Dear Mr Mountain,

I would like to pass on my thanks for the opportunity for myself and Kenneth Hannaway to appear before the Rural Economy and Connectivity Committee on 15 March to give the technical background session on the Seat Belts on School Transport (Scotland) Bill. I hope that members found it a useful endeavour which helped to set some of the context.

We agreed to write to the Committee with some additional information regarding specific points, and these are taken in turn below.

**Requirements on the Wearing of Seat Belts**

As discussed at Committee, the Bill is directed towards imposing a duty to ensure that contracts for dedicated home-to-school transport services include a requirement that vehicles used are fitted with seat belts. It would exist alongside relevant law on the wearing of seat belts, which is a reserved matter.

There is currently no legal requirement that children between the ages of 3 and 14 wear seat belts where they are fitted on buses and coaches. However, the UK Government has indicated a desire to transpose relevant elements of EU Directive 2003/20/EC to the effect of creating such a law.

Scottish Government officials have previously been in contact with UK Government officials to keep track of this matter, however the timescale for implementation of the relevant aspects of the EU Directive remains unclear. Given the Committee’s interest in the issue, the Minister for Transport and the Islands has written to UK Ministers seeking formal clarification of the timescale for implementation. The Scottish Government will update the Committee regarding their response when we are able to do so.
It should be noted that other elements of Directive 2003/20/EC were implemented over a decade ago and the UK Government consulted on the seat belt measures for children aged between 3 and 14 in 2007. The Committee may be interested to note that some of the issues raised in that consultation are similar to issues raised at Committee on 15 March, particularly around the practicalities of ensuring seat belt use by children. Information on that consultation can be seen at:


It was also asked at Committee whether the Scottish Government had ever explicitly asked the UK Government to legislate in this area. As indicated above, the contact between the Scottish Government and the UK Government has been directed towards tracking UK Government intentions in respect of this reserved matter, the UK Government having indicated a desire to make relevant provision.

As regards the section 30 Order, it was clear in negotiating the terms of that order that the UK Government position was that what it was prepared to devolve was that which was eventually devolved; and that it was not prepared to devolve “construction and use” type provision (such as the technical aspects of seat belts or the wearing of seat belts).

The Committee may wish to note that similar measures to those proposed by the Bill have been in place in Wales since 2014 and feedback has been that implementation has gone well. Stakeholders in Scotland also report there are innovative and effective ways of monitoring and improving behaviour around the wearing of seat belts on school transport. It is intended that Scottish Government non-statutory guidance accompanying an Act in this area would complement the legislation and promote good practice.

**Finances**

Regarding the distribution of finances to local authorities connected to the proposed new legal obligation, there were questions about how these would fall on the 18 councils which currently include a requirement for seat belts in dedicated school transport contracts and the councils that do not.

The overall cost forecasts, calculated in collaboration with local government, include costs for councils which already voluntarily require seat belts in their contracts in order to ensure they are not negatively affected. CoSLA and the Scottish Local Government Partnership have previously confirmed this. Therefore it will not only be local authorities which implement these practices following the legal requirement which receive funding. More information is set out in the Financial Memorandum accompanying the Bill.

With regard to a council-by-council breakdown, it is not possible to give this at present. When new or additional funding becomes available for local government as a result of new legislation or policy change, both the quantum and the distribution to individual local authorities is discussed and agreed by the standing joint Scottish Government and COSLA officers Settlement and Distribution Group (SDG).
Any recommendations made by the SDG then require to be endorsed at political level by both Scottish Government Ministers and COSLA Leaders. However, these will be future budget allocation discussions as the new legal duty is not to be enacted until 2018 for primary school vehicles and 2021 for secondary vehicles.

Bus Monitors

Concerning the issue of bus monitors and whether it would be possible for the Scottish Parliament to create a legal duty on local authorities to provide these, the Scottish Government will need to examine this further before responding more fully to the Committee.

