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Llywodraeth Cymru  
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Welsh Government

## Consultation Document

# Proposed Guidance on Learner Travel Statutory Provision and Operational Guidance

Date of issue: 13 January 2014

Responses by: 13 April 2014



## **Overview**

The Learner Travel Operational Guidance was published in 2009. Its purpose was to provide local authorities and governing bodies of maintained schools with statutory guidance on all aspects of the Welsh Government's home to school/college transport policy.

Welsh Ministers have power to issue statutory guidance under section 15 of The Learner Travel (Wales) Measure 2008.

Concerns have been raised regarding the extent to which certain aspects of the Operational Guidance are clear, consistent and easy to understand for users such as parents and local authorities. There is also a need to update the Operational Guidance to reflect various changes since the guidance was first published.

The All-Wales Travel Behaviour Code (Travel Code), which is referred to in the Operational Guidance, has been in operation since January 2010. The Travel Code and associated statutory guidance sets out the rights and responsibilities of learners when travelling; provides advice on how to ensure a safe journey, as far as is practicable, and sets out the legal framework within section 14 of the Learner Travel (Wales) Measure 2008, for the removal of transport from learners who are in breach of the Code.

Welsh Ministers have a duty under section 12 of the Learner Travel (Wales) Measure 2008 to make and publish a Travel Behaviour Code and to review the Code from time to time. Section 12(6) of the Measure requires the Welsh Ministers to consult such persons as they consider appropriate before revising the Code.

The purpose of this consultation is to seek the views of key stakeholders, including children and young people, on how the Operational Guidance and the Travel Code (including the associated statutory guidance) could be improved.

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## **How to respond**

You may respond to this consultation by using either or both of the questionnaires which form part of this document. One questionnaire applies to the Learner Travel Operational Guidance and the other applies to the Travel Code (including the associated statutory guidance).

**Further information and related documents**    **Large print, Braille and alternative language versions of this document are available on request.**

The consultation web address is:  
[LearnerTravelMailbox@wales.gsi.gov.uk](mailto:LearnerTravelMailbox@wales.gsi.gov.uk)

**Contact details**    For further information:

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**Data protection**    **How the views and information you give us will be used**

Any response you send us will be seen in full by Welsh Government staff who deal with the issues covered by this consultation. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

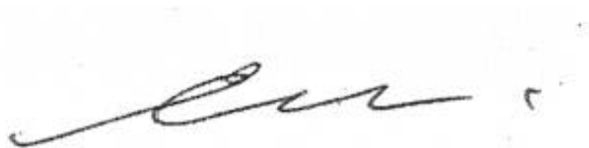
## **Ministerial Foreword**

There is a strong case for making improvements to both the Learner Travel Operational Guidance, which was first published in 2009, and the All Wales Travel Behaviour Code which has been in operation since January 2010.

In amending the Operational Guidance, I want to ensure that young people, parents, local authorities and those who provide learner travel are clear about their rights and responsibilities and that there is greater consistency throughout Wales in how this Guidance is applied.

I also want to look at how the Travel Code has been working and make improvements that will make it more effective.

I attach great importance to children and young people being involved in this consultation exercise and am grateful for the Children's Commissioner's support in engaging children and young people in the consultation process.

A handwritten signature in black ink, appearing to read 'Edwina Hart', is centered on the page. The signature is fluid and cursive, with a long horizontal stroke at the end.

**Edwina Hart MBE, CStJ, AM**  
**Minister for Economy, Science and Transport**

## **Part 1**

### **The Learner Travel Operational Guidance**

#### **What are the main issues?**

During 2012-13, the Welsh Government sought views from the Welsh Local Government Association, governing bodies of maintained schools and local authorities about how the Learner Travel Operational Guidance was working in practice.

The feedback indicated that there were a number of main issues:

- Members of the public, parents and local authorities were sometimes unclear about certain aspects of local authorities' and parents' responsibilities to provide learner transport and / or assist with learners' travel arrangements
- A number of key provisions within the guidance were not particularly clear or easy to understand
- Best practice and the requirements for statutory provision could be more clearly differentiated
- Wider policy reforms, which have taken place since the guidance was first published in 2009, were not reflected in the guidance – neither were details relating to the Travel Code and prospective changes to legislation as a result of the Safety on Learner Transport (Wales) Measure 2011 and
- There was no mechanism whereby children and young people were able to express their views on learner travel policy

#### **Where are we now?**

In light of that feedback, the Welsh Government concluded that the following issues needed to be addressed:

- The ambiguities and inconsistencies in some of the provisions within the guidance need to be resolved
- Clarification of the responsibilities of local authorities and parents
- Making clearer differentiation between statutory provision and best practice
- Creating a mechanism by which children and young people can express their views on learner travel policy
- Ensuring that wider policy developments, which have occurred since 2009 and which impact upon learner travel policy, are reflected in the guidance

- Providing information within the guidance on both the Travel Code and amendments to the Learner Travel (Wales) Measure 2008 as a result of the Safety on Learner Transport (Wales) Measure 2011

## **What changes are proposed?**

The key issues that we want to address in revising the guidance are set out below:

- Produce clearer, more user-friendly guidance
- Explain key provisions more clearly – for example, those relating to:
  - dual residency
  - the nearest suitable school
  - local authorities' use of discretionary powers
  - local authority changes to home to school transport policy
  - journey times
  - SEN provision
  - learners' entitlement to free transport
  - transport to Welsh medium, English medium and denominational schools
  - walking routes to school
  - cycled routes to school
  - parental responsibilities
  - Schools / colleges responsibilities
  - Ensure that the guidance reflects wider policy reforms that have already taken place and which will occur in future – for example, educational reforms due to take effect in 2015 and 2016
  - Ensure that the guidance covers the range and content of current learner travel policy more comprehensively – for example by including additional information about the Travel Code and seat belt policy on dedicated learner transport
  - Ensure that additional information is incorporated into the guidance – for example, dedicated chapters on parental and young persons' responsibilities and schools' and colleges' responsibilities

In addition, we have taken the opportunity to include some additional guidance on the provision of post-16 learner travel.

The proposals in the consultation are not intended to change the requirements currently set out in legislation. Instead they should make it clearer and easier to understand the requirements that are in place.

## **Proposals**

Based on the issues identified earlier in this consultation document, we have revised the Learner Travel Operational Guidance and the draft revised guidance is at Annex 1.

## **Consultation**

The purpose of the consultation is to establish whether the draft guidance at Annex 1 takes into account the needs of all key stakeholders (that is, learners; parents; local authorities; operators; and school governing bodies). We aim to be in a position to publish finalised guidance in April 2014. We have produced a list of consultation questions at Annex 2.

We are undertaking a separate consultation on risk assessments of the safety of walked routes to school. The outcome of that consultation will be incorporated into the final Learner Travel Operational Guidance.

## Part 2

### The Travel Code

#### What are the main issues?

During 2012-13, the Welsh Government gathered feedback on the Travel Code from local authorities in Wales. The evidence indicated that the Travel Code is valued because it sets out the standards of behaviour that are required of learners when they are travelling between home and school or between educational institutions during the day<sup>1</sup>. However, the feedback also indicated that there are areas of the Travel Code that are not working effectively, such as:

- The sanctions set out in the Travel Behaviour Code statutory guidance could be stronger to address the types of severe anti-social behaviour that can occur on learner transport
- The Travel Behaviour Code statutory guidance needs to provide a clearer framework on how to deal with the severity of some anti-social behaviours
- That in many cases, schools tend not to apply their respective School Behaviour Codes to address incidents of anti-social behaviour on learner transport - one consequence of this is that it places the onus on local authorities to investigate breaches of the Travel Code as required by the Travel Code statutory guidance, whereas the application of the School Behaviour Codes would enable the use of more robust sanctions that would be more appropriate in addressing some incidents
- Both schools and local authorities need to gain a greater awareness of the Travel Code and a better understanding of its contents, including how to operate in a collaborative manner – for example, some schools have dealt with incidents of anti-social behaviour without informing the relevant local authority

Other issues linked to the application of the Travel Code that were highlighted include:

- The 24 hour Notice of the withdrawal of transport following anti-social behaviour incidents is ineffective because it often means that the people who breach the Travel Code are ‘rewarded’ with taxi transport to school due to being banned from dedicated learner transport
- The maximum ten day ban from using learner transport is not a sufficiently robust sanction because local authorities are still under a duty to provide alternative transport to school – often this results in the people who breach

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<sup>1</sup> The Travel Code does not apply to travel to and from locations which are not deemed as “relevant places” (see section 1(4) Learner Travel Measure 2008. “Relevant places” are generally schools, institutes of further education or places of training funded by the Welsh Ministers). Behaviour on school trips to the theatre or museums, for example, is governed by individual school behaviour policies instead.



the Travel Code being 'rewarded' with better, more comfortable transport arrangements (such as taxi transport)

## **Where are we now?**

Currently, there is no structured mechanism whereby children and young people can express their view on the Travel Code and this should be addressed.

Section 12(4) of the Learner Travel (Wales) Measure 2008 requires the Welsh Ministers to review the Travel Code from time to time. Section 12(6) of the Measure requires Welsh Ministers to consult such persons as they consider appropriate.

The feedback we have received so far indicates that:

- Awareness of the Travel Code amongst key stakeholders is low
- The sanctions are insufficiently robust for addressing severe incidents of anti-social behaviour
- Schools and local authorities need to operate in a more collaborative manner – in some instances, some schools have dealt with incidents of anti-social behaviour without informing the relevant local authority; in other instances, schools have not deployed their School Behaviour policies to address incidents of severe anti-social behaviour which has, in turn, placed the onus on local authorities to apply the Travel Code (whereas the sanctions within the School Behaviour policies would have been more appropriate for addressing the severity of some incidents)

## **What changes are proposed?**

The precise nature of any changes can only be established following the evaluation of the Travel Code and the associated statutory guidance.

We need to establish:

- Which areas of the Travel Code and guidance work well
- Which areas of the Travel Code and guidance do not work well
- Which areas of the Travel Code and guidance need to be improved
- The extent to which the Travel Code resources on the Learner Travel Facebook page, posters, and learning guides are used by learners and schools
- The current levels of awareness and understanding of the Travel Code amongst learners, parents, local authorities, bus operators, head teachers and governing bodies of maintained schools

## **Proposals**

Based on the issues identified in this consultation document, we have produced a series of consultation questions at Annex 3.

## **Consultation**

The purpose of the consultation is to seek views from stakeholders about the current Travel Code and statutory guidance and any changes we should make. We are also asking for views on awareness of the Travel Code and the resources to help people make use of it effectively.

## Annex 2

### Consultation on the Learner Travel Operational Guidance

#### Consultation Response Form

Your name:

Organisation (if applicable):

E-mail / Telephone number:

Your address:

**Question 1: Which areas of the Learner Travel Operational Guidance need to be explained more clearly? Why?**

**Question 2: Which areas of the Learner Travel Operational Guidance are clearly explained and user-friendly?**

**Question 3: Does the guidance on learner travel inform broader policy areas, such as education and children's welfare and safeguarding policy, and is the guidance adequately informed by those?**

**Question 4: Should any other areas/provisions be included in the guidance? If yes, please state.**

**Question 5: How helpful do you find the Learner Travel Operational Guidance?**

**Question 6: Would it be a good idea to bring together all areas of learner travel policy into the Learner Travel Operational Guidance – for example, guidance on the Travel Code, the Learner Travel Information Regulations 2009 and the Learner Travel (Wales) Measure 2008 (as amended)<sup>2</sup>? Why?**

**Question 7: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:**

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<sup>2</sup> The Safety on Learner Transport (Wales) Measure 2011 made amendments to the existing Learner Travel Wales Measure 2008, introducing new safety related provisions. The term, 'Learner Travel (Wales) Measure 2008 (as amended)' therefore incorporates the provisions of the original 2008 Measure and those safety provisions introduced by the Safety on Learner Transport (Wales) Measure 2011.

Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept confidential, please tick here:

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## **Annex 3**

### **Consultation on The All-Wales Travel Behaviour Code**

#### **Consultation Response Form**

Your name:

Organisation (if applicable):

E-mail / Telephone number:

Your address:

**Question 1: Which areas of the Travel Code and supporting materials work well and why?**

**Question 2: Which areas of the Travel Code and supporting materials do not work well and how might they be improved?**

**Question 3: What are the barriers to the effective operation of the Travel Code?**

**Question 4: What are the main changes that you would like made to the Travel Code and supporting materials and why?**

**Question 5: How important and useful are the Travel Code materials on the Learner Travel Facebook page? How could they be improved?**

**Question 6: How can awareness and understanding of the Travel Code and supporting materials be raised and improved?**

**Question 7: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:**

Please enter here:

Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept confidential, please tick here:

# Section 1: Statutory Provisions.

## Chapter 1: The Learner Travel (Wales) Measure.

### Overview

- 1.1 The Education Act 1996 (as amended) sets out the law in Wales and England for the **attendance** of pupils at school and the Learner Travel (Wales) Measure 2008 (as amended) ('the Measure') sets out the legal framework specifically related to **travel and transport** provisions for learners<sup>1</sup> travelling from home to school<sup>2</sup> in Wales.
- 1.2 This Statutory Guidance ("the Guidance") is published by Welsh Ministers under section 15 of the Learner Travel (Wales) Measure 2008.
- 1.3 The Guidance has no special authority in regards to matters of legal interpretation. Where there appear to be differences between the Measure and the Guidance, the Measure always takes precedence.
- 1.4 Where the Guidance says that something **must** be done, this means that it is a requirement in either primary or secondary legislation and a footnote gives the appropriate provision.
- 1.5 Section 1 of this guidance document outlines the statutory provisions, specific duties and key responsibilities for Welsh Ministers, local authorities, governing bodies of maintained schools, head teachers, learners and parents.
- 1.6 The Measure sets out specific requirements for home to school transport in Wales. Its main provisions are :-
- 1.7 Legal Duties of the Welsh Ministers.

The Welsh Ministers **must**:

- Make an All-Wales Travel Behaviour Code ('Travel Code'<sup>3</sup>)
- Promote access to Welsh Medium education<sup>4</sup>
- Promote sustainable modes of travel<sup>5</sup>

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<sup>1</sup> Definition of 'learner' is provided in the glossary (Section 2).

<sup>2</sup> For the purposes of this document the definition of 'school' has the same meaning as the term "relevant places" outlined in Section 1(4) of the Measure. The definition of 'relevant places' is provided in the glossary (Section 2).

<sup>3</sup> Section 12 of the Measure

<sup>4</sup> Section 10 of the Measure

<sup>5</sup> Section 11 of the Measure



- Welsh Ministers may also issue direction and/or make statutory guidance<sup>6</sup>.

## 1.8 Legal Duties of the local authority.

Local authorities **must**:

- Assess the travel needs of learners in their authority area<sup>7</sup>
- Provide free home to school transport for learners of compulsory school age attending primary school who live 2 miles or further from their nearest suitable school<sup>8</sup>
- Provide free home to school transport for learners of compulsory school age attending secondary school who live 3 miles or further from their nearest suitable school<sup>9</sup>
- Assess and meet the needs of “looked after”<sup>10</sup> children in their authority area<sup>11</sup>
- Promote access to Welsh medium education<sup>12</sup>
- Promote sustainable modes of travel<sup>13</sup>

Under section 32 of the Education Act 2002 (which was amended by section 21 of the Measure), local authorities have the power to change school session times<sup>14</sup>, **if the change is considered necessary or expedient to promote the use of sustainable modes of travel, or to make travel arrangements more effective or efficient**<sup>15</sup>. The Welsh Government has made regulations setting out the appropriate procedure.<sup>16</sup>

Where learners are not entitled to free transport, local authorities have the power to provide transport on a discretionary basis<sup>17</sup>.

## 1.9 Legal Duties of Head-teachers.

They **must**:

- Promote knowledge and awareness of the Travel Code; and
- Ensure compliance with the Travel Code<sup>18</sup>.

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<sup>6</sup> Section 15 of the Measure

<sup>7</sup> Section 2 of the Measure

<sup>8</sup> Section 3 of the Measure

<sup>9</sup> Section 3 of the Measure

<sup>10</sup> Definition of ‘looked after’ children is provided in paragraph 1.48

<sup>11</sup> Sections 2 and 3 of the 2008 Measure

<sup>12</sup> Section 10 of the Measure

<sup>13</sup> Section 11 of the Measure

<sup>14</sup> This provision applies to community special schools, maintained nursery schools, foundation schools, voluntary aided schools and foundation special schools.

