

**National Assembly for Wales**  
Constitutional and Legislative  
Affairs Committee

## Report on the Active Travel (Wales) Bill

May 2013



Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales

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## Remit and Powers

The Constitutional and Legislative Affairs Committee was established on 15 June 2011 with a remit to carry out the functions and exercise the powers of the responsible committee set out in Standing Orders 21. This includes being able to consider and report on any legislative matter of a general nature within or relating to the competence of the Assembly or the Welsh Ministers.

## Current Committee membership



**David Melding (Chair)**  
Deputy Presiding Officer  
Welsh Conservatives  
South Wales Central



**Suzy Davies**  
Welsh Conservatives  
South Wales West



**Julie James\***  
Welsh Labour  
Swansea West



**Eluned Parrott**  
Welsh Liberal Democrats  
South Wales Central



**Simon Thomas**  
Plaid Cymru  
Mid and West Wales

In accordance with Standing Order 17.48, Mick Antoniw AM substituted for Julie James AM.



**Mick Antoniw**  
Welsh Labour  
Pontypridd

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## The Committee's Recommendations

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**Conclusion 1.** We are not persuaded that the balance of the Bill is correct. We believe that more detail should be set out on the face of the Bill and that powers to make regulations should, in some instances, replace proposed Ministerial powers to issue statutory guidance. Specific recommendations on these issues are set out later in this report. (Page 13)

**Recommendation 1.** We recommend that where we consider statutory guidance to be appropriate, the Minister should consider including on the face of the Bill a procedural mechanism to facilitate scrutiny. (Page 13)

**Conclusion 2.** In reaching these views, we wish to make it clear that we do not want to see a trend developing of substantive provisions arising from primary legislation being delivered without any formal scrutiny. (Page 13)

**Recommendation 2.** We recommend that the Minister should consider tabling an amendment to section 2 of the Bill to provide a clear set of minimum criteria to be used in determining what constitutes a designated locality. (Page 16)

**Recommendation 3.** We recommend that the Minister should consider tabling an amendment to section 2 of the Bill to include a power to make regulations to specify more detail of the criteria to be used to designate localities in a local authority area. The regulation-making power should have clear principles attached to it and the regulations themselves should be subject to the affirmative procedure in the first instance. (Page 16)

**Recommendation 4.** We recommend that the Minister should consider tabling an amendment to section 3 of the Bill to set out the minimum consultation and other requirements for local authorities when preparing existing routes maps. (Page 18)

**Recommendation 5.** We recommend that the Minister should consider tabling an amendment to section 4 of the Bill to set out the minimum consultation and other requirements for local authorities when preparing integrated network maps. (Page 20)

**Recommendation 6.** We recommend that the Minister should consider tabling an amendment to the Bill to include a power to make regulations covering the requirements that local authorities must take into account when preparing integrated network maps. The regulation-making power should have clear principles attached to it and the regulations themselves should be subject to the negative procedure.  
(Page 20)

**Recommendation 7.** We recommend that the Minister should consider tabling an amendment to the face of the Bill to define the meaning of the phrase ‘continuous improvement’ by reference to minimum requirements that need to be met by local authorities.  
(Page 22)

**Recommendation 8.** We recommend that the Minister should consider tabling an amendment to provide for regulations to be made setting out how the duty placed on local authorities under section 7(1) is to be implemented and monitored.  
(Page 22)

**Recommendation 9.** We strongly recommend that the Minister table an amendment to the Bill to enable the legislation to apply to users of mobility aids. In our view, the Bill should expressly include a definition that, for the purpose of this Bill, ‘walkers and cyclists’ include persons with disabilities who use mobility aids, which may be prescribed in regulations. Such a regulation-making power should be subject to the negative procedure.  
(Page 24)



# 1. Introduction

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1. The remit of the Constitutional and Legislative Affairs Committee (“the Committee”) is to carry out the functions of the responsible committee set out in Standing Order 21<sup>1</sup> and to consider any other constitutional or governmental matter within or relating to the competence of the Assembly or Welsh Ministers.
2. Within this, the Committee considers the political and legal importance and technical aspects of all statutory instruments or draft statutory instruments made by the Welsh Ministers and reports on whether the Assembly should pay special attention to the instruments on a range of grounds set out in Standing Order 21.
3. The Committee also considers and reports on the appropriateness of provisions in Assembly Bills and UK Parliament Bills that grant powers to make subordinate legislation to the Welsh Ministers, the First Minister or the Counsel General.

