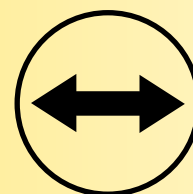


Home to School Transport

**Consultation
Document**



Date of Issue: 17 November 2006

Action Required: Responses by 9 February 2007

**LEA
Responsibilities**



- Title of document:** Home to School Transport.
- Audience:** Directors of Education of County and County Borough Councils in Wales; Diocesan Directors of Education in Wales, WLGA, a 10% sample of primary and secondary schools in Wales, parents, transport operators, and various interest groups.
- Overview:** This consultation document sets out the Welsh Assembly Government's draft guidance to Local Education Authorities (LEAs) about school transport. It is targeted at LEAs but will also be of interest to schools, parents, transport operators and interest groups.
- Action required:** Consultees to respond to this document by 9th February 2007. Responses should be made on the enclosed proforma and returned to the address below or electronically to **smd4mailbox@wales.gsi.gov.uk**.
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- Related documents:** Welsh Office Circular 19/95 'Home to School Transport'.
The Education Act 1996:
Education (School Information Wales) Regulations 1999 (SI 1999/1812).

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HOME TO SCHOOL TRANSPORT

SUMMARY

This consultation invites comments on draft guidance to Local Education Authorities (LEAs) about school transport. It is targeted at LEAs but is also of interest to schools, transport operators, parents and interest groups.

The draft guidance sets out the Welsh Assembly Government's view of the law on school transport. It is set in the context of the law as it stands and Welsh Assembly Government policy. When finalised, the guidance will replace Welsh Office Circular 19/95 ('Home to School Transport').

The draft guidance is not statutory and is not intended to provide a definitive guide to the law. It is not a substitute for persons seeking independent legal advice. This consultation does not cover post-16 learners; that is described in Circular 4/06 ('Guidance on Transport Policy Statements for Learners Aged 16 - 19 2006-07').

The draft guidance explains the duties placed on LEAs to provide transport for school pupils, while recognising that it is for LEAs to establish and maintain their policy for school transport as they see fit taking account of their discretionary powers. The draft guidance sets out the Welsh Assembly Government's expectations of LEAs for the provision and maintenance of high quality, safe and effective home to school transport service for pupils; and the publication of information for users.

The draft guidance takes account of the National Assembly for Wales' Education and Lifelong Learning Committee's review of school transport, published in April 2005. The Welsh Assembly Government's response to it was published on 14 June 2005.

The draft guidance does not address the possibility of change in the law on school transport using the new powers the National Assembly for Wales will have under the Education and Inspections Act 2006. These will permit the Assembly to develop legislation on travel arrangements for persons in school or further education or training. This will be the subject of consultation in due course.

The consultation period ends on 9 February 2007. Responses are to be sent to: Mrs Sue Brooks, Schools Management Division 4, Welsh Assembly Government, Cathays Park, Cardiff, CF10 3NQ or completed electronically and sent to SMD4mailbox@wales.gsi.gov.uk. It should be noted that responses to the consultation will be made public. Normally, the name and address (or part of the address) of the author are published along with the response. If you do not wish to be identified as the author of your response please state this expressly in your response.

Section 1: Legal Framework

Overview

1.1 The Education Act 1996 ('the Act') sets out the law for the attendance of pupils at school and related provisions for school transport. It places duties upon parents and LEAs. LEAs are also required by the Education (School Information Wales) Regulations 1999¹ to publish information about school transport arrangements.

Attendance of pupils at school

1.2 Parents of children of compulsory school age are required by section 444(1) of the Act to ensure that their children regularly attend the school² at which they are registered pupils. Parents who fail to do this commit an offence under section 444(1). However, the Act describes circumstances in which parents would not be judged to have broken the law. These circumstances are described in section 444(4) for pupils who are of fixed abode and do not attend boarding school. They are:

- (a) that the school at which the pupil is registered is not within walking distance of the pupil's home; and
- (b) that the LEA has not made suitable arrangements for any of the following:
 - transport to and from the school at which the pupil is registered; or
 - boarding accommodation for the pupil at or near the school; or
 - enabling the pupil to become a registered pupil at a school nearer to the pupil's home.

1.3 Logically, if an LEA provides for any of the three alternatives set out in (b) above the parent has no defence for the pupil's failure to attend school. Thus, the implication of section 444 is that LEAs have to provide transport for pupils between the pupil's home and registered school if they cannot either allow a pupil to register at another school within walking distance of the home or the LEA cannot provide boarding accommodation for the pupil at or near the registered school. The Courts have ruled that an LEA has acted unreasonably if it has failed to provide free school transport for a pupil of compulsory school age in circumstances where the parent has a defence under section 444(4).

Walking Distance and Safe Walking Routes

1.4 At the core of section 444(4) is the concept of 'walking distance'. This is defined by section 444(5) of the Act. For pupils under the age of eight, walking distance is two miles. For pupils aged eight or over it is three miles.

¹ Statutory Instrument 1999/1812

² The definition of 'school' for the purpose of section 444, and therefore this guidance, includes Pupil Referral Units.

1.5 Section 444(5) specifies that walking distance is to be measured by the 'nearest available route'. Although the term is not defined by the Act, section 509 (4)(a) of the Act requires an LEA to have regard, in deciding whether or not to provide free transport, to the age of the pupil and the nature of the route or alternative routes which a pupil could reasonably be expected to take. The Courts have held that a route is 'available' if a child, accompanied as necessary by an adult, can walk to school in reasonable safety. Thus a route which is less than the statutory walking distance might not be suitable because it is not 'available'. LEAs therefore have a responsibility to ensure that walking distances are measured along routes which can be used by accompanied pupils in reasonable safety. LEAs need to use consistent methodology and criteria in making risk assessments about the walking routes for individual pupils, taking account of the age of children using them, the proximity and volume of vehicular traffic and any specific hazards. If the shortest route to school is dangerous and the alternative route is over the statutory walking distance, then the LEA is under a duty to provide transport.