<sup>15</sup> Change can only be made if it meets these criteria

<sup>16</sup> The Changing of School Session Times (Wales) Regulations 2009 (S.I. 2009/572).

<sup>17</sup> Section 6 of the Measure

<sup>18</sup> Section 89(2A) of the Education and Inspections Act 2006 states that in determining a behaviour policy for a school the head teacher must require pupils to comply with the travel behaviour code.

## Assessing Needs

- 1.10 Section 2 of the Measure places a duty on a local authority to assess the travel needs of learners under the age of 19. This includes those who have reached 19 but started a course when under 19 and continue to attend that course who receive education or training and who are ordinarily resident in the authority's area<sup>19</sup>.
- 1.11 Assessing the travel needs of learners does not mean providing free transport. Learners will only qualify for free transport provision if they meet the entitlement criteria outlined in paragraphs 1.20 – 1.25 and 1.50 of this document.
- 1.12 Learner travel needs are the specific needs of learners in terms of the travel arrangements between home and school each day. Those learners whose travel needs are assessed by the local authority also include those whose nearest suitable schools are in other local authority areas.
- 1.13 It is recommended that in assessing the travel needs of learners, local authorities should consider:-
- Who the learners are in their area
  - Where those learners currently attend or are due to attend school
  - Which learners they are under a legal duty to provide with transport under Sections 3 and 4 of the Measure
  - Which learners they want to provide with travel on a discretionary basis under Section 6 of the Measure
  - What other arrangements already exist / will exist for those for whom they do not provide transport (e.g. does the further education college provide transport for 16-18 year olds?)
- 1.14 The local authority is also required to have regard to:-
- The needs of disabled learners<sup>20</sup> and learners with learning difficulties<sup>21</sup>
  - Any particular needs of learners who are 'looked after' or formerly looked after by a local authority<sup>22</sup>
  - The age of a learner
  - The nature of the route that the learner is expected to take between home and the places where they receive education or training.

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<sup>19</sup> Local authorities are required to assess the travel needs of learners under the age of 5 (nursery age) and aged 16-19, but there is currently no legal duty to provide free or assisted transport arrangements for nursery or post-16 learners.

<sup>20</sup> Section 24(1) of the Measure. The definition of disability can be read as that from the Equality Act 2010, which is explained in the glossary (see Section 2)

<sup>21</sup> Section 24(1) of the Measure

<sup>22</sup> The statutory definition of 'looked after' children is defined in section 22(1) Children Act 1989 and is provided in paragraph 1.48.

- 1.15 In assessing the travel needs of learners, local authorities must<sup>23</sup> take into account the fact that the travel arrangements they make in light of the assessment must not cause unreasonable levels of stress; take an unreasonable amount of time or be unsafe.
- 1.16 The assessment will give a local authority an overview of the travel needs of learners in their area. This will allow them to make travel arrangements for learners in an efficient and effective manner and enable them to provide information to others about the travel arrangements available. Local authorities must also promote sustainable modes of travel<sup>24</sup> when exercising their functions under the Measure as far as reasonably practicable.
- 1.17 The assessment is only required to take into account travel to and from the learner's home to the nearest suitable school and not the learner's travel needs during the day between different places of education or training, including:
- residential trips or day trips organised by schools.
  - travel between schools or between different sites of the same school (i.e. travel incurred by learners during the school day to access courses in relation to the learning pathways programme)
- 1.18 When exercising functions under the Measure the local authority is not required to take account of extra curricular activities, breakfast or after-school clubs when assessing learner travel needs.
- 1.19 In each academic year, the local authority must assess the learner travel needs for the following academic year<sup>25</sup>.

## Entitlement

- 1.20 Section 3 of the Measure places a duty on a local authority to make transport arrangements for learners of compulsory school age in specified circumstances and subject to specified conditions. The section makes provision for free transport defined by whether children receive primary or secondary education and whether they live further than set distances from the schools at which they receive education or training.
- 1.21 Learners receiving primary education will be entitled to free transport if they live two miles or more from their nearest suitable maintained school; pupil referral unit; or non-maintained special school. The exception is if the authority has arranged for the learner to board at or near the school.

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<sup>23</sup> Sections 3(5) (transport arrangements) and 4(6) of the Measure (travel arrangements)

<sup>24</sup> Definition of 'sustainable modes of travel' is outlined in Section 11 of the Measure and is provided in the glossary (Section 2)

<sup>25</sup> Section 2(2) of the Measure

- 1.22 Where a learner receiving primary education has a statement of special educational needs (SEN), which names an independent school, then should that school be two miles or more from the learner's home, a local authority will have to provide free transport. The exception is if the authority has arranged for the learner to board at or near the school.
- 1.23 A similar entitlement is provided for learners receiving secondary education, but in this case if they live three miles or more from their nearest suitable maintained school; pupil referral unit; non-maintained special school or independent school named in a statement of special educational needs. Where the local authority has arranged for the learner to board at or near the school, the duty to provide free transport does not apply.
- 1.24 The entitlement includes transport for any learners of compulsory school age who attend their nearest suitable further education institution as a full time student if it is three miles or more from the learner's home and the local authority has not arranged for the learner to attend a suitable institution closer than three miles from the learner's home.
- 1.25 The entitlement also includes travel between home and school, where a learner is registered at more than one school and needs to attend different schools on different days of the week. For example this would cover travel at the beginning and/or end of the day to a different school.

## **Making Suitable Transport Arrangements**

- 1.26 The local authority must<sup>26</sup> make suitable transport arrangements to facilitate the attendance of the learner each day at their nearest suitable school where they receive education and training. Under Sections 3(5) and 4(6) of the Measure Transport arrangements are not suitable if:
- they cause unreasonable levels of stress for the learner
  - they take an unreasonable amount of time
  - they are unsafe

### **1.27 Unreasonable Levels of Stress**

Local authorities must provide suitable transport arrangements to ensure that, as far as reasonably practicable they do not cause unreasonable levels of stress to the learner<sup>27</sup>. There is no legal definition of 'stress', nor is there a definitive list of what criteria local authorities should take into account to determine if the journey causes an unreasonable level of stress. It is for local authorities to determine

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<sup>26</sup> Section 3 of the Measure.

<sup>27</sup> Section 3(5) of the Measure.

how stress assessments are carried out, in accordance with their own learner travel policy.

### 1.28 Journey Times

The Measure does not specify a time limit for journeys, however, local authorities are required to assess the individual needs of learners when considering if a journey time is reasonable. An assessment should take into account the nature, purpose and circumstances of each journey. It is recommended that local authorities consider the following whilst assessing learner journey times:-

- the learner's age
- whether the learner has any disability or learning difficulties that need to be accounted for<sup>28</sup>
- the locality of the learner's home in relation to available schools in the vicinity<sup>29</sup>

### 1.29 Safe Travel

For the purpose of this document 'safe travel' is defined as 'providing appropriate travel arrangements to ensure that as far as reasonably practicable a learner is not placed at risk, whether known or foreseen, which might result in them or other persons sustaining a trauma and or serious physical injury'.

1.30 Further information on safe travel with regards to available walking routes is provided in paragraphs 1.59- 1.63 of this document.<sup>30</sup>

1.31 It is recommended that local authorities ensure that appropriate health and safety checks and risk assessments on learner transport are carried out. The assessment should take into account stress factors; appropriate journey times and safe travel arrangements<sup>31</sup> when determining what transport provisions are suitable for learners.

1.32 Local authorities should satisfy themselves that contracted arrangements for learner transport are safe. This is an ongoing duty so local authorities should ensure that processes are in place to monitor contracts and that prompt action is taken to remedy problems. There is no legal specification of when assessments should be carried out therefore local authorities have discretion in deciding how to meet this requirement. Further information on risk assessment best practice is provided in Section 3 (Questions 1 and 2) of this document.

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<sup>28</sup> Both the journey time and the suitability of the school (which the learner may need access to) need to be accounted for – especially if a named specialist school is specified in the learner's statement of special education needs.

<sup>29</sup> Information on what might be considered suitable journey times is provided in Section 3 (Question 3)

<sup>30</sup> Information on how to assess available walking routes is provided in –'Risk Assessments of Wales Routes' Statutory Guidance 2014

<sup>31</sup> Section 3(5) of the Measure

### 1.33 Making Other Travel Arrangements

Section 3 of the Measure is about dedicated transport provision, where this provision does not apply or it is an inappropriate transport arrangement, local authorities are under a duty to make other travel arrangements.

1.34 Section 4 of the Measure places a duty on a local authority to make other travel arrangements for children of compulsory school age if the authority thinks that it is necessary to facilitate a child's attendance at school. These travel arrangements only apply to travel to and from the learner's nearest suitable school at the start or finish of the school day and does not include travel during the day.

1.35 Section 4 provides the basis for local authorities to support travel for learners if they have specific needs whether arising from a learning difficulty, a disability or any other factor which makes particular travel arrangements necessary to facilitate the child's attendance.

1.36 In considering whether travel arrangements are suitable, the local authority must<sup>32</sup> have regard to:

- the needs assessment undertaken under Section 2 of the Measure (outlined in paragraphs 1.10 -1.19 of this document)
- the transport arrangements it is duty bound to make under Section 3 of the Measure
- the age of the learner
- any disability or learning difficulty<sup>33</sup>
- the nature of the route a learner is expected to take.

### **Nearest Suitable School.**

1.37 The definition of nearest "suitable school" is where the "education or training provided is suitable having regard for the age, ability and aptitudes of the learner and any learning difficulties he or she may have<sup>34</sup>".

1.38 Local authorities need to consider the suitability of the school when deciding if the placement is appropriate for the learner. Deciding which suitable school is the learners 'nearest' is a matter for the local authority to determine in accordance with their own learner travel and education policy.

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<sup>32</sup> Section 4(5) of the Measure.

<sup>33</sup> This includes taking into account a learner's disability and / or a learner's parent's disability. See paragraphs 1.82- 1.96 for further information on this provision

<sup>34</sup> Section 4(9) of the Measure

1.39 Parents and learners may express a preference for a particular school, a particular type of linguistic provision or faith school, but the Measure does not confer on those parents and learners any rights to free transport to their preferred school and or location. Further information regarding parental and learner preference is provided in paragraphs 1.43 – 1.46 and Chapter 5 paragraphs 5.6 – 5.9.

1.40 Transport must be provided free of charge<sup>35</sup> to a school outside a local authority's area if that establishment is deemed (under provisions outlined in paragraphs 1.37 and 1.40) to be the learner's nearest suitable school and if the learner lives:

- further than the statutory distances specified for their age (see paragraph 1.7 (bullet points 1 and 2)); or
- under the statutory distance specified for their age where the prescribed route the learner is expected to travel has been classified unavailable by the relevant authority

#### 1.41 Admission to School

If a learner cannot be admitted to their nearest suitable school which results in the learner having to attend the next available nearest suitable school, the local authority has the same duty to provide free transport.

1.42 The School Admissions Code 2013<sup>36</sup> (the '2013 Code') outlines in more detail the statutory requirements governing school admission policy. The 2013 Code came into force on 8 July 2013 and applies to admission arrangements for intakes from September 2014/15 onwards. Paragraphs 2.48 – 2.55 of the 2013 Code outline how distance between home and school can be used as a determinant for entitlement to admission at a school where demand for places means that the oversubscription criteria applies<sup>37</sup>.

#### 1.43 Parental Preference

Section 86 of the School Standards and Framework Act 1998 requires a local authority to enable a parent to express a preference for the school they wish their child to attend. For the purpose of this document this is defined as 'enacting parental preference'.

1.44 Parental preference does not give a right to a place in their chosen school. If there are places available at the parents' preferred school, the admission authority's decision should usually be to accept an application for admission. This can mean that some learners do not

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<sup>35</sup> This relates to learners of compulsory school age only.

<sup>36</sup> 005/2013.

<http://wales.gov.uk/topics/educationandskills/publications/guidance/schooladmission/?lang=en>

<sup>37</sup> Further information regarding the oversubscription criteria is outlined in Section 3 (Question 40) of this document

attend their nearest suitable school and live some distance away from the school they attend.

- 1.45 If a parent exercises their parental preference when determining which school their child attends and the chosen school is not the nearest suitable school agreed by the local authority, the learner is not entitled to free transport provision – even if the learner meets the distance or age criteria usually entitling them to free transport provision. In these circumstances a local authority may provide discretionary transport provision under section 6 of the Measure, but if the local authority decides to use this power Welsh Government recommends that they ensure they provide the same provision to all learners in the same circumstance within their authority. Further information regarding this provision is provided in Chapter 5 – ‘Parental Responsibilities’ paragraphs 5.1 - 5.9 and 5.11 - 5.12.

### Children’s Preference

Local authorities should also bear in mind the the United Nations Convention on the Rights of the Child (“UNCRC”) and any commitments made to in relation to it.

- 1.46 When a child exercises their preference for a school they would like to attend, if it is not their nearest suitable school the learner is not entitled to free transport provision. Even if they meet the distance and age criteria usually applied to receive free transport provision. Further information regarding this provision is provided in Chapter 5 – ‘Parental Responsibilities’ paragraphs 5.1– 5.9 and 5.11– 5.12.

## **Attendance of Pupils at School**

- 1.47 Section 444 of the Education Act 1996 creates the offence on the part of a parent of failing to secure the regular attendance at school of a registered pupil. Section 20 of the Measure amends section 444 to provide that a parent will have a defence to a prosecution if a local authority has failed to discharge, where required, their statutory duties under this Measure to make travel arrangements to facilitate the attendance of their child at school.

## **Looked After Children**

- 1.48 The Definition of a ‘looked after’ child is the term used within the Children Act 1989 to describe a person (under the age of 18) who is in the care of the local authority, or who is provided with accommodation for more than 24 hours by a local authority<sup>38</sup>. This could be a placement with foster carers; in residential homes or with parents or other relatives (‘kinship care’). These are social service functions within the meaning of the Social Services Act 1970 (apart from functions under Section 17, 23B and 24B)’

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<sup>38</sup> As defined by Section 22(1) of the Children Act 1989



- 1.49 A learner who is classified as a ‘looked after child’ is different to a child (learner) with dual residency<sup>39</sup>.
- 1.50 Under Section 3 and 4 of the Measure, the same age and distance criteria apply to ‘looked after’ children (learners) as to those who are not looked after. But the provision that the learner must attend their nearest suitable school to their home does not apply to ‘looked after’ learners (in the same way it applies to learners who are not looked after). Further information explaining the justification for this difference in provision is provided in Section 3 (Question 5) of this document.

## Ordinary Residence

- 1.51 Section 19 of the Measure sets out the provisions for determining a person’s ordinary residence in particular circumstances. There is no statutory definition of the term ‘ordinary residence’. However for the purposes of this document ‘ordinary residence is defined as ‘where a learner usually lives, or if under 16, where those with parental responsibility for the learner live.’
- 1.52 ‘Living’ means more than occasionally visiting. If a learner has no ordinary residence they should be treated as being ordinarily resident at the place at which they are for the time being resident<sup>40</sup>.
- 1.53 Dual residency
- Dual residency means a learner who has more than one home (ordinary place of residence). This provision applies to learners whose parents are not living together with the learner living partly with each parent<sup>41</sup>, or with a parent and other carer, foster placement etc.
- 1.54 Where a learner has dual residence both places of residence should be regarded as the learner’s ordinary residence. If a learner lives at more than two such places then only those two places nearest to their school will qualify<sup>42</sup>.
- 1.55 Sections 3 and 19 of the Measure place a duty on a local authority to provide free transport for learners (of dual residence) to their nearest suitable school if the learner is of compulsory school age and the residence(s) meet the statutory distance criteria (see paragraphs 1.20–1.25 and 1.50). If the statutory criteria is not met local authorities still

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<sup>39</sup> Further information on looked after children is provided in Section 3 (Questions 4 and 5) of this document. Further information of what transport entitlement is given to learners in dual residency is outlined in paragraphs 1.53 – 1.58.

<sup>40</sup> Section 19(1) of the Measure.

<sup>41</sup> ‘Parent’ means a parent within the meaning of section 576(1) of the Education Act 1996 who is an individual and includes any person who is not a parent but who has parental responsibility, or who has care for the child.

