

Transport Policy - Road Safety Team

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Edward Mountain MSP
Convener, Rural Economy and Connectivity Committee
Scottish Parliament
Edinburgh
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Date: 18 April 2017

Dear Mr Mountain,

I write in addition to my letter of 23 March concerning the Seat Belts on School Transport (Scotland) Bill, regarding information on specific points raised by Rural Economy and Connectivity Committee members during my evidence session alongside Kenneth Hannaway on 15 March.

Taking the two outstanding points in turn below, from the official report of the above session:

1) Mr Rumbles MSP had asked:

"It is just a technical point. You said that good practice in local authorities is to have somebody on the bus. Could we amend the bill to place a duty on local authorities to have someone on buses to ensure that the children wear seat belts? Is that within our legislative powers?"

As previously stated, school authorities are currently free to use bus monitors on dedicated school transport where this is appropriate for their specific needs. We understand that, in practice, this can be a person employed by the local authority or school provider, or supplied by a private bus operator under terms within a contract, and in some instances it may involve prefects or other pupils.

In-depth discussions, via the Seat Belts on School Transport Working Group and other engagement with local authorities, have taken place in order to inform implementation guidance on promoting guidance which will accompany any future Act. This has highlighted that, with regard to promoting good behaviour and helping pupils embrace safety measures such as seat belts, this current flexibility allows for different approaches based on individual needs, cultures or approaches.

Feedback from some of those contracting dedicated school transport has been that placing formal bus monitors on vehicles can actually be detrimental to behaviour and encourage pupils to not conform, given that it provides a figure of authority at which misbehaviour can be directed. Although this is not a universal experience, it does highlight the merit in solutions to these matters being able to be tailored to particular circumstances. As such, whilst ensuring a monitor or supervisor on the vehicle may work for some, it would be difficult to deem this as universal good practice across Scotland's 32 local authorities.

Additionally, particularly in more rural areas, vehicles can be collecting and dropping-off children along particularly long routes which may begin and end in remote areas with more limited transport links. This can obviously impact on the practicalities of having a monitor or supervisor on every vehicle, or the ability to attract candidates to fill such roles and to support or accommodate any travel arrangements needed at the beginning or end of a working pattern.

In terms of legislative powers in this area, as posed by Mr Rumbles, it would broadly be possible to make provision for monitors to supervise children on dedicated school transport. However, as outlined in my previous letter of 23 March, the legal powers to ensure children between the ages of 3 and 14 wear seat belts where they are fitted on buses and coaches are reserved. To this end, it would be outwith the legislative competence of the Scottish Parliament to give such monitors the ability to enforce or ensure compliance with any current or future seat belt wearing requirements. Additionally, any legal requirement to notify bus passengers that seat belts must be worn is also reserved and the Bill cannot create a duty in this regard either.

Notwithstanding such legislative limitations, the above considerations regarding how provision works on the ground mean that such measures are not likely to be easily implemented by all councils and indeed may not be welcomed by local government nationally. Flexibility in these matters can have significant benefit and any top-down mandate may restrict a local authorities' ability to use the best solution for its particular need.

Additionally, in challenging times across the public sector financially, a legal requirement for bus monitors is likely to have significant costs implications – and may also raise questions about the best area to focus resources within the education system in Scotland.

That's why the Scottish Government's intention has been to address these issues through comprehensive non-statutory guidance accompanying the legislation, setting out the options open to councils and highlighting good practice solutions they may want to implement. There is a wealth of current successful approaches on the ground to be drawn from, not least from the 18 councils which already require seat belts on all dedicated school transport, and our planned approach is to highlight such innovative solutions whilst allowing for tailored solutions.

2) Ms Grant MSP had asked:

“My question is about the duty of care. Although there is no legal responsibility, people send their children to school and hand them over to the authority, which is in loco parentis. If a child was in an accident and was not wearing a seat belt, one would imagine that the parent would come back against the authority, because it had not ensured that the child was being cared for appropriately. Might there be a comeback under health and safety or negligence legislation?”

Whilst it is for local authorities themselves to ensure that their education provision complies with their legal obligations, the Education (Scotland) Act 1980 provides that, when considering whether to make arrangements for the provision of school transport, local authorities are required to have regard to the safety of the pupils. In addition, the Schools (Safety and Supervision of Pupils) (Scotland) Regulations 1990 impose a particular duty on local authorities to take reasonable care for the safety of pupils under their charge. Local authorities also have a general duty of care for pupils under common law, as do independent schools and grant-aided schools. Both the statutory and common law duty would extend to pupils using school transport.

However, the way that any legal duties are interpreted under a specific scenario such as that posed by Ms Grant would ultimately be a matter for a court. It should be noted that it is for councils to appraise their own dedicated school transport provision and take legal advice on any duties or potential exposure to liability as appropriate.

I hope the Committee finds the above a useful addition to its considerations on the Bill.

Yours sincerely,

Brendan Rooney
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