Provision of school transport by LEAs

1.6 Section 509 of the Act, as amended by the School Standards and Framework Act 1998, the Learning and Skills Act 2000, and the Education Act 2002, sets out the law for LEAs to make arrangements for transport.

1.7 Section 509(1) places a duty on LEAs to make arrangements for home to school transport as they consider necessary to enable pupils to attend school. The duty extends to pupils who attend an independent school or a non-maintained special school where this is the nearest suitable school.

1.8 It is implicit in section 509(1) that there is a duty upon an LEA to provide free transport to a school outside its area if that school is the nearest educationally suitable school and if the pupil lives further away than the statutory walking distance. The obligation falls on the LEA where the pupil is ordinarily resident and not the LEA in which the school is situated.

1.9 In making arrangements, the law sets conditions which LEAs must take into account. These are described in the following paragraphs.

1.10 Section 509(2) requires that transport must be provided free of charge for pupils who are eligible for such provision. When considering whether or not to make transport arrangements for pupils, LEAs are required by section 509(4) to take into account: a pupil's age; the nature of the walking route, or alternative walking routes he/she might reasonably be expected to take; and any parental wish for the child to be educated at a school or institution where the religious education provided is that of the denomination to which the parent adheres. Section 509(5) requires LEAs to ensure equality of treatment amongst all categories of persons for whom transport arrangements are made. Therefore, LEAs must ensure that statutory transport provision is non-discriminatory, and that any provision made for pupils attending foundation schools, a further education institution, or any other institution providing education, is no less favourable than the provision made for pupils of the same age attending other schools maintained by an LEA within its jurisdiction.

Parental wishes and preference

1.11 Section 9 of the Act provides that LEAs, in exercising or performing all their respective powers and duties under the Education Acts, are to have regard to the general principle that pupils are to be educated in accordance with parents' wishes, as far as is compatible with the provision of efficient instruction and training and the avoidance of unreasonable expenditure.

1.12 Section 86 of the School Standards and Framework Act 1998 requires LEAs to enable parents to express a preference for the school they wish their child to attend, including preference for Welsh-medium or denominational schools. Parental preference is, however, not an absolute right to a place in a first choice school: for instance schools may receive more applications than they can accommodate. Nevertheless, admission authorities (be they LEAs or the governing bodies of voluntary aided and foundation schools) have a duty to comply with parental preferences unless doing so would "prejudice efficient education" in the school. In practice, prejudice of efficient education usually means when the school is full. If there are more applicants for a school than places available, the admission authority has to prioritise applications based on their published oversubscription criteria, which might include distance from the school, sibling links, and transfer from named primary feeder schools. Therefore there are instances in which applicants are not given a place and parental wishes and preferences are not fulfilled.

1.13 Where a parent cannot obtain a place for their child at the nearest suitable school because the school is full, and as a result the child has to attend a school beyond the statutory walking distance from their home, then the LEA is under a duty to provide free home to school transport.

1.14 If there are enough places available in a school to accept all applicants, the admission authority's decision must usually be to accept all applications. This can mean that children living at some distance from the school secure a place. However, if this is not the nearest suitable school, the pupil does not have a right to free school transport if they live beyond walking distance. In such cases, parents are generally responsible for making their own transport arrangements, although LEAs do have discretion to provide free or assisted transport for such pupils.

Children with Special Educational Needs (SEN) and Disabilities

1.15 In the case of a pupil with SEN, whether statemented or not, LEA judgement as to which is the nearest suitable school for the pupil must take into account the pupil's special needs. Pupils with SEN statements or disabilities often live further from their nearest suitable school than the general school pupil population.

1.16 In making decisions about transport provision for pupils with SEN statements, LEAs should note section 324(5) of the Act which includes transport within the definition of non-educational provision. This section empowers an LEA to provide a statemented pupil with transport to the school named in the pupil's SEN statement if the pupil's parents have not made suitable alternative arrangements.

1.17 The provisions regarding walking distance apply to pupils irrespective of SEN or disabilities. LEAs have an obligation to provide free transport if a pupil lives beyond walking distance from the school or institution specified in the SEN statement. However for some statemented pupils, and for some disabled pupils, walking to school is not an option whatever the distance involved. In those cases, the LEA is under an obligation to provide free home to school transport.

Other legal considerations for LEAs

1.18 The paragraphs above describe the principal parts of the law that apply to school transport arrangements for pupils. However, other parts of the law may have a bearing on LEA policy and operations. In formulating school transport policies and in deciding what school transport arrangements to provide, LEAs should consider whether their provision is fair, reasonable, and compliant with the relevant provisions of equality legislation such as: the Sex Discrimination Act 1975; Race Relations Act 1976; Welsh Language Act 1993; Disability Discrimination Act 1995; the Human Rights Act 1998; and the European Convention on Human Rights.

1.19 LEAs should also consider health and safety and transport legislation that may be relevant to their policy and operations. In relation to health and safety, LEAs should be aware of the following:

- duties on LEAs, schools and contractors under the Health and Safety at Work etc. Act 1974;
- duties under The Management of Health and Safety at Work Regulations 1999 (SI 1999/3242) to make suitable and sufficient assessment of the risks to the health and safety of employees and persons not in their employment (regulation 3) and to give effect to appropriate arrangements for the effective planning, organisation, control, monitoring and review of preventative and protective health and safety measures (regulation 5);
- the Workplace Health, Safety and Welfare Regulations 1992 (SI 1992/3004); and
- Health and Safety Guidance contained in 'Workplace Transport Safety' (HSG 136) published by the Health and Safety Executive in 2005.