## ***The Bill***

4. On 18 February 2013, the then Minister for Local Government and Communities, Carl Sargeant AM introduced the Active Travel (Wales) Bill (“the Bill”) and accompanying Explanatory Memorandum.<sup>2</sup>
5. The National Assembly’s Business Committee referred the Bill to the Enterprise and Business Committee, setting the deadline of 24 May 2013 for reporting on its general principles.
6. Following a change in ministerial portfolios in March 2013, the First Minister authorised John Griffiths AM, Minister for Culture and Sport (“the Minister”), as the new Member in Charge of the Bill, from 18 March 2013.
7. The Constitutional and Legislative Affairs Committee considered the Bill at its meeting on 15 April 2013, taking evidence from John Griffiths AM, the Minister for Culture and Sport.

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<sup>1</sup> National Assembly for Wales, *Standing Orders of the National Assembly for Wales*, December 2012

<sup>2</sup> Welsh Government, *Active Travel (Wales) Bill, Explanatory Memorandum incorporating the Regulatory Impact Assessment and Explanatory notes*, February 2013

## 2. Background

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### *Purpose of the Bill*

8. The Explanatory Memorandum accompanying the Bill explains that:

“The purpose of the Bill is to require local authorities to continuously improve facilities and routes for pedestrians and cyclists and to prepare maps identifying current and potential future routes for their use. The Bill will also require new road schemes (including road improvement schemes) to consider the needs of pedestrians and cyclists at design stage.”<sup>3</sup>

9. Specifically, the Bill makes provision:

- for approved maps of existing active travel routes and related facilities;
- for approved integrated network maps of the new and improved active travel routes and related facilities needed to create an integrated network of active travel routes and related facilities;
- requiring local authorities to have regard to integrated network maps in preparing transport policies and to make continuous improvement in the range and quality of active travel routes and related facilities; and
- requiring the Welsh Ministers and local authorities, in constructing and improving highways, to have regard to the desirability of enhancing the provision made for walking and cycling.

10. The Explanatory Memorandum adds that:

“The aim of the Bill is to enable more people to walk and cycle and generally travel by non-motorised transport. We want to make walking and cycling the most natural and normal way of getting about. We want to do this so that more people can experience the health benefits, we can reduce our greenhouse gas emissions, and we can help address poverty and disadvantage. At the same time, we want to help our economy

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<sup>3</sup> Explanatory Memorandum, paragraph 1

to grow, and we want to take steps that will unlock sustainable economic growth.”<sup>4</sup>

### ***Summary of provisions in the Bill***

11. The Bill has 13 sections and contains one order-making power (for commencement purposes) and no regulation-making powers. However, it contains extensive powers for the Welsh Ministers to issue statutory guidance and directions. The Explanatory Memorandum identifies them as powers to make subordinate legislation.<sup>5</sup>

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<sup>4</sup> Explanatory Memorandum, paragraph 14

<sup>5</sup> Explanatory Memorandum, Part 1, Chapter 5

### 3. Legislative Competence

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#### *Evidence from the Minister*

12. The Explanatory Memorandum explains that the National Assembly for Wales has the legislative competence to make this Bill under the Highways and Transport subject heading of Part 1 of Schedule 7 to the *Government of Wales Act 2006*.<sup>6</sup>

13. The Minister said that there had been “engagement and liaison” with the UK Government regarding the proposals including meetings between both governments’ officials.<sup>7</sup> He added that:

“As far as I know, the UK Government has not raised any concerns”.<sup>8</sup>

14. An official accompanying the Minister confirmed the position:

“Certainly, the UK Government has not raised any issues of competence, as far as we know. We had a consultation response from the Ministry of Defence in its role as a landowning body ... That was about the provisions of the Bill and not about the competence”.<sup>9</sup>

#### *Our view*

15. We note that there has been no response from the UK Government expressing a view on the competence of the National Assembly to make this legislation under Schedule 7 to the *Government of Wales Act 2006*.