<sup>42</sup> Section 19(6) of the Measure.

have the option of providing discretionary transport under section 6 powers. Further advice regarding this provision is provided in Section 3 (Question 6) of this document.

- 1.56 Section 9 of the Education Act 1996 states that local authorities must have regard to the general principle that learners are to be educated in accordance with the wishes of their parents so far as reasonably practicable. So far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure.
- 1.57 Where a learner has two places of ordinary residence which are located in two different local authorities, each of those local authorities will be responsible for the learner's travel arrangements when the learner is residing in its area.
- 1.58 Further information regarding dual residency is provided in, Chapter 5 – 'Parental Responsibilities' – paragraph 5.11.

## **Walking Distances and Available Walking Routes**

*[A separate consultation is being undertaken to inform an update of this section]*

- 1.59 Section 3 of the Measure sets out the distance criteria whereby learners are entitled to free transport to and from their nearest suitable school. Distances below these thresholds for the purpose of this document are referred to as 'walking distances'.
- 1.60 Under section 3(7) of the Measure the walking distance should be measured by the 'shortest available route'. A route is considered to be available if it is safe (as far as reasonably practicable) for a learner without a disability or learning difficulty to walk the route alone or with an accompanying adult if the learners age and levels of understanding requires this.
- 1.61 If a route is not 'available' and there is no alternative 'available' walking route which can be used instead, the learner cannot be expected to walk to their nearest suitable school even though the distance from home to school is less than the distance limit that applies to the learner's age.
- 1.62 In such cases the local authority has a duty to provide the learner with free transport provision to and from their nearest suitable school, But only if the learner is attending their nearest suitable school. If a learner does not attend their nearest suitable school and if the walking route is not 'available' the local authority is not required to provide free transport.
- 1.63 Assessment of walking distances and routes to school should be carried out by local authorities in accordance with the Welsh

Government Statutory Guidance on Risk Assessing Walked Routes to School; the Health and Safety Executive guidance and other relevant legislation governing health and safety provision<sup>43</sup>. Further advice on when risk assessments should be undertaken is provided in Section 3 (Question 2) of this document.

## **Transport for Learners Not in Compulsory Education or Training**

### Post-16 Learners

- 1.64 Section 2 of the Measure requires local authorities to assess, where practicable, the travel needs of all learners under the age of 19 who receive education or training and who are ordinarily resident in the authority's area. This includes those who have reached 19 but started a course when under 19 and continue to attend that course.
- 1.65 There is no statutory duty for a local authority to provide free transport to post 16 learners who continue their studies in mainstream further education or training.
- 1.66 There is no statutory duty on a local authority to provide free transport to a learner with a disability or learning difficulty in post-16 further education or training, although in assessing learner travel needs under section 2(4) of the Measure, a local authority "must have regard in particular" to the needs of learners who are disabled or with learning difficulties. Further information on transport costs for children with statements is provided at 8.87 to 8.90 of the SEN Code of Practice for Wales<sup>44</sup>.
- 1.67 Section 6 of the Measure provides local authorities with the power to provide discretionary transport arrangements for post-16 learners. Further information on discretionary transport provisions is provided in paragraphs 1.97 – 1.104.
- 1.68 The Measure repeals Section 509AA of the Education Act 1996 so local authorities in Wales are no longer required to publish a separate transport policy statement for learners of sixth form age. However, under the Learner Travel Information (Wales) Regulations 2009, local authorities are required to include information about post-16 learners' travel provisions within the information they publish about general arrangements and policies in respect of home to school learner travel. Further information on the Learner Travel Information (Wales) Regulations 2009 is provided in Chapter 3 paragraphs 3.1 -3.6).

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<sup>43</sup> <http://www.hse.gov.uk/workplacetransport/separating.htm>

<sup>44</sup> <http://learning.wales.gov.uk/resources/special-education-needs-code-of-practice/?lang=en>

1.69 Children Under 5 Years of Age (Nursery).

Section 2(1) of the Measure requires local authorities to assess the travel needs of learners who are under the compulsory school age (under five years of age), attending nursery education<sup>45</sup> and who are ordinarily resident in the authority's area.

1.70 There is no statutory duty for a local authority to provide free transport to any nursery learner who is under five years of age.

1.71 Section 6 of the Measure provides local authorities with the power to provide discretionary transport arrangements for learners under the age of five who attend nursery. Further information on discretionary transport provisions are provided in paragraphs 1.97 – 1.104.

1.72 Under the Learner Travel Information (Wales) Regulations 2009, local authorities are required to include information about nursery learners' travel provisions within the information they publish about general arrangements and policies in respect of home to school learner travel. Further information on the Learner Travel Information (Wales) Regulations 2009 is provided in paragraphs 3.1 -3.6)

**Welsh Medium / English Medium Education**

1.73 When deciding which schools are most suitable for learners in their area, local authorities and Welsh Ministers have a duty under Section 10 of the Measure to 'promote access to education and training through the medium of Welsh'.

1.74 Section 6 of the Measure provides local authorities with the power to provide discretionary transport arrangements for learners who are not attending their nearest suitable school because of language preference. Further information regarding discretionary transport provision is provided in paragraphs 1.197– 1.104.

1.75 Authorities should make clear in their school admissions documents their policy on providing free or assisted travel to schools teaching through the medium of Welsh or English. Preference for either language should be treated equally.

1.76 Under the Learner Travel Information (Wales) Regulations 2009, local authorities are required to include information about learners' travel provisions with regard to accessing Welsh and English medium schools. This information must be included within the information they publish about general arrangements and policies in respect of home to school travel. Information on the Learner Travel Information (Wales) Regulations 2009 is provided in Chapter 3 paragraphs 3.1 -3.6.

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<sup>45</sup> This provision covers all children aged under 5 (those aged 3 and 4) who receive education in any school or nursery setting whether the learning establishment is maintained or non-maintained.

- 1.77 The School Standards and Organisation (Wales) Act 2013 places a duty on local authorities in Wales<sup>46</sup> to prepare a Welsh in Education Strategic Plan (WESP) for their area. A WESP sets out a local authority's proposals on how it will carry out its education functions to:
- improve the planning of the provision of education through the medium of Welsh ("Welsh medium education") in its area
  - improve the standards of Welsh medium education and of the teaching of Welsh in its area
- 1.78 In setting out how this will be delivered travel of learners to access this provision may need to be taken into account and incorporated into the plan.

### **Transport to Denominational Schools**

- 1.79 Section 6 of the Measure provides local authorities with the power to provide discretionary transport arrangements for learners who are not attending their nearest suitable school because of denominational preference. Further information regarding discretionary transport provision is provided in paragraphs 1.97 – 1.104.
- 1.80 Paragraph 1 of the Schedule to the Learner Travel Information (Wales) Regulations 2009 (SI 2009/569) requires local authorities to make clear in their school admissions documents their policy on providing free or assisted travel to denominational schools.
- 1.81 Under the Learner Travel Information (Wales) Regulations 2009, local authorities are required to include information about learners' travel provisions to denominational schools. This information should be included within the information they publish about general arrangements and policies in respect of home to school travel. Information on the Learner Travel Information (Wales) Regulations 2009 is provided in Chapter 3 paragraphs 3.1 -3.6.

### **Special Educational Needs (SEN), Disabilities and Learning Difficulties**

- 1.82 Under Sections 2 (4) (a) and (4) (b) of the Measure a local authority must consider a learner's disabilities and learning difficulties when assessing the travel needs of learners in their area.
- 1.83 With regard to the provision of learner transport, when determining whether a child is attending the nearest suitable school, a local authority must take into account the suitability of that school by having regard to (amongst other things) any learning difficulties the learner may have, irrespective of whether the learner has a SEN statement<sup>47</sup>

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<sup>46</sup> Section 84 of the School Standards and Organisation (Wales) Act 2013

<sup>47</sup> Section 3(6)

The definition of “learning difficulty” within the Measure<sup>48</sup> includes reference to any disability the learner may have which either prevents or hinders that person from using facilities provided at a school or other educational establishment.

- 1.84 Under Section 3 of the Measure if an independent school named in a statement for a child<sup>49</sup> or a non-maintained special school is determined to be a learner’s nearest suitable school and the learner meets the eligibility criteria for free transport a local authority is required to provide free home to school transport provision for the learner.
- 1.85 The transport arrangements for a learner with SEN will depend on their individual circumstances and the route they must travel. Under Section 4 of the Measure, if a learner of compulsory school age cannot walk (accompanied or unaccompanied) to their nearest suitable school because of a disability or learning difficulty which they have, even if the distance is less than the statutory limit for their age group. Local authorities will need to consider what arrangements are appropriate to facilitate the learners attendance at school in accordance with their learner travel policy.
- 1.86 The Equality Act 2010 contains a number of duties which are relevant when local authorities are complying with their duties under the Measure.
- 1.87 The Public Sector Equality Duty (PSED) in section 149 of the Equality Act 2010 places a duty on local authorities, when carrying out their powers and duties, *to have due regard* to the need to promote equality and opportunity for people with protected characteristics (of which disability is one) and to eliminate unlawful discrimination. The Measure specifically requires local authorities to have regard to any disability or learning difficulty of learners in making various assessments and decisions under it. However, this does not replace the need to also comply with the PSED in making assessments and decisions under the Measure. Therefore, local authorities should always consider whether there are any wider adverse impacts on protected groups of the assessments and decisions which they make under the Measure and, if there are, whether it would be appropriate to take steps to mitigate the effects of those.
- 1.88 Separately from the PSED, section 29(7) of the Equality Act 2010 places a duty on local authorities to make certain reasonable adjustments in relation to disability when providing services or carrying out public functions. An authority cannot charge for any reasonable adjustments it makes under this duty.
- 1.89 Section 4 of the Measure in effect creates a specific requirement for local authorities to adjust their travel arrangement provision so that if a

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<sup>48</sup> Section 24(1).

<sup>49</sup> Under section 324 of the Education Act 1996.

child with a disability or learning difficulty lives closer to their nearest suitable school than the distances specified in section 3, but travel arrangements are necessary to facilitate the child's attendance at that school, the authority has a duty to make those arrangements.

- 1.90 However, the reasonable adjustments duty is still relevant to the nature of transport or travel arrangements which the local authority make under the Measure. The local authority should ensure that the arrangements they make allow disabled learners to benefit in the same way as those who are not disabled – for example, by ensuring that the transport provided is accessible and safe for the particular disabled learner.
- 1.91 Local Authorities have a duty to assess the travel needs of all learners under the age of 19 who receive education or training within their area<sup>50</sup>. Local authorities do not have a duty to provide free or subsidised school transport arrangements for learners over the age of 16), regardless of any additional learning needs they may have. Local authorities may use their discretionary powers in section 6 of the Measure to provide assistance if they wish. It is recommended that any such provision applies to all learners in similar circumstances within their authority area.
- 1.92 'The Special Educational Needs Code of Practice for Wales'<sup>51</sup> sets out the issues to be considered by authorities when providing transport for learners with a SEN statement. An authority should review a learner's entitlement and transport needs on a regular basis, irrespective of whether or not the statement specifically includes transport provision.
- 1.93 It is recommended that local authorities have a clear and consistent policy on transport provision for pupils with SEN. Further information on this provision is provided in Section 3 (Questions 12 to 14).
- 1.94 As part of the procurement procedures for tendering, including where they are procuring transport which may be used for disabled learners, local authorities need to bear in mind their duties under the Data Protection Act 1998 in relation to personal data, including sensitive personal data<sup>52</sup>. Tender documents should not identify learners to be transported or information that could be used to identify the learner.
- 1.95 It is recommended that local authorities work with schools and operators appropriately to ensure that the only information which is made available to operators about learners is that which is necessary for the operators to have to ensure that appropriate transport provision for the learner can be made.

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<sup>50</sup> Section 2(2) of the Measure.

<sup>51</sup> Reprinted in January 2004 (ISBN 0 7504 2757 4) (paragraphs 8:87 to 8:90) [SEN code of practice].

<sup>52</sup> [http://www.ico.gov.uk/upload/documents/library/data\\_protection/practical\\_application/guidance\\_on\\_data\\_security\\_breach\\_management.pdf](http://www.ico.gov.uk/upload/documents/library/data_protection/practical_application/guidance_on_data_security_breach_management.pdf)

- 1.96 Further information on the provision of disclosure and barring of information is provided in Section 3 (Questions 17 – 19).

## Discretionary Transport Arrangements

- 1.97 Section 6 of the Measure gives local authorities the power to make any arrangement they think fit to facilitate the travel of learners to and from a place where they receive education or training. The power applies in relation to a learner living or studying in the authority's area.
- 1.98 Discretionary travel provisions are not the same as statutory transport provisions<sup>53</sup>. A local authority does not have to use their discretionary powers to provide free or assisted travel if they do not think the provision is appropriate to facilitate the transport of learners within their authority.
- 1.99 Examples of when discretionary transport provision might be used include:
- Transport for learners who are not of compulsory school age (i.e. under the age of five attending nursery school or in post 16 education or training)
  - Transport for learners who are not attending their nearest suitable school
  - Transport for learners who live below the statutory distance limit relevant to the learner's age
- 1.100 If a local authority does make use of their Section 6 powers, it is recommended that the policy applies all learners in similar circumstances living in that authority's area. The local authority should ensure that any policy is fair, reasonable and complies with relevant equality legislation to ensure that they do not discriminate unlawfully between learners when using their section 6 powers.
- 1.101 Travel arrangements made by a local authority cannot discriminate between different categories of learners. Learners of compulsory school age, at establishments that are not maintained schools but do fall within Section 1(4) of the Measure as "other relevant places", must not be treated less favourably than learners of the same age at maintained schools<sup>54</sup>. Other learners receiving full-time education or training at establishments which are not maintained schools (but do fall within Section 1(4) of the Measure) must not be treated less favourably than learners of the same age at maintained schools. Likewise there should be no discrimination between learners attending maintained schools and those of the same age with learning difficulties, a disability or who are 'looked after' by a local authority attending learning establishments other than maintained schools.

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<sup>53</sup> Statutory provisions are those which a local authority must provide to specific learners who meet the eligibility criteria entitling those learners to free transport.

<sup>54</sup> Section 9 of the 2008 Measure



- 1.102 In accordance with the Learner Travel Information (Wales) Regulations 2009, local authorities must<sup>55</sup> publish information about their policies for providing discretionary travel within their learner travel policy. Further information on these Regulations is provided in paragraphs 3.1-3.6.
- 1.103 If a local authority chooses to make use of the Section 6 power to provide discretionary transport arrangements, the local authority also has the power to remove this provision at a later date. In doing this the authority should follow the correct procedures for withdrawal of transport provision in line with their relevant policy protocols, for instance, public consultation.
- 1.104 If a local authority decides to change or remove the discretionary transport provision it provides, it must publish<sup>56</sup> the information before 1 October of the year preceding the academic year in which the changes will come into force in accordance with the Learner Travel Information Regulations 2009.

## **The Disclosure and Barring Arrangements.**

- 1.105 The Protection of Freedoms Act 2012 (the '2012 Act') sets out the new pre-employment vetting processes that must be followed by local authorities and education providers when checking the records of people who want to work with vulnerable groups this includes children, to ensure they are suitable and do not pose a risk.
- 1.106 The new disclosure and barring arrangements came into force on 10 September 2012. For individuals who do not work in regulated activity, but work (paid or unpaid) with children and vulnerable people, employers can, but are not required to, obtain criminal records checks.
- 1.107 In December 2012, the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) merged and are now called the Disclosure and Barring Service (DBS). CRB checks are now called DBS checks.
- 1.108 The DBS helps employers make safer recruitment decisions and prevent unsuitable people from working with children and vulnerable groups, through its criminal record checking and barring functions:
- 1.109 The checking service allows employers to access the criminal record history of people working, or seeking to work with children or adults. The DBS issues three types of disclosure, each representing a different level of check. The level of check is determined by the duties

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<sup>55</sup> Regulation 4 of the 2009 Regulations.

<sup>56</sup> In accordance with regulation 4 of the Learner Travel Information (Wales) Regulations 2009 (SI 2009/569)

of the particular position or job involved. Jobs that involve caring for, supervising or being in sole charge of children or adults require an enhanced DBS check.