1.20 In relation to transport, LEAs should note the relationship between school transport and the Transport (Wales) Act 2006 which gives the National Assembly for Wales the power to make orders to require local authorities to prepare local transport plans and bus strategies for areas which reflect regional patterns of travel.

Welsh Assembly Government powers

1.21 The Welsh Assembly Government has a discretionary power under section 509(1) of the Act to direct LEAs to make arrangements for the provision of transport or otherwise for the purposes of facilitating the attendance of pupils receiving education. This power is held in reserve for use should circumstances arise which the Welsh Assembly Government judges require it to intervene. The Welsh Assembly Government also has powers under sections 496, 497 and 497A of the Education Act 1996 to secure proper performance by an LEA of its functions. The Welsh Assembly Government is not responsible for home to school transport

provision nor is it Welsh Assembly Government policy to intervene in the day to day policy making, provision or operation of transport for pupils by LEAs.

The Education and Inspections Act 2006

1.22 The Education and Inspections Act will provide the National Assembly for Wales with powers to make Assembly Measures to change the law covering the travel of persons receiving primary, secondary or further education or training to and from schools and other places where they learn. The Welsh Assembly Government will make proposals for legislation to be considered by the National Assembly for Wales in due course.

Q1. Do you have any specific comments about section 1 (Legal Framework)?

Section 2: Provision of Home to School Transport by LEAs

Overview

2.1 Section 2 provides guidance about how LEAs should manage and monitor an effective, safe and efficient home to school transport service. The section includes comment on the safety of bus vehicles, embarkation areas, driver Criminal Records Bureau (CRB) checks and training, and the management of over-crowding and pupil behaviour.

MANAGEMENT OF AN EFFICIENT AND EFFECTIVE SERVICE

Planning of home to school transport by LEAs

2.2. LEAs have discretion to make transport arrangements that they deem suitable for the needs of pupils as long as arrangements comply with legislative requirements³. Home to school transport may be provided by:

- contracted vehicles which provide a dedicated home to school service;
- arrangements for pupils to use local public transport (train or bus); or
- payment of a mileage or cycle allowance to pupils or parents.

2.3 The Courts have ruled that travel to and from the home and school must be without undue stress, strain or difficulty. Pupils should travel in safety and reasonable comfort.

2.4 Exact arrangements will depend upon the LEA. They will be based upon information about pupil needs, and local geographical and socio-economic issues. LEAs should ensure that school transport arrangements fit with other transport responsibilities of local authorities such as the duty to provide socially necessary bus services.

2.5 There will be many areas of commonality between LEAs. The Welsh Assembly Government expects LEAs to share information, good practice, and to consider opportunities for joint arrangements, where that can lead to service improvements for pupils and / or the public. This expectation arises from 'Making the Connections: Delivering Better Services' and the 'Review of Local Service Delivery' which emphasise that public service providers should collaborate where that will lead to improvements for the user or will make the service more efficient.

2.6 LEAs should plan home to school transport in conjunction with schools and seek opportunities for co-ordinated arrangements. For instance, adjustments to school timetables may have cost-efficiency benefits and ease traffic congestion.

Contracts for home to school transport

2.7 In many parts of Wales the core of home to school transport arrangements are dedicated contracts between LEAs and transport operators. LEAs may enter

³ Cf Section 1.

contracts that they deem fit for their needs. They should test the market regularly to secure value for money and should adhere to procurement best practice.

2.8 There is a balance to be struck between the length of contract, the quality of vehicles that a contractor offers and the training opportunities for a contractor's drivers. Contractors are more willing to invest in better quality vehicles if they have a longer contract, such as five or more years, during which they can make a better return on their investment. Contractors are also more prepared to invest in staff training if there is certainty that those skills are useful for longer. It is for LEAs to determine where the balance lies, though obtaining a high quality service ought to be a high priority.

2.9 Successful tendering and management of LEA contracts should cover:

- objective criteria for the selection of contractors using best value for money practices;
- the types of vehicles to be used, including specifications about required standards;
- specification of the roles and responsibilities of contractors, drivers and any escorts;
- procedures for the collection, evaluation, keeping and accessibility of information (such as CRB checks, operators' licences, drivers' licences, MOT certificates);
- training for drivers and other contractor staff;
- procedures for contractors to bring matters to the attention of LEAs and / or schools;
- stipulation of the frequency and types of monitoring activities that LEAs, or their agents, may undertake (such as programmed visits, spot checks, complaint investigations, and liaison with schools, parents and pupils);
- information exchange with external agencies (such as the Vehicle and Operator Service Agency (VOSA) and the Traffic Commissioner); and
- arrangements to monitor and evaluate the delivery of the service, and to take action if the LEA deems that necessary.

Controlling costs

2.10 The Welsh Assembly Government expects arrangements to be efficient. Local authorities have a duty to co-ordinate passenger transport (including social services and school transport) in order to secure the best value for money from services overall⁴. All arrangements for home to school transport, whether provided by dedicated contract or otherwise, should be monitored and evaluated regularly. LEAs should share information with other local authority departments with an interest in transport matters. Thorough planning, good contracting, and stream-lined processes for managing contracts are essential. LEAs should consider:

- how to plan arrangements to complement socially necessary and other transport services, and arrangements put in place by other local authority

⁴ Transport Act 1985

- services or providers such as the voluntary sector, social services, or health authority;
- having contracts that give operators flexibility to plan routes to save mileage or time and optimise vehicle use;
- having contract lengths that provide certainty to operators and encourage them to invest in vehicles and staff training; and
- how to make the tender and contract management process simple for operators so that new and / or small operators are not discouraged from tendering.