However the Bill as introduced, like the member’s draft and final proposals (“to ensure that seat belts become a legal requirement on all dedicated home-to-school transport in Scotland”), is intended to be of limited ambit. A technical aspect of this is that the Standing Order Rules on scope and admissibility of amendments come into play (Rule 9.10.5(b)). While this is of course ultimately a matter for the Parliament to determine, our understanding is that the Bill as introduced has a single purpose, being about seat belts on school transport, so that amendments relating to a wider purpose of (other) safety measures on school transport may not be within its scope and may therefore be inadmissible.

Separately and as noted above, legal requirements around the wearing of seat belts are essentially a reserved matter and therefore legislative competence issues are likely to arise in connection with any particular amendments that may be proposed in this area.

However, councils already have a range of options in relation to ensuring pupils wear seat belts and promoting good behaviour on dedicated school transport, including adult bus supervisors or using older pupils such as prefects. Over half of local authorities already stipulate seat belts on such contracts and engagement with local government has revealed that flexibility in how they promote good behaviour on the bus is key, given the varied nature of journeys and vehicles from council to council. Indeed, feedback from some quarters has been that bus monitors can have a negative impact on behaviour in some instances. Therefore a national top-down mandate may not be well-received or workable in practice for the needs of every local authority. No doubt the Committee will take more evidence on this from relevant stakeholders.

Additionally, dialogue through the working group set up to prepare for the proposed legislation has highlighted a lot of good practice between councils, bus companies and drivers in taking innovative approaches to helping ensure children wear seat belts. The Bill represents an opportunity to underpin and bolster successful non-statutory approaches and wider awareness of the importance of seat belt wearing. It is intended that non-statutory guidance and awareness-raising campaigns or educational resources published alongside any Act, created in consultation with stakeholders and young people, will promote good practice on these matters.
Local Authority Duty of Care

Regarding a local authority’s wider duty of care in relation to children travelling on school transport and the concept of ‘loco parentis’, the Scottish Government will need to investigate this further before responding.

Section 4 of Bill

Mr Stevenson made some observations on section 4 of the Bill. On reviewing those observations and our responses in the Official Report, we note that it may be helpful to clarify the position on section 4 of the Bill as introduced.

Section 4 requires authorities to publish a statement “containing information about the steps which the authority has taken to comply with the duty imposed by section 1”. That publishing duty is intended to be light-touch, in that the authority can publish its compliance statement “in such manner as the authority considers appropriate”. For example, the statement might be published only on a website, rather than requiring to be made in in hard copy. It is not required to be laid before Parliament.

During any transitional period introduced by the secondary legislation (commencement regulations under section 5(2) of the Bill), the “must” element in section 1 may not be immediate, but phased. As stated in the accompanying documents to the Bill, the basic intention is for section 1 to come into force in respect of primary school transport in 2018 and in respect of secondary school transport in 2021. Under the Bill as introduced, the authority would not need to include any information in its compliance statement as regards section 1, insofar as it not being in force in the relevant period, as there would not be a “duty imposed by section 1” in that respect in that period.

The authority needs to make a statement about “the steps which the authority has taken to comply with the duty imposed by section 1”. The expectation is of course that there will be 100% compliance in respect of the section 1 duty insofar as applying in the relevant period. We are not therefore expecting authorities to report whether or not they have complied, but to give a reporting duty and information on how they have done so. Of course, if they have not complied, they would have to say that there were “no steps” or “partial steps” taken.

There was also a point raised about whether the section 4 reporting duty would apply indefinitely. The position in the Bill as introduced is that it would. This is because dedicated school transport contracts are generally retendered after three to five years and there will be an ongoing need for transparency to show the legal duty is being met as new contracts replace old contracts.
There is no power in the Bill to remove the reporting duty and that would require separate primary legislation. However, as the duty is light-touch and provides a visible way in which authorities can demonstrate how they are complying with the section 1 duty over the long term. There is therefore, we suggest, a valid case for the provision as introduced as a reasonable and permanent reporting and monitoring provision.

I hope this information is useful to REC Committee members in your considerations and will provide updates on the outstanding points as soon as it possible.

Yours sincerely,

Brendan Rooney
Road Safety Policy
Transport Scotland