- 1.110 The barring side of the DBS provides expert caseworkers who process referrals about individuals who have harmed or pose a risk of harm to children and/or vulnerable groups. They make decisions about who should be placed on the children's barred list and/or adults barred list and prevented them by law from working with children or vulnerable groups. It is against the law for employers to employ someone or allow them to volunteer in this kind of work if they are on one of the barred lists.
- 1.111 The DBS will only issue certificates to applicants. Employers will need to ask applicants for sight of their DBS Certificate. Someone who is aged under 16 cannot apply for a DBS check.

#### New definition of 'Regulated Activity'

- 1.112 The new DBS only covers those who may have regular or close contact with children and vulnerable adults, defined as 'Regulated Activity' in legislation. Importantly for schools and FE colleges, the definition and scope of Regulated Activity with children has changed. Being clear about the definition of Regulated Activity is important because:
- Roles that fall within the new definition of Regulated Activity will require an enhanced DBS check and the appropriate barred list check (for children, adults or both)
  - An organisation which knowingly allows a barred person to work in regulated activity will be breaking the law
  - If you dismiss or remove someone from regulated activity (or you would have done had they not already left) because they harmed or posed a risk of harm to vulnerable groups including children, you are legally required to forward information about that person to the DBS (known as the 'duty to refer'). It is a criminal offence not to do so. If you believe that the person has committed a criminal offence, you are also strongly advised to pass the information to the police.
- 1.113 Regulated Activity<sup>57</sup> (i.e. work that a barred person must not do) in relation to children can be summarised as unsupervised activity in a limited range of establishments with the opportunity for contact with children. These specified establishments include schools, children's homes, childcare premises and pre-school establishments.
- 1.114 Under the new disclosure and barring arrangements the scope of Regulated Activity includes unsupervised activities such as driving a vehicle only for children (dedicated learner transport).

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<sup>57</sup> Section 5 and Schedule 4, Part 1 of the Safeguarding Vulnerable Groups Act 2006

1.115 In addition, in order to be regarded as Regulated Activity such unsupervised activity performed must be done frequently. 'Frequently' means carried out by the same person frequently (once a week or more often), or on more than three<sup>58</sup> days in a 30 day period (or in some cases, between the hours of 2am and 6am)

## Vehicle Standards

1.116 Vehicles used for learner transport are required to comply with UK road safety and transport legislation requirements. Local authorities and Governing Bodies of Maintained schools should liaise with the Vehicle and Operator Services Agency (VOSA)<sup>59</sup>, the Health and Safety Executive (HSE) and the Traffic Commissioner about any concerns they have about suspected breaches of legal standards.

1.117 Local authorities should put in place robust monitoring and evaluation procedures to ensure that current legislation requirements are clearly set out in their contracts and are met. This includes the provision that by 1 October 2014, seat belts must be fitted to every seat on dedicated buses used to transport learners to and from school (Safety on Learner Transport (Wales) Measure 2011). Further information on the Safety on Learner Transport (Wales) Measure 2011 and seat belt provision is provided in Chapter 4 paragraphs 4.6 – .4.21.

## Licensing and Training of Bus Drivers

1.118 In 2008 under the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007<sup>60</sup> the Driving Standards Association (DSA) required that by 10 September 2013 all coach and bus drivers in the UK must have a 'Driver Certificate of Professional Competence' (CPC). To obtain a CPC, a driver must complete a minimum of 35 hours periodic driver training within a 5 year period<sup>61</sup>. Once a driver has successfully completed the CPC training, they will be issued with a 'Driver Qualification Card' (DQC), which they will need to keep with them when driving professionally. The CPC and DQC will need to be renewed every 5 years, therefore a bus or coach driver will need to undertake 35 hours (minimum) of driver training over the next 5 year time period (2013-2018) to qualify for renewal. The DSA has agreed a 'one off arrangement' that dual category drivers (meaning drivers of both bus and coaches and lorries) once having completed their initial September 2013 training deadline, will have 6 years to undertake their

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<sup>58</sup> amended by SI 2010/1154 The Safeguarding Vulnerable Groups Act 2006 (Regulated Activity, Devolution, Miscellaneous Provisions) Order 2010.

<sup>59</sup> Further information about the VOSA is provided in the Section 3 (Question 20)

<sup>60</sup> derived from EU Directive 2003/59/EC on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods and passengers.

<sup>61</sup> In 2009, CPC for lorry drivers was also introduced, with a requirement that by 10 September 2014 a lorry driver will be required to have completed a minimum of 35 hours driver training to obtain a CPC certificate.

next block of training – meaning this training session will need to be completed between September 2013 and September 2019.

- 1.119 There is currently no legal requirement that the bus and coach or dual category CPC training has to include a specific learner transport training module for drivers who work on buses or coaches used for learner travel.

## **Change in School Session Times**

- 1.120 Section 11 of the Measure requires local authorities and the Welsh Ministers to promote the use of sustainable modes of travel when exercising their functions under the Measure. This means that a local authority should consider sustainability when assessing needs and making travel arrangements.
- 1.121 Section 21 of the Measure amends Section 32 of the Education Act 2002 to allow local authorities to issue a notice to governing bodies of certain schools to change school session times where it would promote sustainable modes of travel or improve the effectiveness or efficiency of travel arrangements. The Changing of School Session Times (Wales) Regulations 2009 set out the procedures to follow when the local authority intends to change school session times.
- 1.122 Section 32 of the Education Act 2002, as amended by the Learner Travel (Wales) Measure 2008, sets out who is responsible for determining:
- the dates of school terms
  - school holidays
  - the times of school sessions
- 1.123 For foundation, voluntary aided and foundation special schools, the governing body determines the above<sup>62</sup>. For community, voluntary controlled, community special schools and maintained nursery schools, the governing body determines the times of school sessions and the local education authority determines the dates of the school terms and holidays<sup>63</sup>.
- 1.124 However where a local authority considers that a change in a school's session times is necessary or expedient in order to promote the use of sustainable modes of travel, or improve the effectiveness or efficiency of travel arrangements made or to be made, it can give written notice to the governing body that they will determine the time the school's first session begins and its second session ends (or if there is only one session, its start and end<sup>64</sup>).

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<sup>62</sup> section 32(2) Education Act 2002

<sup>63</sup> section 32(1) Education Act 2002

<sup>64</sup> section 32(5) to (9) Education Act 2002

1.125 Regulation 3 of the Changing of School Session Times (Wales) Regulations 2009 sets out the procedures to be taken by the local education authority when it proposes to change the session times of a community school, voluntary controlled school, community special school, maintained nursery school, foundation school, voluntary aided school or foundation special school.

These procedures include:

- Consulting with the governing body; head teacher and other staff at the school
- Holding a meeting with the parents and pupils at the school
- Giving at least three months notice of the change and when it is to take effect.

1.126 In accordance with the Learner Travel Information (Wales) Regulations 2009, any changes to learner travel arrangements, which occur as a result of amendments to school session times must<sup>65</sup> be made available and published by 1 October preceding the academic year to which the information relates.

1.127 Regulation 4 of the Changing of School Session Times (Wales) Regulations 2009 sets out the procedures to be taken by a governing body of a community, voluntary controlled, community special school or maintained nursery school when it proposes to make changes to school session times.

1.128 Governing bodies must<sup>66</sup> consult with the local authority and school staff, prepare a statement outlining the changes and hold a meeting with the parents of pupils at the school before making a change. This regulation does not apply to foundation, voluntary aided and foundation special schools. If the change is to the time that a school session begins in the morning or ends in the afternoon, the governing body must give at least three months' notice of the change and the change must only take effect at the beginning of a school year. Otherwise it must give at least six weeks' notice, and the change can only take effect at the beginning of a school term.

## **Charging for Transport**

1.129 Local authorities may not charge for transport arrangements that it is required to make for learners of compulsory school age under Section 3 and 4 of the Measure, except in relation to looked after children where the authority making the travel arrangements for a child who is looked after by another authority. In these cases it can recoup costs from the placing local authority (under section 18 of the Measure).

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<sup>65</sup> Regulation 4 of the 2009 Regulations.

<sup>66</sup> Regulation 4 of the Changing of School Session Times (Wales) Regulations 2009.

- 1.130 When a local authority uses its section 6 powers to provide discretionary travel arrangements for learners not entitled to free transport provision, a charge can be made for these arrangements.
- 1.131 For learners who are not of compulsory school age, there is no restriction on charging. With regard to learners of compulsory school age, charging must be in accordance with Section 455 and 456 of the Education Act 1996 (as amended by Section 22 of the Measure).
- 1.132 Section 6 of the Transport Act 1985 provides for the compulsory registration of local bus services with the Traffic Commissioner. Local Education Authorities must register all services carrying fare paying passengers under section 6 of the 1985 Act. Under Section 46 of the Public Passenger Vehicles Act 1981, a local authority can use a school bus to carry fare paying passengers when it is (or is not) being used to carry children entitled to free school transport. Contracted operators must register any services where learners not entitled to free learner transport are carried on payment of a fare.

## **General Powers**

- 1.133 Under Section 15 of the Measure Welsh Ministers have the power to give guidance and directions. When exercising any of their functions under the Measure, local authorities and governing bodies of maintained schools and further education institutions must have regard to guidance issued by the Welsh Ministers.
- 1.134 Welsh Ministers may also issue a direction under section 15 to require authorities to make learner travel arrangements under sections 3, 4 or 6 of the Measure. Such directions can be given to one or more local authorities or local authorities generally. It allows Welsh Ministers to direct on individual cases or on general policy matters. The power may be exercised irrespective of whether a local authority is in default of its duties. It does not take the place of, or affect, the more general powers of direction that Welsh Ministers have under sections 496-497A of the Education Act 1996.
- 1.135 The Welsh Government has no functions in relation to vehicle standards, inspection, enforcement or licensing of vehicles or drivers. These matters are the responsibility of the UK Government.

## **Other Legal Considerations.**

- 1.136 Local authorities and governing bodies of maintained schools are also required to take the following into account:

Equality and Human Rights legislation such as:

- Equality Act 2010

- Welsh Language Act 1993
- Human Rights Act 1998.

Health and safety legislation such as:

- Health and Safety at Work etc Act 1974
- Management of Health and Safety at Work Regulations 1999 (SI 1999/3242)
- Workplace Health, Safety and Welfare Regulations 1992 (SI 1992/3004)
- Guidance in 'Workplace Transport Safety' (HSG 136), published by the Health and Safety Executive in 2005
- Safeguarding Vulnerable Group Act 2006

Education legislation such as:

- Education Acts (1996 and 2002)
- Learning and Skills Act 2000
- School Standards and Framework Act 1998
- School Standards and Organisation (Wales) Act 2013
- Special Educational Needs Code of Practice for Wales (reprinted) 2004
- Statutory School Organisation Code 2013
- Statutory School Admissions Code 2013
- Statutory School Admissions Appeals Code 2013
- Welsh in Education Strategy Plan and Assessing Demand for Welsh-medium Education (Wales) Regulations 2013

Transport legislation such as:

- Transport Act 1985
- Public Passenger Vehicles Act 1981
- Road Vehicles (Construction and Use) Regulations 1986 (SI 1986/1078)
- Road Traffic Act 1998
- The Learner Travel (Wales) Measure 2008
- The Learner Travel Information (Wales) Regulations 2009
- Travel Behaviour Code Statutory Guidance 2009
- Statutory Guidance 'Risk Assessing Walked Routes to School 2014'

# Section 1: Statutory Provisions.

## Chapter 2: The All-Wales Travel Behaviour Code.

### Overview

- 2.1. The Learner Travel (Wales) Measure 2008 (“the Measure”) places a legal duty<sup>67</sup> on the Welsh Ministers to make a Travel Behaviour Code and to publish it. The statutory All Wales Travel Behaviour Code (the “Travel Code<sup>68</sup>”) has been in operation since January 2010 and sets out the responsibilities of learners when travelling. The Travel Code is accompanied by statutory guidance issued under section 15 of the 2008 Measure. This Guidance provides advice on how to ensure, as far as reasonably practicable, a safe journey and describes the rights of learners when travelling.
- 2.2. The purpose of the Travel Code and associated Guidance is to promote safety when travelling, by laying down a set of behavioural standards across Wales, for all learners. The Guidance outlines the procedures local authorities, governing bodies and head teachers must adhere to under the Travel Code.
- 2.3. The Travel Code is divided into two Sections. Section one applies to behaviour when travelling on all modes of transport (i.e. buses, trains cycling, walking, passengers in a parent’s or other person’s car or any other mode of travel). Section two covers behaviour specific to bus travel and is known as the “Bus Travel Code”. The latter provides additional instruction on behavioural requirements for learners travelling on buses to and from school.
- 2.4. The Travel Code supersedes all other learner travel codes of conduct used by local authorities prior to the Travel Code’s introduction. However local authorities may wish to publish supplementary travel information and policies in accordance with the Travel Code provided that they do not contradict the statutory provisions outlined within the Travel Code.
- 2.5. The Travel Code sets out specific requirements regarding the behavioural conduct of learners. It outlines a set of common behaviour standards which apply to all modes of travel by learners irrespective of whether the travel is provided by a local authority, governing body or other modes of travel or transport used by learners (such as taxis, public buses, trains, bicycles, walking, parents’ cars or any other modes of travel).

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<sup>67</sup> Section 12 of the Measure

<sup>68</sup> <http://wales.gov.uk/topic/transport/publications/travelbehaviourcode/?lang=en>



- 2.6. It is a compulsory code of conduct for all learners under the age of 19 years (or who have reached 19 but started a course when under 19 and continue to attend that course)<sup>69</sup>.
- 2.7. It is recommended that local authorities, education institutions, parents, train and bus service operators, taxi and other contracted operators in Wales promote awareness and understanding of and compliance with the Travel Code. (Further information regarding parents' and schools' responsibilities in relation to the Travel Code are provided in Chapters 5 and 6 (respectively)).
- 2.8. Section 12 of the Measure states that the Travel Code applies to home to school journeys and journeys undertaken between places of learning during the day<sup>70</sup>.
- 2.9. The Travel Code statutory guidance<sup>71</sup> sets out a framework for the sanctions regime within the Travel Code and provides for the removal of free or subsidised transport for set periods of time if a learner misbehaves on learner transport.
- 2.10. Welsh Ministers have a statutory duty to review the Travel Code from time to time<sup>72</sup>. Prior to reviewing the Travel Code, Welsh Ministers must consult such persons as they consider appropriate, for example, local authorities, schools and learners<sup>73</sup>.

## Enforcement of the Travel Code - Sanctions<sup>74</sup>

- 2.11. Where a local authority is under a duty (under Section 3 and 4 of the Measure) to provide transport, it must follow the requirements set out in Section 14 of the Measure, before withdrawing transport provision, namely:
- Be satisfied that the learner has failed to comply with the travel behaviour code (table below)

Your Responsibility	Your Safety	Your Rights

<sup>69</sup> Section 89(2A) of the Education and Inspections Act 2006 provides that head teachers must include the Travel Code within their behaviour policy and ensure compliance with the Travel Code.

<sup>70</sup> Such as travel to attend courses in line with the Learning and Skills (Wales) Measure 2009 (14-19 Pathways) - Further information on the Learning and Skills (Wales) Measure 2009 is provided in Section 3 (Question 25).

<sup>71</sup> <http://wales.gov.uk/topics/transport/integrated/learnertravel/travelcode/tbcstatutoryguidance/?lang=en>

<sup>72</sup> This duty is set out in Section 12(4) of the Measure.

<sup>73</sup> Section 12(6) of the Measure.

<sup>74</sup> Guidance about the recommended procedures for enforcing sanctions with relation to the Travel Code are provided in Section 3 (Question 26).