OPERATING A SAFE SERVICE

2.11 LEAs should consider the risk factors associated with home to school transport arrangements. These include the vehicles used, the staff who operate them, overcrowding, pupil behaviour, and embarkation / disembarkation arrangements. The following sections consider these matters in turn.

Embarkation and Disembarkation at School Premises

2.12 Embarkation and disembarkation areas present risks. They are often crowded, sometimes confined, might be on busy roads or have many buses arriving or departing, and pupils are not aware of hazards. There is potential for accidents in the congregation area or, if pupils are not adequately supervised, by crushing when entering or leaving buses.

2.13 Health and safety legislation requires:

- supervision of areas in school grounds where pupils congregate before embarking or disembarking;
- clear marking of embarkation areas; and
- keeping embarkation areas clear of obstructions.

2.14 LEAs should liaise with schools to ensure that these legislative requirements are met. LEAs should carry out jointly with schools risk assessments of areas where vehicles park or manoeuvre, and where pupils congregate before embarkation or after disembarkation. LEAs should ensure that these areas are monitored regularly and that there are clear procedures in place for schools, parents, pupils, and transport operators to report problems and for any reports to be evaluated promptly and necessary action taken to solve the problem quickly.

2.15 The Welsh Assembly Government regards it as good practice that schools ensure that there is supervision of embarkation and disembarkation, whether on, outside or near to the school premises. A senior teacher should have responsibility for arranging supervision. The same person should also have general responsibility for home to school transport arrangements and be in regular contact with the LEA.

Vehicles

Vehicle standards

2.16 Vehicles must meet road safety and transport legislation requirements for quality and safety at all times. It is a legal requirement that all buses carry first aid kits and fire extinguishers. LEAs must have robust monitoring and evaluation procedures to ensure that these standards are met and continue to be met. The legal requirements and LEA procedures must be made clear by LEAs to operators during the contracting process. Thereafter, LEAs should monitor vehicles by spot checks, visits to schools and operators, and by feedback from schools, pupils and parents. LEA arrangements should take into account the role of VOSA and Traffic Commissioner standards.

2.17 It is for LEAs to consider setting quality criteria that exceed legal requirements. Nevertheless, the Welsh Assembly Government would encourage LEAs to contract for high quality vehicles that make the home to school journey more pleasant. The Welsh Assembly Government would prefer LEAs to use single deck buses, unless there are practical reasons that make double-deckers a better choice.

Overcrowding

2.18 It is important that buses are not overcrowded. Overcrowding can make the journey dangerous, it certainly makes it less pleasant and it can lead to behaviour problems. There should be adequate space for pupils and their bags. LEAs should consider the needs of pupils carrying musical instruments or large sports equipment. This is important both from a safety perspective and also so that pupils are not discouraged from pursuing these interests because of the difficulty of travelling with such items.

2.19 LEAs and schools should agree on how to ensure that there is supervision of pupils embarking or disembarking on contracted buses at or near the school premises. Supervision will reduce the likelihood of crushing during embarkation and is also essential to prevent overcrowding. LEAs and schools should not expect bus drivers to take on this role. It is for bus drivers, however, to determine whether a bus is full and to decline to take more pupils.

2.20 Bus passes should be issued annually to all pupils entitled to school transport and those travelling regularly on a vehicle as part of a 'concessionary seat' scheme (see Section 3). Passes should be shown to the bus driver at the start of each journey. LEAs might consider having a 'no pass, no travel' rule. Experience has shown that this can prevent overcrowding on vehicles and the misuse of school transport by pupils who are not entitled to travel on LEA contracted vehicles or choose to travel on a vehicle other than the one they are assigned to. LEAs should arrange regular checks to ensure that the procedure is operating well.

2.21 LEAs are entitled to use the '3 for 2' concession in their contracts. The '3 for 2' concession permits transport operators to sit three children under the age of 14 in two adult seats on a bus. In practice, few LEAs in Wales use it. The Welsh Assembly Government is not in favour of the concession being used other than for exceptional

operational reasons (e.g. inclement weather, vehicle failure, or an emergency where pupils might not be able to get home otherwise). LEAs should ensure that any operator using the concession has appropriate insurance cover.

Seat belts

2.22 LEAs must ensure that transport operators use vehicles which meet legislative requirements for seat belts.

2.23 The Road Vehicles (Construction and Use) (Amendment) (No. 2) Regulations 2001 (SI 2001/1043) require that safely anchored seat belts should be fitted on all minibuses, irrespective of age, and on coaches first used after 1 October 1988. The regulations also require that seat belts should be fitted on all new coaches, minibuses and certain types of bus carrying children built after 1 October 2001.

2.24 The regulations define a minibus as a motor vehicle constructed or adapted to carry more than 8, but not more than 16 seated passengers, in addition to the driver. A coach is defined as a type of large bus, constructed or adapted to carry more than 16 seated passengers in addition to the driver, which has a gross weight of more than 7.5 tonnes and a maximum speed exceeding 60mph.

2.25 Buses which do not meet the weight or speed criteria of a coach are not required to be fitted with seat belts. Such vehicles may be used for home to school transport, when they are operating under contract to an LEA for a dedicated home to school transport service, or when they carry pupils on a public service route. These buses are designed for urban use, may carry standing passengers, and travel at slower speeds with frequent stops. Their nature makes the use of seat belts less practicable. In contracting for bus services, LEAs have to make judgements as to whether a coach with seat belts or an urban bus is most suitable for the route. The decision should take into account the age of pupils, the nature of the route, and any relevant information that might bear upon the LEA's duty of care to the pupils.