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<sup>6</sup> Explanatory Memorandum, paragraph 2

<sup>7</sup> Constitutional and Legislative Affairs (“CLA”) Committee, *RoP* [paragraph 32], 15 April 2013

<sup>8</sup> *Ibid*

<sup>9</sup> CLA Committee, *RoP* [paragraph 33], 15 April 2013

## 4. General observations

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### *Evidence*

16. We questioned the Minister on whether a Bill was the appropriate vehicle for delivering the Minister's policy objectives. The Minister felt the Bill was "fairly novel" and "a radical and different way to take purposeful travel forward in Wales".<sup>10</sup> He considered that the proposal "rightly requires primary legislation"<sup>11</sup> and, based on extensive engagement, was an approach that was supported.<sup>12</sup> He re-iterated this view in later evidence, stating:

"I think that primary legislation is the appropriate vehicle for legislation of this nature, which will be a very important step forward in terms of this area of policy in Wales with cross-cutting benefits ... I believe that we have a widespread level of support for this legislation ...".<sup>13</sup>

17. When questioned about which new powers were available in the Bill that weren't available in existing legislation, the Minister said:

"There is not a duty at the moment to map existing provision and there is not a duty to set out future provision that will deliver continuous improvement for active travel, with regard to purposeful travel in particular. It is about that modal shift to get people out of their cars."<sup>14</sup>

18. The Minister explained how the Government approached striking a balance between what was on the face of the Bill and what was left for directions and guidance:

"... we looked at what will require frequent change, what is technical in essence, and what will need to be tailored to specific local circumstances and situations, allowing those given duties under the legislation the necessary flexibility and ability to respond to the local circumstances that they know best. We also looked at what is essentially supportive in nature in assisting those required to deliver on the legislation, rather

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<sup>10</sup> CLA Committee, *RoP [paragraph 30]*, 15 April 2013

<sup>11</sup> *Ibid*

<sup>12</sup> *Ibid*

<sup>13</sup> CLA Committee, *RoP [paragraph 84]*, 15 April 2013

<sup>14</sup> CLA Committee, *RoP [paragraph 86]*, 15 April 2013

than making requirements that should properly be set out in legislation.”<sup>15</sup>

19. He felt that “the purpose and aim of the legislation is clear from the face of the Bill itself.”<sup>16</sup>

20. Commenting on the lack of legislative scrutiny that would arise from the delegated powers to make subordinate legislation, the Minister said:

“...this is obviously a question of what will most appropriately deliver on policy, as far as the Government is concerned, while abiding by the due process of scrutiny. I recognise ... that there will be, as always, various views as to how that balance is best and most appropriately struck.”<sup>17</sup>

21. In terms of the Bill’s structure, we questioned the Minister on his reliance on powers to make directions and issue guidance and the corresponding absence of regulation-making powers. He explained that, having considered responses to the white paper,<sup>18</sup> and while the Welsh Local Government Association and Sustrans<sup>19</sup> had some concerns,

“... there was an overwhelming feeling that those matters proposed to be dealt with in guidance and directions most properly sit there ... I think that quite a lot of the concern is with regard to having the necessary involvement in working up the guidance. We have a working group and an external reference group, but we have not yet got to the stage where those groups have been involved with the guidance. However, there is an understanding that we very much intend to continue what has been a very good level of involvement and engagement up to now as we work up those sets of guidance. I hope that that will offer considerable reassurance regarding those concerns.”<sup>20</sup>

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<sup>15</sup> CLA Committee, *RoP [paragraph 21]*, 15 April 2013

<sup>16</sup> CLA Committee, *RoP [paragraph 80]*, 15 April 2013

<sup>17</sup> CLA Committee, *RoP [paragraph 64]*, 15 April 2013

<sup>18</sup> Welsh Government, *Consultation on Active Travel (Wales) Bill*, May 2012

<sup>19</sup> Sustrans, <http://www.sustrans.org.uk/wales>

<sup>20</sup> CLA Committee, *RoP [paragraph 25]*, 15 April 2013

22. When we discussed these issues in the context of individual sections of the Bill (see chapter 5), the Minister repeatedly cited the need for flexibility and speed in delivering solutions, together with the likely frequency of change and technical nature of the policies, as the reasons for adopting this approach.