<ul style="list-style-type: none"> <li>• Always respect others including other learners, drivers and the public</li> <li>• Always respect vehicles and property</li> <li>• Always be polite</li> <li>• Never drop litter</li> <li>• Always obey the law</li> </ul>	<ul style="list-style-type: none"> <li>• Always behave well when travelling</li> <li>• Always follow the driver's instructions when travelling</li> <li>• You must not distract the drivers</li> <li>• Always cross the road safely and sensibly</li> <li>• Always travel by a safe route</li> </ul>	<ul style="list-style-type: none"> <li>• To be safe when travelling</li> <li>• To be treated fairly and with respect</li> <li>• To tell someone if somebody is causing you problems</li> <li>• Not to be bullied or picked on</li> </ul>
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**and** that the following conditions applicable to the learner are met:

- 1. Provide the learner and the parent of the learner with an opportunity to make representations and take those representations into account
- 2. Consult with the head teacher of the school or relevant place of learning at which the learner is a registered pupil, and give the head teacher notice of the decision at least 24 hours before the withdrawal takes place.
- 3. Ensure that the decision to withdraw transport arrangements is reasonable in the circumstances. In determining whether this is the case, the local authority must take the following matters into account:
  - whether the period of withdrawal of transport is proportionate in the circumstances of the case
  - whether there are any special circumstances relevant to the withdrawal of travel arrangements which are known to the local authority (or of which the authority ought to be aware of) including:
    - the learner's age
    - any special educational needs the learner may have;
    - any disability the learner may have
    - whether the learner would lose an opportunity to take a public examination and
    - whether suitable alternative arrangements can be reasonably made by the learner's parents.
- 4. Give the learner's parents at least 24 hours notice before the withdrawal of transport provision takes place (Chapter 5 – 'Parental Responsibilities' paragraph 5.10 explains the parental obligations regarding what provisions must be put in place where transport is removed)
- 5. Ensure the period of withdrawal of transport provision does not exceed 10 consecutive schools days.

- 6. Ensure that the period of withdrawal would not result in the learner having travel arrangements withdrawn for more than 30 school days in the school year in which the withdrawal takes effect.

2.12. The Measure provides Welsh Ministers with the power to make regulations to<sup>75</sup>:

- Change the number of days for which transport can be withdrawn
- Specify the categories of person who may appeal
- Specify the circumstances in which appeals can be made
- Specify the constitution of appeal panels
- Specify the appeals procedures
- Make provisions for appeals against withdrawal of transport
- Make provisions for reviews of the decision to withdraw transport
- Make provision about the effect of appeal decisions
- Provide for payment of allowances to members of appeal panels
- Require information about appeals to be made available.

2.13. Where a learner has special educational needs, local authorities should consider what constitutes reasonable steps. The Special Educational Needs Code of Practice for Wales<sup>76</sup> provides further guidance on dealing with misbehaviour for disabled learners and those with learning difficulties.

## **Publication of Local Authority Travel Codes**

2.14. Local authorities are under a duty to publish the Travel Code in accordance with section 12(5) of the Measure and the requirements within the Learner Travel Information (Wales) Regulations 2009<sup>77</sup>. Chapter 3 paragraphs 3.1 -3.6 provide further information on what provisions needs to be covered by these Regulations.

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<sup>75</sup> Section 14(15) of the Measure.

<sup>76</sup>

<http://wales.gov.uk/topics/educationandskills/publications/guidance/specialeduneedscop/?lang=en>

<sup>77</sup> Paragraph 4, Schedule 1 to the 2009 Regulations

# Section 1: Statutory Provisions.

## Chapter 3: The Learner Travel Information (Wales) Regulations 2009

### Publication of School Transport Policies and Information for Parents

- 3.1. The Learner Travel Information (Wales) Regulations 2009 (“the 2009 Regulations”) replace paragraphs 8, 19 and 20 of Schedule 1 to the Education (School Information)(Wales) Regulations 1997<sup>78</sup>. The Regulations require local authorities to publish and make available information on travel arrangements made under the Measure. They set out not only what information local authorities are required to publish but also when and how the information should be published and made available to parents, learners, governing bodies, head teachers and/or other persons.
- 3.2. Travel arrangements for learners during the school day (e.g. travel to attend courses at other places of learning such as those as a consequence of the (14-19) Learning Pathways Programme) are not covered by the Regulations and are not subject to these provisions.
- 3.3. In addition to the Travel Behaviour Code, local authorities are required under the 2009 Regulations to publish the following information:-
- the general policy on providing free transport
  - the general policy on any travel arrangements made for learners for whom free transport is not provided
  - the circumstances that payment of reasonable travelling expenses will be made
  - arrangements and policies in relation to learners with learning difficulties/disabilities
  - information on how to make enquiries/complaints about travel arrangements, and any local authority appeals procedure
  - any other information that the local authority considers would be useful for learners in its area about travel arrangements made by other organisations.
- 3.4. The information must be made available by the 1 October preceding the academic year to which the information relates<sup>79</sup>. The information must be made available<sup>80</sup>:-

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<sup>78</sup> S.I. 1997/1832.

<sup>79</sup> Regulation 4(2) of the 2009 Regulations.

<sup>80</sup> Regulation 4(3) of the 2009 Regulations.

- on the local authority website
- to parents without charge on request and made available for reference by parents and other persons at:
  - at the local authority's offices; and
  - at every school maintained by the local authority
- at public libraries
- at any other relevant place which learners in the area may consider attending
- distributed to parents of pupils who are in the final year of school and may transfer to another school maintained by that authority. (The local authority only needs to give the information that is relevant to the school to which the pupil may transfer)

3.5. Local authorities must also provide free of charge<sup>81</sup> and on request from a governing body, a head teacher, a parent of a child or any other learner in the local authority area the following information:-

- information relating to the assessment of learner travel needs under section 2 of the Measure
- information relating to decisions as to the suitability of transport or travel arrangements where the local authority has a duty to make travel arrangement
- information relating to decisions as to whether a route is 'available'
- information relating to decisions as to whether travel arrangements are necessary to facilitate the attendance of the child each day at the relevant place where the child receives education or training (section 4(1) of the Measure)
- information relating to decisions to make travel arrangements using their discretionary powers (section 6 of the Measure).

3.6. Parents should be able to understand their options and any cost implications of the choice of school they make for their child. Accordingly it is recommended that local authorities provide parents with information about transport arrangements alongside, or as part of, the information made available about school admissions. (Further information on school admission criteria and publication of admission arrangements is provided in section 2.2, 2.11 and 2.12 of the Statutory School Admissions Code 2013<sup>82</sup>)

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<sup>81</sup> Regulation 5 of the 2009 Regulations.

<sup>82</sup>

<http://wales.gov.uk/topics/educationandskills/publications/guidance/schooladmission/?lang=en>

# Section 1: Statutory Provisions.

## Chapter 4: The Safety on Learner Transport (Wales) Measure 2011

### Overview

- 4.1. The Safety on Learner Transport (Wales) Measure 2011 (“the 2011 Measure”) makes amendments to the Learner Travel (Wales) Measure 2008. The purpose of those amendments is to enhance the safety of all learners, as far as reasonably practicable, on dedicated transport used for learner travel.
- 4.2. The 2011 Measure incorporates into the Measure a number of provisions about vehicle specification used for dedicated learner transport.
- 4.3. The 2011 Measure also introduces criminal offences and penalties to be used for breaches of requirements imposed under the Measure<sup>83</sup>.
- 4.4. To date the only provision introduced by the 2011 Measure to have been enacted is the requirement that every bus used for dedicated learner transport to and from school, which has been secured by a local authority or governing body of a maintained school must have seat belts fitted to every passenger seat by **1 October 2014**.
- 4.5. Other provisions introduced by the 2011 Measure which have not been enacted to date include:
  - the recording of visual images or sound on dedicated learner transport;
  - safety risk assessments of dedicated learner transport;
  - driver training (specific for dedicated learner transport);
  - Supervisors on dedicated learner transport;
  - Powers of entry and inspection of vehicles or premises owned or controlled by relevant bodies for the use of dedicated learner transport.

### Seat Belt Provision.

- 4.6. This section describes the statutory requirements in relation to seat belt provision for learner transport, which is governed by Welsh, UK and EU legislation.

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<sup>83</sup> This provision includes the use of criminal and civil sanctions.

## Legislation Governing Seat Belt Provision before 1 October 2014

4.7. The requirements for the installation of seat belts are set by the Road Vehicles (Construction and Use) Regulations 1986 (as amended). Seat belts must be fitted in all minibuses<sup>84</sup>. Seat belts must also be fitted in coaches (defined as a large bus with a maximum gross weight of more than 7.5 tonnes and with a maximum speed exceeding 60 mph first used on or after 1 October 1988<sup>85</sup>). Buses with a gross vehicle weight exceeding 3500kg and first used on or after 1 October 2001 must have seatbelts fitted to every forward and rearward facing seat<sup>86</sup>.

## Legislation Governing Seat Belt Provision after 1 October 2014

4.8. The 2011 Measure requires relevant bodies<sup>87</sup> to ensure that every bus used for dedicated learner transport<sup>88</sup> has a seat belt fitted to every passenger seat used on or after 1 October 2014.

4.9. Buses not procured by a local authority or governing body for the purpose of home to school transport will be exempt from this requirement, even where learners use these vehicles in travelling to and from home and school.

4.10. The seat belt provision applies to all buses used for dedicated learner transport between home and school, including public service buses<sup>89</sup> if they are used for any dedicated learner transport services, even if the majority of their journeys are non dedicated learner transport service routes.

4.10 Passenger seats of double deck buses used for dedicated learner transport on or after 1 October 2014 must also be fitted with seat belts in the same way as single deck vehicles.

## The Wearing of Seat Belts

4.11 The wearing of seat belts is governed by the Road Traffic Act 1988 (as amended) (“the 1988 Act”). The 1988 Act requires seated passengers aged 14 years or older in a bus or coach to use a seat belt if one is installed.

4.12 In relation to passengers under the age of 14, the driver of a vehicle is responsible for making sure that those passengers are wearing seat

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<sup>84</sup> Regulation 3 of the 1986 regulations defines a minibus as a vehicle adapted to carry more than 8 but not more than 16 passengers in addition to the driver.

<sup>85</sup> Regulation 3 of the Road Vehicles (Construction and Use) Regulations 1986 (as amended).

<sup>86</sup> Regulation 47 of the Road Vehicles (Construction and Use) Regulations 1986 (as amended).

<sup>87</sup> Statutory definition of ‘relevant body’ are each of the following ‘a local authority’ and or ‘a governing body of a maintained school’ as stated in section 14N of the 2011 Measure.

<sup>88</sup> Section 3 (Questions 30 and 31) sets out which vehicles are not covered by the 2011 Measure seat belt provision.

<sup>89</sup> Statutory definition of ‘public service buses’ is provided in the glossary (Section 2)

belts<sup>90</sup>. However, the drivers of the following types of vehicles are not bound by this requirement<sup>91</sup>:

- Large buses – with 8 seats in addition to the driver
- Small buses – with fewer than 8 seats in addition to the driver and where seat belts are not available and
- Small buses – with fewer than 8 seats in addition to the driver and where the vehicle is being used for a local service within the meaning of the Transport Act 1985 (that is a public service vehicle carrying passengers by road at separate fares) or the vehicle is designed or adapted for standing passengers

- 4.13 Section 15B of the Road Traffic Act 1988 sets out that where a bus is fitted with seat belts, a bus operator must take all reasonable steps to ensure that all passengers are notified of the fact that it is a legal requirement to wear a fitted seat belt. Passengers may be notified that they must wear seat belts through any of the following ways:
- An official announcement by the bus driver, escort(s) or pupil;
  - An audio visual presentation (made when pupils join the bus or within a reasonable time of doing so);
  - A pictorial sign or text prominently displayed at each passenger seat equipped with a seat belt.
- 4.14 Those passengers with medical conditions may be exempt from wearing a seat belt, but must<sup>92</sup> carry their certificate of exemption with them while travelling.
- 4.15 Bus operators who fail to provide the required notification face a fine of up to £2,500.

### EU Legislation

- 4.16 EU Directive 2003/20/EC<sup>93</sup> requires learners aged 3 to 13 to wear seat belts whilst on a bus or a coach. The UK Government's Department for Transport is currently consulting on how to transpose and enforce this legal requirement in the UK.

### **Criminal Sanctions**

- 4.17 The 2011 Measure introduced a criminal sanctions regime to the 2008 Measure<sup>94</sup> where:
- A relevant body fails to ensure that the buses it provides or secures for learner transport have seat belts fitted to each seat

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<sup>90</sup> section 15(3) Road Traffic Act 1988

<sup>91</sup> Section 3 (Question 33) provides advice on how to persuade young children and learners how to wear seatbelts.

<sup>92</sup> Motor Vehicles (Wearing of Seat Belts) Regulations 1993/176

<sup>93</sup> Information on the EU Directive is provided in the Glossary (Section 2).

<sup>94</sup> section 14A 2008 Measure



- Where a 'person' (for example, a bus operator) providing the bus for learner transport fails to ensure that it has seat belts fitted to each passenger seat
- 4.18 Section 14H of the 2008 Measure provides Welsh Ministers with the power to appoint an enforcement body should they wish to do so. The Welsh Ministers have not established a specific enforcement body and have determined that the police would be best suited to fulfil the role of the enforcement authority for ensuring the seat belt provision of the 2008 Measure is enforced in Wales.
- 4.19 The police have the power to carry out spot checks, carried out by the roadside during the school journey or at the school premises before or after a journey to verify that seat belts are fitted to each passenger seat on dedicated learner transport.
- 4.20 When available, vehicle examiners of the VOSA assist the police whenever and wherever they run school transport checks or operations in Wales.

### **Liability of those who provide or secure learner transport – who will face prosecution?**

- 4.21 Where a prosecution for an offence is carried out under the provisions of the 2008 Measure, it would be the local authority or governing body of a maintained school as a whole who would be responsible and there would be no individual liability. However, in some cases it would be possible for an individual to be prosecuted separately alongside the company/ local authority. For instance in the case of a bus company (or a local authority), where it could be proved that the offence was the result of individual negligence or that the offence was committed with the consent of the individual within the company (or local authority)<sup>95</sup>.

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<sup>95</sup> section 14L of the 2008 Measure (as amended)

# Section 1: Statutory Provisions.

## Chapter 5: Parental Responsibilities.

### Overview

- 5.1. This section outlines the responsibilities of parents and guardians to ensure that travel provision for learners is in accordance with Welsh, UK and EU legislation.

### Learners Entitlement to Free Transport Provision.

- 5.2. Learners are only entitled to free transport provision if they live 2 miles or further from their nearest suitable primary school or 3 miles or further from their nearest suitable secondary school and the learner is of compulsory school age (i.e. 5-16 years of age). If a learner does not meet the eligibility criteria outlined in sections 3 and 4 of the Measure the relevant local authority is not required to provide free transport for the learner. Ultimately, the legal duty to ensure attendance of a child at school rests with the parent or legal guardian of that child.<sup>96</sup>

### Nearest Suitable School

- 5.3. The Welsh Government issued the School Admissions Code in July 2013 (“2013 Code”) under section 84 of the School Standards and Framework Act 1998<sup>97</sup> (“the 1998 Act”). The 2013 Code is statutory and requires local authorities to publish a list of maintained schools within their authority’s area from 2014/15 onwards. This information can be accessed via the local authority’s individual website or on request. It is the responsibility of the parent to request this information as it may not necessarily be issued to parents automatically.
- 5.4. Under the 1998 Act and the 2013 Code, parents are entitled to state a preference for the school they would like their child to attend. Where possible parental preference will be accepted by the relevant admissions authority and the child will be admitted to the preferred school. It is important to note that a parent’s preferred school is not necessarily considered to be the nearest suitable school for that child. The entitlement to free transport provision in accordance with the Learner Travel (Wales) Measure 2008 only relates to learners who are attending their nearest suitable school. Learners who by choice (either parental or learner choice)

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<sup>96</sup> Section 7 Education Act 1996.

<sup>97</sup> As amended by section 40 of the Education and Inspections Act 2006

are not attending their nearest suitable school are not entitled to free transport provision<sup>98</sup>.

- 5.5. Parents need to contact the relevant local authority to clarify which school is classified as their child's 'nearest suitable school' to inform their decision about school preference on their child's school admissions form. It is the responsibility of the parent to request this information when determining whether their child is entitled to free transport provision to access education and training. Under the 2013 Code local authorities should provide parents or carers, on request, easy access to admissions information. This needs to be clear and easily understood so parents can make an informed choice for their children.

### Parental preference

- 5.6. The 2008 Measure only applies to travel arrangements to a learner's nearest suitable school and not to a school chosen because of parental preference where these provisions differ.
- 5.7. If parents enact their parental preference and choose a learning establishment which is not the nearest suitable school or relevant place of learning for their child(ren), local authorities are not legally bound to provide transport although they do have power to make provision on a discretionary basis under section 6 of the Measure.
- 5.8. If a parent chooses a school for their child on grounds of language or denominational preference and that school is not the nearest suitable school as agreed by the relevant local authority, then this constitutes the exercise of parental preference.
- 5.9. Likewise, if a parent chooses to transfer their child from one learning establishment to another without the agreement of the relevant local authority, this also constitutes the exercise of parental preference. This means entitlement to free transport is forfeited (even if their child received free transport to and from the school they previously attended).