2.26 The Motor Vehicles (Wearing of Seat Belts) (Amendment) Regulations 2006 (SI 2006/1892) came into force on 18 September 2006. These require seated passengers aged 14 years and above in a bus or coach to use a seat belt if one is installed. The regulations also require that operators of buses and coaches where seat belts are fitted must take reasonable steps to notify passengers of the need to use seat belts. Where seat belts are fitted to school transport vehicles, LEAs should take steps in collaboration with schools to encourage pupils to use them.

Drivers and Escorts

Licensing of school bus drivers

2.27 It is essential that bus drivers are licensed. LEAs should ensure that arrangements for checking this are included in contracts with transport operators and that there is rigorous compliance monitoring during the life of the contract.

Training of school bus drivers and escorts to work with pupils

2.28 Bus drivers meet pupils daily and tact, good humour, and responding to young people in an appropriate and effective manner are important. Doing so makes the journey more pleasant, reduces the likelihood of behaviour problems and enables the driver to deal with them calmly. LEAs should consider with transport operators how drivers can be trained to work with pupils on matters such as safety, emergency procedures and conflict resolution. The Welsh Assembly Government encourages LEAs to make driver training in such matters a condition of contract. It is for LEAs to decide whether to arrange or fund training for drivers centrally, or require operators to make their own arrangements.

2.29 LEAs may provide escorts on some services or require transport operators to provide them. The decision to use escorts should take into account the needs and risks posed by the age of pupils, any special educational needs, and general standards of behaviour on the route. Escorts help the driver by taking on responsibility for pupil behaviour during the journey. Escorts should have suitable experience and have undertaken appropriate training. If escorts are provided by the transport operator, the LEA should ensure that there are clear arrangements in the contract for their provision and monitoring.

Criminal Records Bureau (CRB) checks on drivers and escorts

2.30 The law does not require employers to make CRB checks on school bus drivers and escorts. Employers have the discretion to commission checks and some LEAs require transport operators to make CRB checks as a condition of the home to school transport contract. However, the Welsh Assembly Government encourages LEAs to ensure that CRB checks are carried out on all staff employed on contracted school transport services as a matter of good practice. The checks required, and how they are arranged, should be set out when LEAs enter contracts with transport operators. LEAs should monitor operators to ensure that they adhere to contractual requirements. LEAs might also stipulate that drivers and escorts, who are CRB cleared, should carry photo identification to assure pupils, parents and schools of drivers' and escorts' identities.

2.31 The Welsh Assembly Government has issued guidance to employers on preventing unsuitable people from undertaking any role with children and young persons in the education service. Circular 34/02 ('Child Protection: Preventing Unsuitable People from Working with Children and Young Persons in the Education Service'), issued in October 2002, outlines the details of the pre-appointment checks that should be made on all staff who will have contact with children.

2.32 LEAs and transport operators should seek guidance from the CRB about CRB checks. The interpretation and application of that guidance is a matter for individual employers.

2.33 LEAs and transport operators should note that the Safeguarding Vulnerable Groups Act 2006 includes arrangements that will effect CRB checks for home to school transport. The Act makes enhanced level CRB checks mandatory for persons who drive a vehicle for the purpose of conveying children or any person supervising

or caring for them. Thus, drivers of dedicated school buses, taxi drivers, and escorts will have to be CRB checked. The commencement date of these new provisions is yet to be decided and the detail of arrangements would be set out in regulations which would prescribe circumstances.

Pupils

2.34 Poor behaviour on school transport is a danger to pupils, the driver, escorts, and other road users. It also deters operators from tendering for school services. LEAs should work with schools and operators to ensure pupils behave well on bus services. To maintain good standards of behaviour amongst pupils, it is important that:

- the LEA makes the expected standards of behaviour clear to schools and parents;
- parents and pupils know the LEA's policy on behaviour, the standards required and the possible consequences of misbehaviour;
- sanctions for breaches of those standards are reasonable, proportionate and applied promptly and consistently by LEAs and schools acting on their behalf; and
- there are robust reporting procedures so bus operators and schools can inform LEAs and action can be taken promptly.

2.35 The following sections describe measures that LEAs can consider to promote good behaviour.

Codes of Conduct

2.36 Some LEAs have drawn up codes of conduct to which pupils must adhere. The Welsh Assembly Government would encourage all LEAs to do this. Codes should make clear the responsibilities of pupils, parents, contractors and their staff, and schools. It is important that all parties understand the code and what it means for them. Used effectively, a code promotes good behaviour and sets out how poor behaviour will be tackled.

2.37 In addition to LEAs making information available to parents and pupils, it is suggested that LEAs encourage schools to include behaviour on school buses in home to school agreements. Parental and pupil signature of a home to school agreement might be made a requirement for use of school transport. Good behaviour can also be promoted through Personal and Social Education (PSE), school assemblies, and school councils. LEAs should work with schools and operators to develop strategies that promote good behaviour. Codes of conduct should be reviewed in the light of experience. Pupils should be involved in the development and review of such codes.

Closed Circuit Television (CCTV)

2.38 Some LEAs use CCTV on school transport. This can be a contractual requirement for providers of dedicated school transport. Transport operators may choose to install it on public service vehicles as well. CCTV provides evidence to

identify pupils behaving badly so that steps may be taken to apply sanctions and then improve behaviour. CCTV may also have a deterrent value. Where CCTV is used on buses contracted to provide home to school transport, LEAs should make clear that the footage is confidential and may be used as evidence by the LEA in cases of pupil misbehaviour or driver misconduct.

Sanctions for poor or inappropriate behaviour

2.39 LEAs, schools and transport operators should agree sanctions for poor or inappropriate behaviour. LEAs should lead the establishment of policy and procedures for sanctions. Temporary or permanent exclusion from school buses could be appropriate in serious cases⁵. It is reasonable for school transport to be provided on the basis that a pupil should adhere to expected standards of behaviour. Thus, pupils who do not behave appropriately cannot expect to use the transport. In such a situation, LEAs are unlikely to be judged to have failed in their duty to make suitable transport arrangements.