23. When asked whether the Minister would consider having a different level of scrutiny for guidance related to the set-up of the initial scheme, for example agreeing that a committee look at it beforehand, the Minister said:

“I would be interested in any proposals or suggestions that this committee might wish to make on that matter.”<sup>21</sup>

24. He also told us that guidance would be available for scrutiny before the Bill was voted on:

“... we will ensure that guidance is available in a timely fashion so that it can be part of the scrutiny process so that we are not asking any Member of the National Assembly for Wales to vote on legislation without understanding what we mean by the terms that we use in that legislation, including the guidance that is issued as part of it.”<sup>22</sup>

25. In exploring the issue of the lack of regulation-making powers in the Bill, we asked about the penalties that might be applicable for failing to comply with guidance issued in this Bill. The Minister said:

“We are not talking about penalties and sanctions. We believe that we have sufficient levers available to us in terms of general Welsh Government powers and policies. For example, we had the walking and cycling action plan, which will be superseded by an active travel action plan. Within that, we will address monitoring, measurement and evaluation. Crucially, funding mechanisms are available to us as well, given that it will be Welsh Government money that will largely fund the new infrastructure and active travel routes. Obviously, we will have certain expectations, dealt with in the guidance, but funding

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<sup>21</sup> CLA Committee, *RoP [paragraph 66]*, 15 April 2013

<sup>22</sup> CLA Committee, *RoP [paragraph 78]*, 15 April 2013

mechanisms are available to us through that funding to ensure that the legislation is properly and effectively delivered.”<sup>23</sup>

### ***Our view***

26. This Bill is unusual in having no regulation-making powers, but very wide-ranging powers for Welsh Ministers to issue statutory guidance or directions. We have therefore sought to consider whether this approach is appropriate, having regard to the subject matters; this is particularly significant as Part 5 of the Explanatory Memorandum clearly identifies these as powers to make subordinate legislation.

27. Unlike regulations and orders, guidance and directions are not made by statutory instrument, nor are they subject to a formal Assembly procedure. They are not therefore subject to formal legislative scrutiny, though subject committees are free to scrutinise a Minister on these matters. They may, or may not, be legislative in character.

28. Guidance issued pursuant to a statutory provision is more likely to be legislative in character than informal guidance which is merely intended to be of assistance. The formula used in relation to statutory guidance is that those to whom it is addressed ‘must have regard’ to it. This means that it is not an absolute legal requirement, but that a body that does not follow the guidance must have a good reason for not doing so.

29. While failure to follow guidance could be enforced by a Minister using default powers, we note that no such powers are included in the Bill. However, we note the Minister’s suggestion that he would ensure that proper regard had been had to the guidance by the exercise of financial leverage.

30. In relation to directions, which are less likely to be legislative in character, there is a legal requirement to comply with them, rather than just to have regard to them. They too can be enforced by the use of default powers (although again we note that none exists in the Bill), financial and political leverage, and court proceedings.

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<sup>23</sup> CLA Committee, *RoP* [paragraph 82], 15 April 2013



31. Given that the Minister is certain that a Bill is the appropriate vehicle to deliver his policy objectives, it is surprising to see such an over-reliance on statutory guidance as a means of facilitating this delivery.

32. We note that the Minister favours issuing statutory guidance because of the flexibility and speed of operation it affords. We also note that the Minister believes the use of such guidance to be appropriate because of the likely frequency of change in this policy area. However, while these factors are important in ensuring the efficient delivery of policy, so too is the need for proper and proportionate legislative scrutiny of proposals that are ultimately an integral part of the Bill. We do not believe that the issues referred to by the Minister outweigh the need for such scrutiny.

33. Whilst guidance is not normally subject to procedural controls, we can see no reason why scrutiny should not be facilitated by some sort of procedural mechanism. For example, a requirement to lay draft guidance before the Assembly could be included. That could be combined with a limitation on the power to issue that guidance for a specified period after it has been laid in draft. That would provide an opportunity for the relevant Assembly committee(s) to carry out appropriate Ministerial scrutiny. There are, however, specific instances in which we would not consider that to be sufficient.