### **The Travel Behaviour Code.**

- 5.10. The Travel Behaviour Code requires learners to comply with the terms and conditions as detailed in Chapter 2 paragraph 2.11 of this document. Under the Travel Behaviour Code Statutory Guidance<sup>99</sup> 2009, parents have the following responsibilities relating to their child(ren)s behaviour:

- Ensure that their child(ren) are aware of and understand the Code;

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<sup>98</sup> Learners may qualify for entitlement to free or subsidised discretionary transport provision, but this is subject to the relevant local authority making use of their section 6 powers of the 2008 Measure.

<sup>99</sup> Issued by the Welsh Government 2009

- Accept responsibility for encouraging good behaviour and ensuring their child(ren) are compliant with the Code
- Be aware of the implications of breaches of the Code and the effect this can have on their child's right to the provision of transport to and from their place of education
- Be responsible for their child's continued attendance at their place of learning if transport is withdrawn
- Co-operate with education institutions, transport operators and local authorities to enforce the Code

## **Dual Residency.**

5.11. Where a child has dual residency local authorities may need to undertake a review to determine whether the learner continues to qualify for transport provision under sections 3 or 4 of the Measure. It is recommended that the review take into account the parents' views and adheres to the authority's consultation procedures. If it is determined that the learner no longer attends their nearest suitable school, the learner may no longer qualify for free statutory transport provision from that authority. It is then open to the local authority to consider whether the learner could benefit from discretionary transport provision under section 6 of the Measure. Further information on dual residency provisions is provided in Chapter 1 paragraphs 1.53 – 1.58 of this document.

## **Accompanied Children**

5.12. Section 3 (8b) of the 2008 Measure states that a walked route to school or relevant place of learning is 'available' if – "it is safe for a child to walk the route with an escort, if the age of the child would call for the provision of an escort". Parents have a duty to ensure their child receives efficient suitable full time education when the child reaches 5 years of age. If the child (learner) receives education or training at a school or relevant place of learning and the age of the child means they need to be accompanied on the journey to school, section 4 of the 2008 Measure provides that the local authority may be under a duty to provide an escort for that child. Local authorities, in accordance with this provision and the 'Guidance on Risk Assessment of Walked Routes to School', are required to assess whether a walked route to and from school is available for a learner to use.

## 5.13. **Section 1: Statutory Provisions.**

### **Chapter 6: Schools' Responsibilities.**

#### **Overview**

6.1. This section outlines the responsibilities of schools and other relevant education establishments in relation to ensuring that learner travel provisions are in accordance with Welsh, UK and EU legislation.

#### **Schools' Behaviour Policy and the Travel Behaviour Code**

Responsibilities under the Travel Behaviour Code, as outlined in the Travel Behaviour Code Statutory Guidance.<sup>100</sup>

6.2. The Travel Code requires education institutions to:

- Publicise and raise awareness of the importance of good behaviour and the consequences of failing to comply with the Code
- Enforce the Code where appropriate
- Incorporate the Code into the school's existing behaviour policy
- Train relevant staff in the content and application of the Code
- Engage with the relevant local authority, providing information and assistance accordingly to ensure the Code is complied with
- Make learners aware of an appropriate person to talk to within the institution about incidents of bad behaviour whilst travelling to and from home to school
- If the local authority is responsible for providing transport, co-operate with them in handling disciplinary action for breaches of the Code, including involvement in the interviewing of learners as part of any investigation
- Ensure that designated persons maintain records of all reported incidents that they are responsible for investigating. If the local authority is responsible for investigating an incident they must pass them this information immediately
- If contractual arrangements organised by the school have been entered into with transport operators, the school should ensure that they are aware of the Code and their responsibilities
- Ensure that contact details of designated staff responsible for handling all matters relating to the Code are made available to transport operators, learners and the local authority
- Report suspected criminal offences or child protection matters to the relevant parties.

#### Incidents Investigated by Educational Institutions

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<sup>100</sup> Statutory Guidance issued by the Welsh Government, 2009 under section 15 of the 2008 Measure. There is also a duty under Section 89 of the Education and Inspections Act 2006 for head teachers to incorporate the travel code into the school behaviour policy.

- 6.3. Section 89(2A) of the Education and Inspections Act 2006 (as amended by the Measure) places a duty on head teachers of relevant schools to ensure that pupils comply with the Travel Code as part of their school's overall behaviour policy.
- 6.4. Section 89(5A) of the 2006 Act provides head teachers with a statutory power to regulate learners' behaviour and conduct outside of school 'to such an extent as is reasonable' and which is not already covered by the Travel Code.
- 6.5. Schools are able to introduce measures to regulate conduct of learners when they are off school premises and not under the supervision of a member of staff<sup>101</sup>. Disciplinary penalties<sup>102</sup> may be imposed as a result of such conduct, including breaches of the Travel Code, but a penalty will only be imposed when the learner is under the lawful control or charge of a staff member. Therefore a sanction could be imposed immediately for unacceptable conduct on a school trip, where the learner is under the direct supervision of a member of staff, but not where, for example, a learner engages in unacceptable conduct on their journey between home and school where no such supervision exists. Any penalty for such conduct will be imposed retrospectively when the learner next attends school or when they are next under the control of a member of staff.

## **School Admissions**

- 6.6. Paragraph 2.2 of the 2013 School Admissions Code requires admissions authorities to 'provide parents or carers with easy access to helpful admissions information'. Schools who administer their own admissions arrangements for post-16 learners entering sixth form at that school should notify the local authority as soon as possible of the learners who will be attending the schools sixth form. Local authorities are best placed to provide advice to parents on school transport matters.

## **Seat Belt on dedicated Learner Transport**

- 6.7. Governing Bodies of maintained schools have a duty under the Measure (as amended) to ensure that any bus the school procures and uses for dedicated learner travel between home and school must have seat belts fitted to every seat from 1 October 2014. Further information on this provision is provided in Chapter 4 - paragraphs 4.1- 4.21.

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<sup>101</sup> Section 89(5A) Education and Inspections Act 2006.

<sup>102</sup> Section 90 Education and Inspections Act 2006.

## Section 2: Glossary

**Admission arrangements** - The overall procedure, practices and oversubscription criteria used in deciding the allocation of school places.

**Admission authority** - The body responsible for setting and applying a school's admission arrangements. For community or voluntary controlled schools, the LA is the admission authority unless under section 88 (1)(a)(ii) of the School Standards and Framework Act 1998 the function has been delegated in full to the governing body; and for foundation or voluntary aided schools, the governing body of the school is the admission authority.

**Admission forum** - A statutory local body charged with co-ordinating the effectiveness and equity of local admission arrangements, and monitoring compliance with the School Admissions Code<sup>103</sup>. The Forum comprises representatives of admission authorities and schools, dioceses, the local community and parent governors. Their role is set out in the Education (Admissions Forum) (Wales) Regulations 2003.

**Admission number** - The number of pupils that can be admitted in a year group. Admission authorities are required to have regard to the 'indicated admission number' for each year group. The indicated admission number is calculated in accordance with the capacity assessment method set out in the guidance document "Measuring the capacity of schools in Wales".<sup>104</sup> Admission numbers are part of a school's admission arrangements, and must be consulted upon with the rest of a school's admission arrangements and be published with those arrangements in the school's prospectus and the local authority composite prospectus.

**Available Routes** – Section 3(8) of the Learner Travel (Wales) Measure 2008 defines that a route is an available route if it is safe for a child without a disability or learning difficulty to walk the route alone, or with an escort if the age of the child would call for the provision of an escort.

**Bus** - A motor vehicle which is constructed or adapted to carry more than 8 seated passengers in addition to the driver<sup>105</sup>.

**Catchment area** - A geographical area, from which children may be afforded priority for admission to a school. A catchment area is part of a school's admission arrangements and must therefore be consulted upon, determined and published in the same way as other admission arrangements. Voluntary aided schools may choose to define their catchment area as their parish boundary, this must be made clear.

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<sup>103</sup> Issued by the Welsh Government July 2013-005/2013

<sup>104</sup> School Admissions Code,

<http://wales.gov.uk/topics/educationandskills/publications/circulars/0906measuringcapacity/?lang=en>

<sup>105</sup> As defined in Regulation 3 of the Road Vehicles (Construction and Use) Regulations 1986

**Coach** - A large bus with a maximum gross weight of more than 7.5 tonnes and a maximum speed exceeding 60mph<sup>106</sup>.

**Compulsory School Age** - Section 8 of the Education Act 1996 and the Education (Start of Compulsory School Age) Order 1998 explain that a child reaches compulsory school age in the term following their fifth birthday. The term dates being prescribed as 31 August, 31 December and 31 March. A child ceases to be of compulsory school age if they have attained the age of 16 on the prescribed school leaving date, or before the next school year, which is the last Friday in June.

**Disability and disabled person** – has the same meaning as in section 6 of the Equality Act 2010. (which repealed the Disability Discrimination Act 1995, but has maintained the same definition of disability) “A person has a disability if (s)he has a physical or mental impairment and the impairment has a substantial and long-term adverse effect on his/ her ability to carry out normal day-to-day activities”.

**EU Directive/2003/20/EC** - Under the Directive, the obligation to use a seat belt when a vehicle is in motion is extended to all categories of vehicles and to all seats fitted with a seatbelt (apart from certain exceptions). The use of restraint systems specially adapted to the size and weight of children also becomes compulsory. There is a remaining part of the Directive which will need to be transposed into UK Legislation, concerning a requirement for children aged 3 to 13 to wear seat belts on buses and coaches where seat belts are provided.

**Education and Inspections Act 2006** - The Act is designed to give greater freedoms to schools, including the possibility of owning their own assets; employing their own staff; and setting their own admissions arrangements. Other important provisions include the creation of a local authority duty to promote fair access to educational opportunities; giving school staff a clear statutory right to discipline students; provisions relating to nutritional standards of school food; and the reform of the school inspectorates.

**Governing bodies** - School governing bodies are bodies corporate responsible for the management of a school with a view to promoting high standards of educational achievement. Governing bodies have three key roles: setting strategic direction, ensuring accountability and monitoring and evaluation. Governing bodies of voluntary aided and foundation schools are admission authorities for their schools.

**Learner** – A person receiving education or training<sup>107</sup>.

**Learning and Skills Measure 2009** - The Measure provides a statutory basis for the 14-19 Learning Pathways. The Measure provides for the creation of local curricula which contain a wide range of academic and vocational courses and opportunities for learners.

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<sup>106</sup> As defined in Regulation 3 of the Road Vehicles (Construction and Use) Regulations 1986

<sup>107</sup> Section 1(3) Learner Travel (Wales) Measure 2008



**Learning difficulty** – Section 24(1) of the Learner Travel Wales Measure defines learning difficulty as a significantly greater difficulty in learning than the majority of persons of the same age, or a disability which either prevents or hinders that person from using facilities of a kind provided at relevant places, but a person is not to be taken as having a learning difficulty solely because the language (or form of language) in which the person is taught or will be taught is different from a language (or form of language) which has at any time been spoken in the person's home.

**Learner Travel Information (Wales) Regulations 2009** - The Regulations require local authorities to publish and make available information on travel arrangements made under the Learner Travel (Wales) Measure 2008. They set out not only what information local authorities will be required to publish but also when and how the information should be published and made available to parents/guardians, learners, governing bodies, head teachers and/or other persons.

**Learner Travel Needs** – Section 2 of the Learner Travel (Wales) Measure 2008 defines 'learner travel needs' as the needs of learners who are ordinarily resident in the authority's area for suitable travel arrangements each day to and from the relevant places where they receive education or training.

**Looked After Children** – same meaning as section 22(1) of the Children Act 1989, i.e. a child in the care of the local authority, or who is provided with accommodation by a local authority in the exercise of any functions which are social services functions within the meaning of the Local Authority Social Services Act 1970 (apart from functions under section 17, 23B and 24B).

**Maintained school** – means a community, foundation or voluntary school, a community school or a maintained nursery school.

**Minibus** - A motor vehicle which is constructed or adapted to carry more than 8 but not more than 16 seated passengers in addition to the driver

**Non-Maintained Special School** – Approved under section 342 of the Education Act 1996 as any school which is specially organized to make special educational provision for pupils with special educational needs and is not a community or foundation special school..

**Nursery class** - Part of a primary school that is used by pre-school pupils – those under compulsory school age – and which provides a range of structured educational experiences suitable for children of that age.

**Nursery school** - A primary school is a nursery school if it is used wholly or mainly for the purpose of providing education for children who have attained the age of two but are under compulsory school age (see section 6 of the Education Act 1996).

**Oversubscription criterion** – the principle that stipulates conditions that affect the priority given to an application, for example taking account of other preferences or giving priority to families who include in their other preferences

a particular type of schools (e.g. where other schools are of the same religious denomination).

**Oversubscription criteria** - The list of criteria an admission authority must adopt for its school(s) which are used only when the school is oversubscribed to assess which children will be offered a place. Once determined, admissions criteria, including the admission number, must be published by the school and in the local authority composite prospectus at least 6 weeks before parents express their preferences. All criteria must be objective and transparent. Guidelines for adopting appropriate criteria are outlined in the School Admissions Code.

**Parent** - The definition of “parent” in section 576 of the Education Act 1996 includes any person who is not a parent but who has parental responsibility for the child or young person, or who has care of him/her. Parental responsibility is defined as in the Children Act 1989(3) (see definition below) Any reference to a “parent” for the purpose of this document should be interpreted as the above definition of “parent” under the Education Act 1996. This will include: all natural parents, whether married or not; any person who, although not a natural parent, has parental responsibility for a child or young person; and any person who, although neither a natural parent nor a person with parental responsibility, has care of a child or young person.

**Parental responsibility** - “Parental responsibility” is defined in section 3 of the Children Act 1989 and means assuming all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his/ her property. The Children Act 1989 states that if a child’s natural parents were not married when the child was born the mother automatically has parental responsibility. The father can, however, acquire parental responsibility by various legal means. It is now the case (following the enactment of the Adoption and Children Act 2002) that a father who is registered as such in the register of births and deaths also automatically attains parental responsibility. In addition, it is now the case that step parents (which includes civil partners) can acquire parental responsibility, for example by entering into an agreement with a parent with parental responsibility.

**Primary school** - Section 5 of the Education Act 1996 defines “primary school” as a school for providing primary education, whether or not it also provides further education.

**Public Service Bus** – has the same definition as section 1 of the Public Passenger Vehicles Act 1981 which states “a motor vehicle (other than a tramcar) which—

(a) being a vehicle adapted to carry more than eight passengers, is used for carrying passengers for hire or reward; or

(b) being a vehicle not so adapted, is used for carrying passengers for hire or reward at separate fares in the course of a business of carrying passengers

**Pupil Referral Units** - A school established and maintained by the local authority, for children who are not able to attend a mainstream or special

school (for example due to emotional or behavioural difficulties) approved under Section 19(2) Education Act 1996..

**Relevant Body** - A relevant body refers to a local authority or the Governing Body of a maintained school as defined in section 14N (2) of the Learner Travel (Wales) Measure 2008 (as amended)

**Relevant Places**<sup>108</sup> – maintained schools; institutions in the further education sector; independent schools named in statements of special educational needs; non-maintained special schools; pupil referral units; places other than pupil referral units where education is arranged under section 19(1) of the Education Act 1996; places where education or training funded by the Welsh Ministers under section 34(1) of the Learning and Skills Act 2000 is provided; institutions where education and training and boarding accommodation have been secured by the Welsh Ministers under section 41 of the Learning and Skills Act 2000; places where nursery education is provided by a local authority or by any other person who is in receipt of financial assistance given by a local authority under arrangements made by them in pursuance of the duty imposed by section 118 of the School Standards and Framework Act 1998, places where work experience is undertaken.

**Safety on Learner Travel (Wales) Measure 2011** - A Welsh law passed by the National Assembly for Wales which made amendments to the Learner Travel (Wales) Measure 2008<sup>109</sup> for the purpose of improving safety on dedicated learner transport. Measures of the National Assembly for Wales have been superseded by Acts of the Assembly as a result of the “yes” vote in the referendum of 2011 on primary powers for the Assembly (in relation to devolved policy areas). The above Measure sets out that all contracted school buses used for dedicated learner transport must have seat belts fitted to each passenger seat by 1 October 2014.