2.40 LEAs should consider the individual needs of pupils with emotional and behavioural difficulties who receive additional support in school. Such pupils might need support when travelling between home and school. LEAs should work with schools and transport operators to identify the needs of such pupils and to put in place strategies to ensure safe travel for them and other pupils.

Reporting incidents of poor or inappropriate behaviour

2.41 LEAs should publicise clear procedures for schools, drivers, escorts, parents and pupils to report incidents. LEAs should retain records of incidents and ensure that appropriate action is taken promptly. It is essential that operators also have clear guidelines about how to deal with bad behaviour or emergencies and that these guidelines are understood and practised by drivers. A bus driver may refuse to carry someone whose behaviour, in his opinion, would put the safe operation of the bus at risk. However, in taking such action, a driver must consider the nature and seriousness of the behaviour and the consequences of refusing to carry that passenger. It would not be acceptable, for example, for a driver to leave a young child by the roadside. Drivers must understand what they can do and who they should contact if there is misbehaviour. These matters should be set out in contracts between the LEA and bus operators and guidance made available widely, and they should be covered in driver training.

Q2. Do you have any specific comments about section 2 (Provision of Home to School Transport by LEAs)?

⁵ National Assembly for Wales Guidance Circular 1,& 1a/2004 – ‘Exclusion from Schools and Pupil Referral Units’

Section 3: Discretionary Transport Arrangements and Transport for SEN pupils

Overview

3.1 Section 3 provides guidance on those circumstances in which LEAs can make discretionary arrangements for pupils who would not qualify by law for free home to school transport.

3.2 In using their discretion, LEAs must ensure that their policies are fair and reasonable, and comply with relevant legislation including the Human Rights Act 1998 and the European Convention on Human Rights.

3.3 LEAs should make clear in their school admissions documents and published information about school transport their policy on providing free or discretionary travel.

Transport for pupils living closer to school than the statutory walking distance

3.4 LEAs may provide free transport for travel over a shorter walking distance than the statutory 2 or 3 miles. When this is the case, the policy must apply to all pupils living in an LEA.

3.5 LEAs may also assist pupils for whom free transport is not provided in a number of ways. For example, if there are spare seats, LEAs may allow pupils not entitled to free transport to travel on a bus providing free school transport as fare paying passengers. LEAs will need to advise parents that such a facility is only available as long as the seats are not required for pupils entitled to free school transport.

Allowances and concessionary fare schemes

3.6 LEAs can reimburse parents or pupils for the cost of transport. This arrangement is usually adopted where there is no suitable public transport service, or provision of a contracted vehicle for a small number of pupils would be a less effective use of resources than making individual arrangements for each pupil. If they use this approach, LEAs need to set out in their policies, and make clear to parents and pupils, the arrangements for payment and reimbursement. LEAs should also check that the operators of vehicles used in this way are insured for such an arrangement.

Transport to Welsh / English medium schools

3.7 Whilst there is no statutory requirement to do so, LEAs may wish to consider parental preference with regard to Welsh or English medium education when deciding whether to provide free, or assisted, school transport. In providing transport to Welsh medium schools, LEAs should take account of their Welsh Language Schemes published under the Welsh Language Act 1993. LEAs should make clear in their composite school admissions documents their policy on providing free or assisted travel to schools teaching through the medium of Welsh or English.

Transport to denominational schools

3.8 LEAs must, under section 509 (4) (b) of the 1996 Act, have regard to parental wishes for their child to be educated at a school or institution in which the religious education provided is that of the parent's religion or denomination. Consequently, most LEAs in Wales have a policy of providing free transport to pupils attending church schools who live beyond statutory walking distance.

3.9 If an LEA provides free or subsidised transport to church schools, it must be non-discriminatory. For example, if the LEA adopts a policy to provide free transport to denominational schools, it must provide transport to both Roman Catholic and Church in Wales schools even if this means transport to a school outside the authority. In the case of Church in Wales' schools, the LEA should not make a distinction between Voluntary Aided and Voluntary Controlled schools.

Transport for children under statutory school age

3.10 There is no legal obligation on LEAs to provide free transport to school for children under the age of five, but they may provide transport for such pupils. This may be particularly relevant for pupils who live in rural areas and whose parents may not be able to take up a nursery place without assistance with transport.

Children with Special Educational Needs (SEN)

3.11 LEAs should adopt a clear and consistent policy on transport provision for pupils with disabilities and special educational needs.

3.12 The Special Educational Needs Code of Practice for Wales⁶ sets out the issues to be considered by LEAs when providing transport for pupils with a SEN statement. LEAs should review a pupil's entitlement and transport needs on a regular basis. For statemented pupils, this might be carried out as part of the annual review of the statement, irrespective of whether or not the statement specifically includes transport matters. For disabled and other non-statemented pupils, LEAs should review annually whether to provide free transport.

3.13 It is suggested that the following matters are covered by LEAs' policies on transport provision for pupils with disabilities or SEN and where appropriate these matters should also be considered when contracts are tendered:

- groups of pupils covered by the policy and how entitlement for free transport is assessed;
- escort provision;
- transport to mainstream schools, special schools, and residential facilities;
- facilitation of parental preference;
- charges for spare places on dedicated transport for pupils not entitled to free transport;
- standards for staff and vehicles, including child protection arrangements;
- good practice on transporting children in wheelchairs or special seats;

⁶ Reprinted in January 2004 (ISBN 0 7504 2757 4) (paragraphs 8:87 to 8:90)

- training for drivers and escorts to use special equipment and arrangements to manage pupil behaviour;
- appeals against refusal of requests for free transport;
- complaints procedures; and
- arrangements for monitoring services, including liaison with and feedback from parents and schools.