**Conclusion 1: We are not persuaded that the balance of the Bill is correct. We believe that more detail should be set out on the face of the Bill and that powers to make regulations should, in some instances, replace proposed Ministerial powers to issue statutory guidance. Specific recommendations on these issues are set out later in this report.**

**Recommendation 1: We recommend that where we consider statutory guidance to be appropriate, the Minister should consider including on the face of the Bill a procedural mechanism to facilitate scrutiny.**

**Conclusion 2: In reaching these views, we wish to make it clear that we do not want to see a trend developing of substantive provisions arising from primary legislation being delivered without any formal scrutiny.**

## **5. Powers to make subordinate legislation – observations on specific powers**

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### ***Delegated powers to make subordinate legislation***

34. The Explanatory Memorandum lists 14 powers to make subordinate legislation, with only one order-making power (in relation to commencement) but extensive powers to give directions and to issue guidance.

35. The Bill does not provide that the Welsh Ministers' powers of direction are to be exercised by statutory instrument or subject to any Assembly scrutiny procedure.

36. The Bill also gives the Welsh Ministers powers to issue statutory guidance, which are also subject to no procedure.

### ***Section 2 – Meaning of “active travel route” and “related facilities”***

37. Section 2 of the Bill sets out the meaning of an active travel route (subsection (1)) and of related facilities (subsection (5)).

38. Section 2(3) gives Welsh Ministers the power, by direction, to designate a locality or a description of a locality for the purposes of the definition of a active travel route in subsection (1). According to the Explanatory Memorandum, they might for example designate towns with a population greater than a specified amount, settlements within a certain radius of such towns, or areas with a population density greater than a specified number of people per square kilometre.<sup>24</sup>

39. Section 2(4) empowers the Welsh Ministers to issue guidance to local authorities in respect of whether it is appropriate for a route to be regarded as an active travel route.

40. The Minister explained that the power in section 2(3) is exercisable by direction because it provides for “speed of decision making” and also provides for “necessary flexibility”, particularly in

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<sup>24</sup> Explanatory Memorandum, Annex A – Explanatory Notes, paragraph 8

terms of “whether a population threshold is used or indeed some other system, such as a list of settlements covered”.<sup>25</sup>

41. The Minister indicated that safety issues would be crucial in formulating guidance<sup>26</sup> but gave no indication that he would include them on the face of the Bill.<sup>27</sup>

42. The Minister also explained the benefits of using statutory guidance:

“Through statutory guidance we can have a meaningful process of consultation, including public consultation as we go forward with it. We will very much involve the stakeholder groups ... in working it up. That will not simply stop when the guidance is in place; we will have ongoing engagement beyond that. Wherever there is a need for tweaking, we can deal with that quickly through guidance—much more quickly than would be the case if we had put it in subordinate legislation, properly so-called, if I can put it that way.”<sup>28</sup>

### ***Our view***

43. We note the Minister’s proposed use of powers of direction under section 2(3) and the Minister’s intention to consult on statutory guidance under section 2(4). However, we note that such consultation is at the discretion of the Minister and that the Bill as currently drafted does not provide for a process of statutory scrutiny.

44. Whilst it is appropriate to designate individual localities by direction, we consider that this should be underpinned by a more robust legislative framework. In our view it would be appropriate to include clearly, on the face of the Bill, a set of minimum criteria to be used in determining what constitutes a designated locality. In addition, regulations could then be used to specify more detailed criteria for the purposes of defining an active travel route under subsection (1). In identifying active travel routes within their designated localities, local authorities would then be obliged to have regard to the statutory

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<sup>25</sup> CLA Committee, *RoP* [paragraph 35], 15 April 2013

<sup>26</sup> CLA Committee, *RoP* [paragraph 39], 15 April 2013

<sup>27</sup> CLA Committee, *RoP* [paragraphs 40- 41], 15 April 2013

<sup>28</sup> CLA Committee, *RoP* [paragraph 43], 15 April 2013

guidance under subsection 2(4), which we believe should be subject to a scrutiny procedure in line with recommendation 1.

**Recommendation 2: We recommend that the Minister should consider tabling an amendment to section 2 of the Bill to provide a clear set of minimum criteria to be used in determining what constitutes a designated locality.**

**Recommendation 3: We recommend that the Minister should consider tabling an amendment to section 2 of the Bill to include a power to make regulations to specify more detail of the criteria to be used to designate localities in a local authority area. The regulation-making power should have clear principles attached to it and the regulations themselves should be subject to the affirmative procedure in the first instance.**

### ***Section 3 – Existing routes maps***

45. Section 3 requires that each local authority must prepare an existing routes map and submit it to the Welsh Ministers for approval.