**School day** - School day is defined in section 579 of the Education Act 1996 as follows: “school day’, in relation to a school, means any day on which at that school there is a school session”. A school session can be a morning session or an afternoon session, so a school day is any day when the school meets for all or part of the day.

**School year** In relation to a school, means the period beginning with the first school term to begin after July and ending with the beginning of the first such term to begin after the following July

**Secondary school** - Section 5 of the Education Act 1996 defines “secondary school” as a school for providing secondary education, whether or not it also provides further education.

**Special Educational Needs Code of Practice for Wales** - The Code provides practical advice to local authorities, maintained schools, early years settings and others. The Code of Practice helps them to carry out their

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<sup>108</sup> Section 1 (4) Learner Travel (Wales) Measure 2008

<sup>109</sup> The Learner Travel Wales Measure 2008 (as amended)

statutory duties, identify, assess and make provision for children's special educational needs.

**Sustainable Modes of Travel** – Section 11 of the Learner Travel (Wales) Measure defines sustainable modes of travel as modes of travel which may improve the physical well-being of those who use them; and / or the environmental well being of the relevant area.

**Travel arrangements** – travel arrangements of any description and include – the provision of transport; the provision of one or more persons to escort a child when travelling; the payment of the whole or any part of a person's reasonable travelling expenses; the payment of allowances in respect of the use of particular modes of travel<sup>110</sup>.

**Urban bus** - Buses designed for use on local bus service/rural and urban routes with standing passengers.

**.Vehicle Operating Services Agency (VOSA)** - An executive agency of the Department for Transport. The agency provides a range of licensing, testing and enforcement services with the aim of improving the roadworthiness standards of vehicles.

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<sup>110</sup> Section 1(2) Learner Travel (Wales) Measure 2008

## Section 3: Advisory Guidance.

### Frequently Questions and Answers:

#### 1. In relation to dedicated learner transport, what should be included in a transport risk assessment?

It is best practice when undertaking home to school transport risk assessments that they should cover the following:

- The route
- Identified Pick-up and drop-off points
- Identified School Drop-off and Pick-up Points
- Driver and Passenger Assistant
- Vehicle

Further information can be found by clicking the following link  
<http://wales.gov.uk/topics/transport/publications/hometoschooltransport/?lang=en>

Since September 2013, bus and coach drivers are required by law to complete 37 hours of driver training after which they are awarded a Certificate of Professional Competence - Driver Qualification Card (CPC-DQC). Drivers must<sup>111</sup> by law carry their CPC-DQC cards with them at all times while they are operating a bus or coach and must be able to present the cards to the Police or VOSA upon request.

From 1 October 2014, all buses used for dedicated learner transport must have seatbelts fitted to every passenger seat<sup>112</sup>.

Transport risk assessments must take account of new legal requirements as and when they come into effect.

#### 2. How often should risk assessments be carried out?

The frequency of risk assessments is currently a matter which is at the discretion of each local authority.

#### 3. What is considered a suitable journey time for travel to primary or secondary school?

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<sup>111</sup> EU Directive 2003/59

<sup>112</sup> The Vehicle Drivers (Certificate of Professional Competence) Regulations 2007 – derived from EU Directive 2003/59/EC on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods and passengers.

The Learner Travel (Wales) Measure 2008 ('the Measure') does not specify a time limit for journeys. However, section 2(5)(b) states that transport arrangements are not suitable if they take an unreasonable amount of time. Local authorities are required to assess the individual needs of learners when considering if a journey time is reasonable. An assessment should take into account the nature, purpose and circumstances of each journey to ascertain if the timeframe is suitable. Considerations that should be included in this assessment are:-

- the learner's age
- whether the learner has any disability or learning difficulties that need to be taken into account
- the location of the learner's home in relation to available schools in the vicinity

#### **4. What is meant by the term "looked after children"?**

The term "looked after children" has the same meaning as in section 22(1) of the Children Act 1989, that is, a child under the age of 18 in the care of the local authority or who is provided with accommodation by a local authority in the exercise of any functions which are social services functions within the meaning of the Local Authority Social Services Act 1970 (with the exception of functions under section 17, 23B and 24B).

#### **5. Why do 'looked after' children receive free transport to schools which are not the nearest suitable schools to their homes?**

Under Section 3 and 4 of the Measure, the same age and distance criteria apply to 'looked after' children (learners) as to those who are not looked after, but the provision that the learner must attend their nearest suitable school to their home does not apply to 'looked after' learners (in the same way it applies to learners who are not looked after). It will be for the local authority looking after a child to determine where he or she should go to school. The school decided upon might be a school other than the nearest suitable school due to the need to maintain continuity in education or contact with siblings or friends to promote wellbeing. If that is the case, transport will be provided.

#### **6. If a learner becomes a 'dual resident', living with 2 parents at separate addresses, why is it that the school they currently attend may not be deemed their nearest suitable school anymore?**

Any changes to a learner's ordinary place of residence needs to be taken into account when determining if the school the learner attended before the change of address is still their nearest suitable school.

Parents should be advised that if one or both move to a new address, a different school may then become their child's nearest suitable school.

Consequently, the entitlement to free transport (if previously applicable) could be removed. Transport may still be provided on a discretionary basis under section 6 of the Measure in accordance with the relevant local authority's transport and education policy governing learner travel.

Local authorities are required to publish their general arrangements and policies in relation to learner travel, to include the provision of free transport<sup>113</sup>. It is recommended that this information include the provision that any changes to a learner's residence (including dual residence) may affect a learner's eligibility for free transport.

## **7. When and how often should risk assessments of walked routes to school be carried out?**

These issues are currently not specified in either health and safety guidance or legislation or in guidance and legislation relating to learner travel.

The consultation document on the risk assessment of walked routes to school includes this question. Following the completion of the consultation exercise, Welsh Government officials will examine the evidence provided by key stakeholders (such as local authorities) and these issues will be addressed in the new statutory guidance on the risk assessment of walked routes to school. Welsh Government officials will provide an update as soon as possible.

## **8. Do parents have the right to see / request a copy of a risk assessment and, if yes, how do they go about doing this?**

Under the Learner Travel Information (Wales) Regulations 2009, where a risk assessment of a route to school has been carried out, a parent is entitled to request a copy of the risk assessment from the local authority who conducted the assessment under Part 2 of Schedule 1.

In order to do so, parents should contact the School Transport team within their local authority.

## **9. What is the difference between 'travel' and 'transport'?**

Travel (i.e. the Learner Travel (Wales) Measure 2008) refers to all modes of travel, which includes walking. Transport (i.e. the Safety on Learner Transport (Wales) Measure 2011) only relates to vehicle transportation and therefore excludes walking.

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<sup>113</sup> Regulation 4 of the 2009 Regulations.

**10. Why does the Active Travel Act 2013 refer to ‘accessible’ routes whereas the Learner Travel (Wales) Measure 2008 refers to ‘available’ routes. Are these terms different in meaning?**

The purpose of the Active Travel Act 2013 is to require local authorities to continuously improve facilities and routes for pedestrians and cyclists, identifying current and potential future routes for use, thereby promoting access. The 2013 Act refers to ‘accessible’ routes because the planned improvements are not tailored to meet the needs of a specific group of users but to the needs of the public in general.

The Learner Travel (Wales) Measure 2008 specifies that a route must<sup>114</sup> be ‘available’ because the target users are learners (namely children and young people). The available (or safe) route is used by learners travelling between home and school.

**11. Is it a legal requirement for local authorities to provide free transport to Welsh medium primary and secondary schools?**

Under current school transport legislation, a learner is entitled to free transport to a Welsh Medium school if that school is considered by the local authority to be the learner’s nearest suitable school and the learner meets the distance criteria specific to their age. Primary pupils are entitled to free transport if they live 2 miles or further from the nearest suitable school whilst secondary pupils are entitled to free transport if they live 3 miles or further from the nearest suitable school.

In cases where learners do not attend the nearest suitable school, local authorities use their discretion to provide free transport<sup>115</sup> to Welsh Medium schools regardless of the distance criteria in order to promote access to education and training through the medium of Welsh. Local authorities also operate bilingual policies in schools in order to promote<sup>116</sup> access to education and training through the medium of Welsh. Local authorities have a general duty to promote access to education and training through the medium of the Welsh language when exercising functions under the 2008 Measure, which should be outlined in their Welsh Education Strategy Plan (WESP).

**12. Does the Travel Behaviour Code apply to Learners with SEN?**

The Travel Behaviour Code does apply to learners with SEN.

However, if a learner has special educational needs it is especially important to give consideration to the nature of the learner’s individual circumstances and to discuss the application of any potential sanctions

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<sup>114</sup> Section 3(8) Learner Travel (Wales) Measure 2008.

<sup>115</sup> Section 6 Learner Travel (Wales) Measure 2008

<sup>116</sup> section 10 Learner Travel (Wales) Measure 2008



with the learner's place of learning. When considering any special educational needs a learner may have, regard should be given to the Special Educational Needs Code of Practice to determine what sanctions should be used to deal with issues of misbehaviour.

### **13. Should each learner with SEN be given one-to-one transport?**

Not necessarily. Local authorities have options available to them to promote the interests of learners and save money (but still provide appropriate transport provision for learners with SEN). These include:

- Assessing the needs of the learner to determine whether specialist transport is required. If it is required, it is advisable for the local authority to ask questions, such as:
  - Is it possible and practical for a SEN learner to travel with other SEN learners? Is the provision of one-to-one transport strictly necessary? What would be the benefits to the SEN learner of travelling with peers? Local authorities should take into account whether the learner could, with or without reasonable adjustments, travel on mainstream transport. Reasonable adjustments may involve travelling with an escort, using wheel chairs to access buses, ensuring the learner is seated with or apart from other learners as appropriate etc.
  - Travel Training – this programme provides learners with the support, assistance and skills to enable them to access mainstream transport with the confidence to travel independently.

### **14. What is Travel Training?**

Travel Training Schemes are aimed at providing SEN pupils with the key skills and confidence to travel independently on public transport.

In Wales, for example, Cardiff Council operates a Travel Training Scheme. The scheme is funded by the Welsh Government and focuses on providing free, intensive one to one training to teach SEN pupils to use public transport between home and school.

Working one to one with a travel trainer, learners are accompanied to and from school over an extended period of time until they are ready to make the journey independently. Once a learner has completed the training, they are given an annual bus pass which they can use for school routes and journeys outside of school.

### **15. What are the travel arrangements for a post 16 learner with an SEN statement?**

The Special Educational Needs Code of Practice states that transport provision should be in Part 6 (which is not legally binding on a local authority). If the local authority deems such transport to be necessary in exceptional circumstances because a child has particular transport needs, this should be incorporated into the statement. Local education authorities remain responsible for pupils with special educational needs statements in school until they are 19

## **16. What does Disclosure and Barring of information mean?**

The Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) have merged and are now called the Disclosure and Barring Service (DBS). CRB checks are now called DBS checks. The DBS has two functions:

- Disclosure which searches police records and, in relevant cases, information held by the DBS barring function and issues a DBS certificate to the applicant.
- Barring to help safeguard vulnerable groups including children from those people who work or volunteer with them who pose a risk of harm. The DBS may use any information on a certificate or otherwise held by the DBS to inform any of its barring decisions made under its powers within the Safeguarding Vulnerable Groups Act 2006.<sup>117</sup>

## **17. What information can the DBS share/not share under the current Disclosure and Barring of information requirements and how does the DBS process personal data?**

The DBS is legally bound by the Data Protection Act 1998, and they outline their data standards in a personal information charter. When the DBS processes personal data, according to their privacy policy the following principles apply:

- Only the data the DBS needs is collected and processed
- The data is only seen by those who need it to do their jobs
- Data is retained for only as long as it is required
- The data held on people is accurate and is only used as part of the DBS process
- Decisions affecting people are made on the basis of reliable and up to date data
- Data is protected from unauthorised or accidental disclosure
- On request, people are provided with a copy of the data held on them
- Data in relation to the disclosure service is only processed with people's knowledge and consent
- A full complaints procedure is in place

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<sup>117</sup> DBS Privacy Policy

Personal data is only held by the DBS if a person has applied for a disclosure check, applied to be a counter signatory for a disclosure check, or has been referred to the barring service. The DBS has access to the Police National Computer (“PNC”), which provides the disclosure function with basic identifying details such as name and date of birth of persons included on the PNC. For the barring function access is granted to personal details and conviction information.

**18. Who are the people who are subject to DBS checks and what are the procedures for DBS checks?**

Please refer to, paragraphs 1.105 – 1.115 of this document for information on the Disclosure and Barring Arrangements.

**19. Can information be shared between different local authority departments or different local authorities under the Disclosure and Barring of Information requirements?**

In each local authority, different departments will have ownership of safeguarding policy in relation to different groups – for example, the Education Department will have ownership of safeguarding policy relating to children in schools; the Health or Social Services Department will have ownership of safeguarding policy in relation to vulnerable groups, including vulnerable children; and the Transport Department will have ownership of safeguarding policy in relation to learner travel arrangements.

Given the potential for overlapping responsibilities, there will be occasions when staff in different departments will need to see the same data to do their jobs.

The legal constraint on sharing personal data is the Data Protection Act (DPA). Any processing or sharing of information has to comply with the DPA. The DPA contains 8 data protection principles which must be adhered to.

In this scenario, the onus of compliance with the DPA is on both the DBS and the local authority as they are the data controllers. They determine both the purpose for which, and the manner in which, any personal data is being or is to be processed.

The sharing of personal data has to be fair, lawful and needs to meet at least one condition set out in Schedule 2 and, in the case of sensitive personal data, at least one condition set out in Schedule 3 to the DPA.

The individual who is the subject of the personal data must be made aware of the use of that personal data. This is usually done by providing fair processing information to the individual which confirms the identity of the data controller, outlines the personal data being

processed, what it is being used for, explains any sharing and outlines an individual's rights in respect of that personal data.

Further information on the DPA is available at <http://www.legislation.gov.uk/ukpga/1998/29/contents>

## **20. What is the Vehicle Operating Services Agency (VOSA) and what do they do?**

VOSA is an executive agency of the UK Government's Department for Transport. The agency provides a range of licensing, testing and enforcement services with the aim of improving the roadworthiness standards of vehicles.

## **21. Who is the Traffic Commissioner and what do they do?**

In relation to England and Wales, there are six Traffic Commissioners including a Commissioner for the Welsh Traffic Area (Wales and West Midlands).

Traffic Commissioners are responsible for the licensing and regulation of those who operate heavy goods vehicles, buses and coaches, and the registration of local bus services. They are assisted in this work by deputy Traffic Commissioners, who preside over a number of public inquiries.

## **22. Why do I have to pay the local authority for the provision of my child's school transport?**

Under the Learner Travel (Wales) Measure 2008, primary school pupils who live 2 miles or further from the nearest suitable school are entitled to free transport whilst secondary school pupils who live 3 miles or further from the nearest suitable school are entitled to free transport.

If the route to school is deemed to be unsafe, then the learner cannot be expected to walk to school even though the distance from home to school is less than the distance limit that applies to his/her age. In such circumstances, the learner is entitled to free transport.

Learners who do not meet these requirements are generally not entitled to free transport. Local authorities do have a discretionary power under section 6 of the Learner Travel (Wales) Measure 2008 to provide learners who do not meet the eligibility criteria for free transport with either free or subsidised transport. Where subsidised transport is provided by the local authority and parents want to use this service, the local authority can, by law, charge for this provision.

## **23. How much can a local authority charge for the school transport they provide to learners not entitled to free transport?**

When a local authority uses its discretionary power to provide transport to learners who are ineligible for free transport, they can charge for the provision of transport.

For learners who are not of compulsory school age, there is no restriction on the amount that can be charged. With regard to learners of compulsory school age, charging must be in accordance with Section 455 and 456 of the Education Act 1996 (as amended by Section 22 of the Measure).

Disabled learners may have specific transport requirements (or reasonable adjustments required for this) which may result in increased transport costs. The Equality Act 2010 prohibits an authority charging for any reasonable adjustments it has made for disabled learners.

#### **24. How do local authorities treat each request for school transport?**

Parents are required to fill-in a School Transport Application Form in which they should present:

- The details of the learner, including their home address (or ordinary place of residence if applicable)
- The details of the learner's parent or guardian
- The reason(s) for making the application
- The location of the pick-up point/nearest bus stop to the home address

In this way, each request for school transport is treated on an individual basis.