3.14 As part of their procedures for tendering for school transport for pupils with SEN, LEAs should bear in mind the requirements of the Data Protection Act 1998 in relation to the collection and holding of personal data and appropriate use of it. In particular, they should have regard to the provisions of the Act in relation to the processing of 'sensitive personal information', including details of a 'physical or mental health condition'. Tender documents must not contain the identity of pupils to be transported or information that could be used to identify them.

3.15 Depending upon the needs of the pupil, LEAs should work with schools and operators to keep records to ensure appropriate provision is made. This might include information about:

- pupil attendance: which schools and days and times a pupil attends;
- pupil needs for supervision, or requirements for specially trained personnel to manage behavioural or other needs;
- wheelchair provision: for example ascertaining details about the make and model of a pupil's equipment to ensure that the transport vehicle is appropriate and that the driver or escort is trained to operate the equipment;
- special seating or harnesses;
- special assistance requirements: for example, lifting or handling of pupils in and out of vehicles;
- medical needs/medication; and
- emergency contact telephone numbers.

Q3. Do you have any specific comments about section 3 (Discretionary Transport Arrangements and Transport for SEN pupils)?

Section 4: Communication with Users and Schools

Overview

4.1 Section 4 provides guidance about the information that should be made available to parents, pupils and schools in relation to home to school transport.

Publication of school transport policies and information for parents

4.2 LEAs are required by paragraph 8(1) of Schedule 1 to the Education (School Information) (Wales) Regulations 1999⁷ to publish their school and college transport policies and arrangements. The manner and timing of publication is prescribed by Regulation 6. Publication for the purposes of Regulation 6(3) requires distribution of relevant information to parents. The fundamental point is that parents must be able to understand their choices and any cost implications of the choice of school they make for their child. LEAs should therefore provide parents with information about transport arrangements alongside, or as part of the information, made available about school admissions. The information should include a summary of the LEA's transport policy, including any discretionary arrangements.

4.3 The education and transport departments of local authorities often have shared interests in school transport. LEAs should ensure that communication arrangements are as easy as possible for the user. To this end, LEAs may consider establishing a 'one stop shop' with a single point of contact for schools, bus operators, parents and the general public. A report by the Welsh Local Government Association and the National Foundation for Education Research⁸ identified good practice where these functions were undertaken by one department. It is important that parents and pupils are able to obtain information and advice when the need arises. The sorts of information that parents and pupils might need are:

- arrangements for applying for free transport provision and / or for appeals against refusal of free transport;
- how to complain;
- who to contact if there is an emergency;
- the provision and role of escorts;
- notification that vehicles may be fitted with CCTV to identify pupils who misbehave;
- child protection arrangements; and
- codes of behaviour for pupils and the sanctions that LEAs might use.

Changes to school transport policies

4.4 LEAs should only change their existing transport policy and / or arrangements at the beginning of a school year, and any changes which restrict discretionary provision of free school transport should only apply to pupils reaching compulsory school age or changing school. An LEA could be judged to be acting unreasonably if entitlement to free school transport were lost and parents had not been aware of this

⁷ SI 1999/1812

⁸ Good Practice in School Transport in Wales; published in May 2005.

at the time their application for admission was accepted. Similarly, an LEA could be judged to have acted unreasonably in respect of change in any other aspect of its arrangements e.g. changes to timing of services or pick up/drop off points, if it failed to give parents adequate and timely notification of the change.

4.5 Where an authority wishes to change its school transport policy, as a matter of fairness and good practice, such changes may necessitate consultation with the schools, parents of pupils, and any other relevant parties likely to be affected, before reaching a decision.

4.6 Consultation should also take place with children and young people, where appropriate, to ensure that service users have a chance to contribute to the discussions. LEAs could ask School Councils or their youth forum for views. School Councils are a statutory requirement in every primary (excluding nursery and infants), secondary and special school under the School Council (Wales) Regulations 2005 (SI 2005/3200). Care should be taken to ensure that the methods of acquiring the views of children and young people are as inclusive as possible and are conducted in a way that is appropriate to the particular age group concerned. Those consulting children and young people should ensure that they give a clear picture of how their views will be taken into account and that feedback is provided on decisions taken.

4.7 The Welsh Assembly Government intends to issue guidance on consultation with pupils under section 176 of the Education Act 2002 which LEAs and school governing bodies will have to have regard to in relation to the involvement of pupils in decisions that affect them. It is anticipated that this guidance will be issued in early 2007.

Liaison with schools

4.8 Schools have an important role to play in helping to ensure the smooth operation of transport arrangements. For schools to play their part effectively, they need to work closely with the LEA. This is a two way relationship. Schools should play their part as follows:

- nomination of a senior member of staff to deal with school transport issues and to act as a contact point for the LEA and transport operators;
- prompt reporting of any shortcomings in the transport service to the LEA;
- supervision of embarkation / disembarkation points where these are on school grounds or nearby;
- assisting the LEA to identify pupils responsible for incidents of misconduct on buses; and
- inclusion of good behaviour in home – school contracts and implementation of any disciplinary sanctions agreed with the LEA.

Q4. Do you have any specific comments about section 4 (Communication with Users and Schools)?

Q5. Do you have any general comments about the scope and balance of the guidance as a whole?

Q6. Do you have any other comments or examples of practice to offer?

