsh Ministers?

I would like further detail on the face of the Bill in order to address the issues I have raised in relation to the application of the provisions of the Bill with regard to children.

ENDS

Submitted by:



Keith Towler

Children's Commissioner for Wales