It is important that school transport application forms are submitted to the relevant local authority by the stated deadline. This ensures local authorities have the time needed to process the form and put in place suitable transport arrangements for when they are required.

#### **25. What is the Learning and Skills (Wales) Measure 2009?**

The Measure provides a statutory basis for the 14-19 Learning Pathways. The Measure provides for the creation of local curricula which contain a wide range of academic and vocational courses and opportunities for learners.

These courses may be delivered on different sites which require additional learner travel either at the start and end of the school day or during the school day.

Travel and transport provision required during the school day as a result of the 14-19 Learning Pathways is not covered by the Learner

Travel (Wales) Measure 2008 or the statutory provisions outlined in this document.

## **26. What are the recommended procedures for enforcing the Travel Behaviour Code sanctions?**

The relevant procedures which are currently in place are set out in the Travel Code statutory guidance. The guidance can be accessed by clicking on the following link  
<http://wales.gov.uk/topics/transport/publications/tbcstatutoryguidance/?lang=en>

The procedures to follow if an incident occurs include a number of steps to ensure the incident is dealt with fairly and properly.

There may be cases where learners' severe anti-social behaviour endangers life and causes criminal damage – for example, in cases where fires are started on buses travelling between home and school. In such cases, the sanctions regime set out in the Travel Behaviour Code statutory guidance will be insufficient to address the serious nature of these incidents. The bus operator and/or the local authority will need to refer the matter to the Police for them to investigate and determine the appropriate action.

The Health and Safety Executive (HSE) should only be involved in investigating a road traffic incident where Police demonstrate that serious management failures have been a significant contributory factor. It is a matter for the Vehicle and Operator Services Agency (VOSA), who award the licenses for bus routes, to comment on whether bus companies are operating a safe system of work, as it is here that their knowledge and expertise on matters relating to passenger transport rest.

## **27. Must parents and learners be made aware of the use of CCTV on buses used for dedicated learner transport?**

Yes. Where CCTV is used, parents and learners must<sup>118</sup> be made aware that recording services are in operation. This could be done through a written statement outlining this provision within the local authority's learner transport application form (terms and conditions) pack, by a letter home to parents or by signs placed on learner transport to ensure that parents and learners are aware of the surveillance.

If parents and learners are unaware that surveillance is taking place, then any evidence gathered by CCTV of a particular incident may be inadmissible in a subsequent court prosecution or hearing.

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<sup>118</sup> Under provisions of the Data Protection Act 1998

## **28. What is accessible information?**

Information which can be easily understood by its target audience. Examples of this include: the provision of information in alternative languages such as Welsh; making Braille or large print versions available; or having an easy read document which outlines key points and uses illustrations to accompany the document.

## **29. What is 'dedicated learner transport' and how does this differ from learner transport?**

Dedicated learner transport includes buses, coaches, minibuses, taxis. It is transport provided or secured by a relevant body (a local authority or the governing body of a maintained school), specifically for the purpose of transporting learners of compulsory school age (that is, those aged between 5-16) between home and school. Dedicated learner transport is for the use of learners only. Members of the general public are not allowed to use the service.

Learner transport has a more general meaning – it refers to the transportation of nursery learners; those of compulsory school age; and those in post-16 education. The transport could be dedicated learner transport buses, service buses or other types of vehicle (coaches, minibuses, taxis and private ambulances).

## **30. What is the difference between dedicated learner travel buses and service buses used by learners?**

Dedicated learner travel buses have been provided or secured by a relevant body for the specific purpose of transporting learners of compulsory school age between home and school.

Service buses may be used to transport learners between home and school but are also used to transport fare paying passengers who are members of the general public on the same service routes.

## **31. Why does the requirement to have seat belts fitted to each passenger seat by 1 October 2014 only apply to dedicated learner travel buses, including service buses used for dedicated learner travel, and not to every bus?**

Part 1 of Schedule 7 to the Government of Wales Act 2006 sets out the subject areas in which the National Assembly for Wales may legislate, as well as the exceptions to those general subject areas. The legislative competence conferred in relation to transport allows the Assembly to legislate in relation to dedicated school transport which can include buses, coaches, taxis and private hire vehicles such as

minibuses. The Assembly may not legislate in relation to public service vehicles. It is the responsibility of the UK Government to propose policies in relation to public service vehicles and the responsibility of the UK Parliament to pass the relevant legislation.

### **32. My child goes to school on a bus which is not fitted with seat belts. Is this legal?**

It depends on which type of bus is being used to transport the child to school.

The Measure requires that every bus provided or secured by a relevant body and used for dedicated home to school learner transport will need to have a seat belt fitted to every passenger seat by 1 October 2014. Service buses, which are used in any capacity for dedicated home to school learner transport (even if the majority of their journeys are non dedicated learner transport service routes), will also need to be fitted with seat belts by 1 October 2014.

The provision **does not** cover public service buses used by learners with local authority-purchased bus passes, even if the route is mostly used by learners travelling to and from school or college. This is because the bus is not used solely for transporting learners and members of the public can also access the service.

Double deck buses used for dedicated home to school learner transport will need to have seat belts fitted to every passenger seat in the same way as single deck vehicles.

### **33. How can I get children to wear seat belts?**

There are a number of ways of encouraging and persuading children to wear seat belts, for example:

- Rolling out a training and education programme in schools on a pan-Wales basis - the programme could be delivered by teachers or the relevant local authority officials and might include activities like quizzes, games, DVDs and role play exercises
- Schools can play a role in encouraging parents to impress upon their children the importance and necessity of wearing seat belts - this could be achieved by schools raising the issue at parents' evenings, engaging with parents through Parent Teacher Association (PTA) meetings, sending information leaflets to parents or including an article on seat belts and responsibility in school newsletters
- Responsible older pupils/prefects can monitor the wearing of seat belts on dedicated school transport and can help enforce the regime by verbally instructing other learners to wear seatbelts and taking the names of those who refuse to



- Local authorities have a role to play in achieving this outcome and could work in partnership with schools providing officials to monitor and enforce the wearing of seat belts on school transport

**34. Which seat belts should be used and need to be in place by 1 October 2014 to meet the statutory requirement of the Safety on Learner Transport (Wales) Measure 2011?**

The Welsh Government cannot legally specify the type of seat belt that should be used. Lap belts are used on most buses and meet all the relevant legal requirements. However, a 3-point all age seat belt is generally recommended. Reasons to support this recommendation are:

- The 3-point all age seat belt restrains the upper and lower parts of the torso, is anchored at not less than 3 points, and includes a lap belt - in addition, the position of the shoulder strap can be adjusted to suit the size of the passenger
- This particular type of seat belt is rated highly for its effectiveness and ease of use - the seat belt tongue clips into the buckle, an action which can be performed with one hand and a retractor device is included as part of the seat belt system to ensure that any unnecessary slack is taken up automatically

**35. What is EU Directive 2003/20/EC, and what does it mean in practical terms?**

Under the Directive, there is an obligation to use a seat belt when a vehicle is in motion. This applies to all categories of vehicles and to all seats fitted with a seatbelt (apart from certain exceptions which can be granted to allow certain professional activities to be carried out, to ensure the proper functioning of law and order, safety or emergency services, or to take account of the special conditions in certain types of transport)). The use of restraint systems specially adapted to the size and weight of children has also become compulsory under the Directive.

There is a remaining part of the Directive which will need to be transposed into UK Legislation by the Department for Transport (UK government). This concerns a requirement for children aged 3 to 13 to wear seat belts on buses and coaches where seat belts are provided.

The Directive does not specify that seat belts must be installed on all buses and coaches. Neither does it specify what type of child restraint system should be used where seat belts are fitted to the vehicle.

**36. Is there a statutory duty on local authorities to provide free transport to denominational schools?**

If a learner wishes to attend a faith-based school which is the nearest suitable school and also meets the distance criteria, then the local authority will be under a duty to provide free home to school transport.

However, if the criteria set out above are not met, there is no legal requirement for a local authority to provide free transport. In such cases, the provision of transport is a discretionary matter for local authorities.

**37. What financial support is available to cover/contribute to the transport costs of those in post-16 education?**

The Education Maintenance Allowance (EMA) was introduced as a financial incentive for young people from low-income households to remain in full-time education or training beyond compulsory education. It is available to learners who attend school or college.

The Assembly Learning Grant (ALG) is available to learners aged 19 or over who are in Further Education.

The Welsh Government also provides support for those students facing hardship through the Financial Contingency Fund (FCF) which is distributed to further and higher education institutions in Wales.

The EMA, the ALG and the FCF may be used, amongst other things, to cover or contribute to transport costs.

There are instances where local colleges and the relevant local authorities will fund schemes which provide financial support for travel to those in post-16 education.

Each local authority will have its own post-16 transport policy and it is the responsibility of the learner or a learner's parent(s) to check individual local authority websites for specific details.

**38. What is the Welsh Government's learner travel policy in relation to learners in further education aged 19-25?**

The Welsh Government's policy is that the provision of transport to learners aged between 19-25 is a discretionary matter for local authorities, Higher and Further Educational institutes in Wales.

**39. What is the legal definition of "compulsory school age"?**

Section 8 of the Education Act 1996 (and accompanying regulations/Order<sup>119</sup>) defines compulsory school age.

A child is of compulsory school age when he or she attains the age of 5:

- a) on 31<sup>st</sup> March, 31<sup>st</sup> August or 31<sup>st</sup> December in any given year, or
- b) if not on those dates, on the nearest one of those dates following his or her 5<sup>th</sup> birthday.

A person ceases to be of compulsory school age at the end of the day which is the school leaving date (currently the last Friday in June):

- (a) if he attains the age of 16 after that day but before the beginning of the following school year,
- (b) if he attains 16 on that day, or
- (c) (unless paragraph (a) applies) if that day is the school leaving date next following his attaining 16.

#### **40. What does oversubscription criteria regarding school admissions mean in practical terms?**

Parents can express a preference for any school they would like their child to attend. If a school has applications that exceed the admission number for the school, the admission authority will apply oversubscription criteria to all the applications in priority order. This means that all the applications will then be ranked and offered places up to the admission number. Should there be several applications that sit against the same oversubscription criterion, a 'tie breaker' may be used. The tie breaker is usually based on the distance from the pupil's home to the school. The pupils who live the nearest to the school would be offered the remaining places.

In practice this means that pupils living some distance from a school may be offered places and may become eligible for school transport. The local authority Transport Policy defines eligibility criteria for their area in relation to the discretionary transport provision it provides.

#### **41. If I obtain my place of choice will I get transport?**

Parents can express a preference for any school and may be successful in obtaining a place at their preferred school. This does not necessarily mean that their child will be eligible for free school transport. This will be determined by the local authority who define eligibility criteria for the discretionary transport provision it provides within their Transport Policy.

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<sup>119</sup> Education (Start of Compulsory School Age) Order 1998 (SI 1998/1607) and The Education (School Leaving date) Order 1997 (SI 1997/1970).

## **42. What considerations should local authorities take into account with regards to post 16 learner travel provision?**

### Post 16 Education

In assessing what transport arrangements are necessary for post 16 learners it is recommended that local authorities consider the need to ensure that learners have reasonable opportunities to choose between different establishments at which education and training is provided. Reasonable choice should include enabling learners to choose an establishment of education or training that is not the closest to where they live, if other more significant factors take precedence, for example, the suitability of the course. It is further recommended that local authorities consider the needs of:

- Those who are vulnerable to becoming NEET (not in education, employment or training) at the age of 16 or 17 or who have already become NEET.
- Those who live in particularly rural areas where the transport infrastructure can be more limited.
- Those learners who are of low income or are from low income families.
- The distance from the learner's home to establishments of education and training - it is recommended that local authorities consider the distance a young person has to travel to access education in determining eligibility for support with transport. It is Welsh Government's view that young people in rural areas should not be worse off financially because they may need to travel further to access education and training provision than their peers in urban areas. Local authorities could also consider taking into account other factors, such as the impact a learning difficulty or disability may have on a young person's ability to walk a distance, and the nature (including safety) of the route, or alternative routes, which a young person could be expected to take in determining whether transport arrangements are necessary.
- The journey time to access different learning establishment – it is recommended that young people should be able to reach their establishment of education or training without incurring such stress, strain, or difficulty that they would be prevented from benefiting from the education provided. For example, a young person should not have to make several changes of public service bus (or other mode of transport) to get to their establishment of education or training, if that would result in an unreasonably long journey time. In this context, local authorities will want to consider which mode of transport will best meet the need to ensure a reasonable journey time. Best practice suggests that a child of secondary school age may reasonably be expected to travel 60 minutes each way to access learning. It is recommended that local authorities apply similar expectations to post 16 learners.

## **Annex 1:**

The relevant contact details for local authority School Transport teams are as follows:

Isle of Anglesey

<http://www.anglesey.gov.uk/education/schools/school-travel-support/>

Bridgend County Borough Council

<http://www1.bridgend.gov.uk/services/highways/transport-and-roads-home/public-transport/school-transport.aspx>

Blaenau Gwent County Borough Council

<http://www.blaenau-gwent.gov.uk/education/18101.asp>

Caerphilly County Borough Council

<http://www.caerphilly.gov.uk/site.aspx?s=qDAHRXN8cSZ9oLQm4cvwPGFdfG1SCelA>

Cardiff Council

[http://www.cardiff.gov.uk/content.asp?nav=2869,3047,3063,5164&parent\\_directory\\_id=2865&id=5455&d1p1=1](http://www.cardiff.gov.uk/content.asp?nav=2869,3047,3063,5164&parent_directory_id=2865&id=5455&d1p1=1)

Carmarthenshire County Council

<http://www.carmarthenshire.gov.uk/english/education/schools/schooltransport/pages/schooltransport.aspx>

Ceredigion County Council

<https://www.ceredigion.gov.uk/index.cfm?articleid=9584>

Conwy County Borough Council

<http://www.conwy.gov.uk/doc.asp?cat=6249&doc=23052>

Denbighshire County Council

<https://www.denbighshire.gov.uk/en/resident/education/grants-and-funding/free-school-transport.aspx>

Flintshire County Council

<http://www.flintshire.gov.uk/en/Resident/Schools/School-Transport.aspx>

Gwynedd Council

[http://www.gwynedd.gov.uk/gwy\\_doc.asp?cat=7052&doc=25990&language=1&p=1&c=1](http://www.gwynedd.gov.uk/gwy_doc.asp?cat=7052&doc=25990&language=1&p=1&c=1)

Merthyr Tydfil County Borough Council

<http://www.merthyr.gov.uk/English/EducationAndLearning/SchoolsAndColleges/Pages/SchoolTransport.aspx>

Monmouthshire County Council

<http://www.monmouthshire.gov.uk/home/education/schools/school-transport/>

Neath Port Talbot County Borough Council

<http://www.npt.gov.uk/default.aspx?page=5065>

Newport City Council

<http://www.newport.gov.uk/dc/index.cfm?fuseaction=schools.parentsinfo&contentid=DevXP001620>

Pembrokeshire County Council

[http://www.pembrokeshire.gov.uk/content.asp?nav=647,867&parent\\_directory\\_id=646&id=7551&d1p1=1](http://www.pembrokeshire.gov.uk/content.asp?nav=647,867&parent_directory_id=646&id=7551&d1p1=1)

Powys County Council

<http://www.powys.gov.uk/index.php?id=3064&L=0>

Rhondda Cynon Taf

<http://www.rctcbc.gov.uk/en/transportstreets/schooltransport/schooltransport-policy/schooltransport-policy.aspx>

City and County of Swansea

<http://www.swansea.gov.uk/index.cfm?articleid=10438>

Torfaen County Borough Council

<http://www.torfaen.gov.uk/en/EducationLearning/Grants/School-travelsupport/Transport-Entitlement.aspx>

Vale of Glamorgan County Council

[http://www.valeofglamorgan.gov.uk/en/working/education\\_and\\_skills/schools/school\\_transport/school\\_transport.aspx](http://www.valeofglamorgan.gov.uk/en/working/education_and_skills/schools/school_transport/school_transport.aspx)

Wrexham County Borough Council

[http://www.wrexham.gov.uk/english/education/Transport\\_Policy.htm#criteria](http://www.wrexham.gov.uk/english/education/Transport_Policy.htm#criteria)