46. Section 3(3) gives the Welsh Ministers the power to issue guidance to local authorities on existing routes maps, including on the consultation to be undertaken and other steps in preparing them, the matters to be shown on the map, and its form.

47. While section 3(4)(a) requires local authorities to submit their existing routes maps within 3 years of section 3 coming into force, section 3(4)(b) allows the Welsh Ministers to specify, by direction, a date after that 3 year period by which a local authority must submit its existing routes map for approval.

48. Section 3(5) empowers the Welsh Ministers by direction to require a local authority to revise or further revise an existing routes map not approved by them, or to submit one for approval by a certain date.

49. Section 3(7) requires local authorities to update and submit maps for approval by Welsh Ministers every three years. Section 3(8) gives the Welsh Ministers the power, by direction to specify a different period from that specified in section 3(7).

50. The Minister explained the rationale for the approach adopted in section 3:

“It is very important that there is due ministerial ability to ensure that we get the improvement and the progress that this Bill has as its objective ... Therefore, it is important in terms of the maps—the initial mapping, the integrated routes maps, and any revisions—that due ministerial approval is required. We need to be sure that the Welsh Government is able to, confidently, expect that this legislation, and the approach to this legislation, will lead to the improvements that are so important in many respects. Therefore, it is right that there is that requirement in the guidance. However, if we had put any of this on the face of the Bill, I think that we would have run into those difficulties in terms of frequent change, the speed of change, the difficulty of change, and flexibility. Therefore, again, I believe that the balance is just about right on those matters.”<sup>29</sup>

51. He also highlighted why guidance, rather than regulations, were appropriate, saying:

“Much of this will be quite technical, which is why it is so important that we get the working group’s involvement in making sure that this guidance is worked up in an inclusive way that really does take on board all the on-the-ground issues. There is a series of common factors to the questions around whether regulations rather than guidance are the most appropriate mechanism ... It is about flexibility, the local authority’s own particular circumstances, and the speed of operation. As I said, it is about technicality, including technological change ... as well as about spreading best practice with speed from one area to another, where improvements are replicable.”<sup>30</sup>

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<sup>29</sup> CLA Committee, *RoP* [paragraph 58], 15 April 2013

<sup>30</sup> CLA Committee, *RoP* [paragraph 56], 15 April 2013

### ***Our view***

52. We note the comments of the Minister.

53. However, we believe that requirements regarding the consultation and other significant steps to be undertaken in preparing existing routes maps as described in section 3(3)(a) should appear on the face of the Bill.

54. We are content with the Ministerial powers to issue statutory guidance under sections 3(3)(b) and 3(3)(c), subject to recommendation 1.

**Recommendation 4: we recommend that the Minister should consider tabling an amendment to section 3 of the Bill to set out the minimum consultation and other requirements for local authorities when preparing existing routes maps.**

55. We are content with the Ministerial powers to issue directions contained in this section.

### ***Section 4 – Integrated network maps***

56. Section 4 requires that each local authority must prepare an integrated network map and submit it to the Welsh Ministers for approval. The map will show both new and improved active travel routes and facilities.

57. While section 4(4)(a) requires local authorities to submit their integrated network maps within 3 years of section 3 coming into force, section 4(4)(b) allows the Welsh Ministers to specify, by direction, a date after that 3 year period by which a local authority must submit its integrated network map for approval.

58. Section 4(5) empowers the Welsh Ministers by direction to require a local authority to revise or further revise an existing routes map not approved by them, or to submit one for approval by a certain date.

59. Section 4(7) requires local authorities to update and submit maps for approval by Welsh Ministers every three years. Section 4(8) gives

the Welsh Ministers the power, by direction, to specify a different period from that specified in section 4(7).

60. Section 4 follows a similar format to section 3 and we again explored whether there was some way on the face of the Bill or through regulation to be clearer about the consultation process that Welsh Ministers envisage being included in guidance. The Minister told us:

“Again, these are matters that will be dealt with in the guidance ... In line with what the First Minister has stated, there would obviously be an opportunity for committees ... to examine that guidance in a timely fashion during the scrutiny process. That is very important. I recognise that a lot of matters are the province of guidance—appropriately so, in my view. However, it is important that there is engagement with committees during the scrutiny process to ensure that the guidance is subject to due process before the legislation is voted upon.”<sup>31</sup>

### ***Our view***

61. We note the comments of the Minister.

62. As with our comments on section 3, we believe that consultation and other steps to be undertaken in preparing integrated network maps, as described in section 4(3)(a), should appear on the face of the Bill.

63. However, we also believe that requirements regarding the preparation of integrated network maps, as set out in sections 4(3)(b), 4(3)(c) and 4(3)(d), should be provided through regulations rather than statutory guidance, given that they are integral to ensuring the successful delivery of the Bill’s objectives.

64. In our view, such an approach will ensure there is clarity and certainty for local authorities about what is required of them. It will also ensure that any subsequent changes in policy and approach have an appropriate lead-in time to allow local authorities to respond effectively.

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<sup>31</sup> CLA Committee, *RoP* [paragraph 62], 15 April 2013

**Recommendation 5: We recommend that the Minister should consider tabling an amendment to section 4 of the Bill to set out the minimum consultation and other requirements for local authorities when preparing integrated network maps.**

**Recommendation 6: We recommend that the Minister should consider tabling an amendment to the Bill to include a power to make regulations covering the requirements that local authorities must take into account when preparing integrated network maps. The regulation-making power should have clear principles attached to it and the regulations themselves should be subject to the negative procedure.**

65. We are content with the Ministerial powers to issue directions contained in this section.

### ***Section 5 – Publication etc. of maps***

66. Section 5 sets out the publication requirements in respect of maps.

67. Section 5(2) provides that local authorities must have regard to guidance issued by the Welsh Ministers on the publication, supply and copying of approved existing routes maps or integrated network maps.

68. When asked why guidance was to be used to provide this information rather than regulations, the Minister said:

“...it is because of that necessary flexibility to recognise the great variety of circumstances and means of communication that local authorities employ.”<sup>32</sup>

### ***Our view***

69. We are content with the Ministerial power to issue guidance contained in section 5.

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<sup>32</sup> CLA Committee, *RoP* [paragraph 72], 15 April 2013



## ***Section 7 – Securing continuous improvement in active travel routes***

70. Section 7(2) provides that local authorities must have regard to guidance issued by the Welsh Ministers in performing their duty under section 7(1) to make continuous improvement in the range and quality of the active travel routes and related facilities in their area.

71. The Explanatory Memorandum describes continuous improvement as meaning:

“...local authorities will be expected to make year on year improvements to their routes and facilities, either by expanding the amount that is available or by upgrading existing provision.”<sup>33</sup>

72. The Minister felt that the phrase ‘continuous improvement’ “very much speaks for itself”<sup>34</sup> and has “its general English meaning, rather than a specific particular meaning when used in legislation”.<sup>35</sup> He also noted that the phrase is used in other legislation and is understood by local government in Wales.<sup>36</sup> When pressed on these issues, he said “it will be dealt with in guidance”,<sup>37</sup> noting that:

“... we will ensure that guidance is available in a timely fashion so that it can be part of the scrutiny process so that we are not asking any Member of the National Assembly for Wales to vote on legislation without understanding what we mean by the terms that we use in that legislation, including the guidance that is issued as part of it.”<sup>38</sup>

### ***Our view***

73. While we are content with the Ministerial power contained in this section to issue guidance, we have some concerns regarding the meaning of ‘continuous improvement’.

74. Section 7(1) provides that each local authority “*must*” make continuous improvement in the range and quality of the active travel

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<sup>33</sup> Explanatory Memorandum, Annex A – Explanatory Notes, paragraph 20

<sup>34</sup> CLA Committee, RoP [paragraph 74], 15 April 2013

<sup>35</sup> CLA Committee, RoP [paragraph 76], 15 April 2013

<sup>36</sup> CLA Committee, RoP [paragraph 74], 15 April 2013

<sup>37</sup> CLA Committee, RoP [paragraph 78], 15 April 2013

<sup>38</sup> CLA Committee, RoP [paragraph 78], 15 April 2013

routes and related activities. We believe that having inserted such a demand, it is unsatisfactory to explain the phrase ‘continuous improvement’ in statutory guidance. Moreover, it is unclear from the Minister’s evidence how he intends to achieve that.

75. We believe that a definition of continuous improvement needs to be included on the face of the Bill given that it is central to achieving the objective of getting more people walking and cycling and generally travelling by non-motorised means of transport (see paragraph 10). We believe that this could be achieved by reference to a minimum set of requirements that need to be met by local authorities.

76. We also believe that there needs to be some statutory underpinning for implementing and monitoring the local authority’s duty under section 7(1) relating to continuous improvement. We believe this is best delivered by regulations.

**Recommendation 7: We recommend that the Minister should consider tabling an amendment to the face of the Bill to define the meaning of the phrase ‘continuous improvement’ by reference to minimum requirements that need to be met by local authorities.**

**Recommendation 8: We recommend that the Minister should consider tabling an amendment to provide for regulations to be made setting out how the duty placed on local authorities under section 7(1) is to be implemented and monitored.**

### ***Section 9 – evidence from the Minister***

77. Section 9(1) allows the Welsh Ministers to issue guidance to local authorities on how the provisions of the Bill should apply to disabled active travellers, such as users of wheelchairs and other mobility aids.

78. As the Bill applies to walkers and cyclists, and neither is defined so as to include users of mobility aids, we explored whether guidance is an appropriate way of expanding the scope of the Bill.

79. The Minister told us:

“We are likely to have quite technical guidance on this; that is one of the acid tests of whether guidance is the most appropriate vehicle and whether its content will be very

technical in nature. It could come down to the nature of the surfaces that will be provided on the routes and making the maps accessible to the widest range of people. We will also have regular revisions of what is suitable travel infrastructure, because that changes very quickly. We could have some innovative schemes that we would want replicated quickly elsewhere. So, local circumstances require a lot of flexibility on this matter and it will be subject to a good level of public consultation. There have been significant issues for the various groups involved, such as disability groups. We have had good input through the White Paper and the consultation process and we expect that to continue as we go forward with formulating the guidance and with implementation.”<sup>39</sup>

80. When pressed on whether the guidance would be changing what is on the face of the Bill and therefore whether regulations were a more appropriate vehicle, the Minister responded by saying that this argument:

“... very much emphasises the appropriateness of dealing with these matters in guidance, because there could be frequent change in these definitions and, indeed, in other legislation. I think that it is sensible to deal with it in guidance, which allows for a great deal of flexibility. As you say, there is an issue with the definition of bicycles and electric bikes, where, if the electric element is an aid to getting up a hill, or getting somewhere more quickly for a purpose, that is one thing, but, where it goes beyond that, it is quite another. These matters change quite regularly and guidance is the most appropriate vehicle.”<sup>40</sup>

### ***Our view***

81. As currently drafted, the Bill applies to walkers and cyclists, and neither is defined so as to include users of mobility aids. As such section 9 would permit the scope of the Bill to be extended by guidance, which is not subject to any scrutiny procedure. This approach is wholly inappropriate for such an important change. In any

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<sup>39</sup> CLA Committee, *RoP [paragraph 98]*, 15 April 2013

<sup>40</sup> CLA Committee, *RoP [paragraph 100]*, 15 April 2013

case, guidance cannot extend the application of a Bill that is expressly limited to walkers and cyclists.

**Recommendation 9: We strongly recommend that the Minister table an amendment to the Bill to enable the legislation to apply to users of mobility aids. In our view, the Bill should expressly include a definition that, for the purpose of this Bill, ‘walkers and cyclists’ include persons with disabilities who use mobility aids, which may be prescribed in regulations. Such a regulation-making power should be subject to the negative procedure.**

***Section 12 – evidence from the Minister***

82. Section 12 of the Bill provides details of when the Bill will come into force:

- sections 3 to 9 in accordance with provision made by the Welsh Ministers by Order (subject to no procedure in accordance with normal legislative practice); and
- the remaining provisions on the day after the day on which the Act receives Royal Assent.

***Our view***

83. It is standard practice that no procedure is prescribed for commencement orders that contain no other provision and we are content with this approach.