Web links

Education Act 1996: <http://www.opsi.gov.uk/acts/acts1996/1996056.htm>

Circular 4/06 ('Guidance on Transport Policy Statements for Learners Aged 16 – 19 2006/07'): <http://www.learning.wales.gov.uk/pdfs/guidance-transport-policy-2006-e.pdf>

National Assembly's Education and Lifelong Learning Committee's policy review of school transport:
<http://www.wales.gov.uk/keypubassemedlifelearn/content/committee-report-e.pdf>

Education (School Information Wales) Regulations 1999 (SI 1999/1812):
<http://www.opsi.gov.uk/si/si1999/19991812.htm>

Circular 34/02 'Child Protection: Preventing Unsuitable People from Working with Children and Young Persons in the Education Service', issued in October 2002:
<http://www.wales.gov.uk/subieducationtraining/content/circulars/3402/child-protection-e.pdf>

The Special Educational Needs Code of Practice for Wales:
<http://www.learning.wales.gov.uk/pdfs/senforwales-cover-e.pdf>

Making the Connections: Delivering Better Services:
<http://new.wales.gov.uk/docrepos/40382/403823121/40382213/403822133/mtc-document-e.pdf?lang=en>

Review of Local Service Delivery:
[http://www.allwalesunit.gov.uk/mediapdf/6/0/English_Report_10_Jul_06_\(3\).pdf](http://www.allwalesunit.gov.uk/mediapdf/6/0/English_Report_10_Jul_06_(3).pdf)

LIST OF SCHOOLS CONSULTED

Ysgol Gynradd Llanddona
Ysgol Gynradd Carmel
Ysgol Garndolbenmaen
Y.G. Rhostryfan
Ysgol Bro Cynfal
Ysgol Gynradd Talsarnau
Ysgol Ffridd Y Llyn
Ysgol Gynradd Llandwrog
Ysgol Beuno Sant Y Bala
Ysgol Llanbrynmair
Troedyrhiw Junior School
Magor V.A. Primary School
Rhydypenau Primary School
Ton-Yr-Ywen Primary School
Trowbridge Infant School
Coryton Primary School
Ysgol Gymraeg Pwll Coch
St Paul's C.I.W. Primary School
St Bernadette's R.C. Primary School
Ysgol Gymuned Bryngwran
Ysgol Gynradd Santes Gwenfaen
Ysgol y Tywyn
Ysgol Gynradd Caergeiliog
Ysgol Gynradd Rhiwlas
Ysgol Ieuan Gwynedd
Ysgol Gynradd Maesincla
Ysgol Capelulo
Ysgol Penmachno
Ysgol Bod Alaw
Ysgol Gynradd Rhydgaled
St Elfod Junior School
Ysgol Porth y Felin
Ysgol Hiraddug
Bodfari C.P. School
Ysgol Y Parc Infants
Ysgol Caer Drewyn
St Asaph V.P. Infants
Ysgol Mair R.C. School
Gwynedd C.P. School
Ysgol Glanrafon
Ysgol Bro Carmel
Ysgol Y Ddol
Wepre C.P. School
Ysgol Croes Atti
Trelawnyd V.A. School
Cefn Mawr Primary School
Brynteg County School
Rhosddu Primary School

Deiniol C.P. School
Ysgol Sant Dunawd
St Giles Junior Controlled School
St Mary's Aided Primary School
Arddleen C.P. School
Llandinam C.P. School
Trefnanney C.P. School
Hafren C.P. Junior School
Sennybridge C.P. School
Caehopkin C.P. School
Howey C.I.W. School
Llangattock C.I.W. School
St Mary's R.C. (A) School
Cross Inn C.P. School
Pennant C.P. School
Ysgol Llanfarian
Ysgol Gynradd Trefeurig
Llanwnnen C.P. School
Rhyd Lewis C.P. School
Y.G. Swyddffynnon
Y.G. Sirol Hayscastle
Hook C.P. School
Tenby Junior Community School
Broad Haven C.P. School
Llangwm VCP School
Holy Name V.R.C. School
Cross Hands C.P. School
Ysgol Gynradd Parcyrhun
Cwrt Henry
Johnstown C.P. School
Ysgol Gynradd Pum Heol
Old Road C.P. Primary School
Llangunnor C.P. School
Ysgol Teilo Sant
Y.G. Nantgaredig
Ysgol Carreg Hirfaen
Ysgol Bro Brynach
Ysgol Capel Cynfab
St Mary's R.C. Primary School
Ysgol Gynradd Gymraeg Lonlas
Plasmarl Primary School
Clase Primary School
Clydach Infant School
Llanrhidian Primary School
Craigfelen Primary School
Pennard Primary School
Dunvant Primary
St Josephs Catholic Primary School
Alltwen Primary School
Cwmafan Infant School

YGGD Gwauncaegurwen
Neath Abbey Infants
Ynysmaerdy Primary School
YGGD Trebannws
Betws Primary School
Ffaldau Primary School
Nantymoel Primary School
Pil Primary School
Porthcawl Primary School
Tremains Junior School
Archdeacon John Lewis
Gladstone Primary School
Sully Primary School
Ysgol Sant Baruc
St David's C.I.W. Primary School
Abercynon Infants School
Coedylan Primary School
Glanffrwd Infant School
Comin Junior Mixed School
Maes-Y-Coed Primary School
Llanhari Primary School
Hirwaun Primary School
Heol-Y-Celyn Primary School
Ysgol G.G. Aberdar
Ynyswen Infant School
Ysgol Gymraeg Llantrisant
Penyreglyn Primary School
Cwmbach C.I.W. Primary School
Brecon Road Infants School
Ysgol Santes Tudful
Argoed Primary School
Derwendeg Primary School
Hengoed Primary School
Ty Isaf Infants & Nursery School
Abercarn Primary School
Upper Rhymney Primary School
Pontlloftyn Primary School
Aberbargoed Primary School
Bryn Bach County Primary School
Bryngwyn Primary
Hillside Primary School
Kemys Fawr Infants School
Coed Eva Junior Mixed School
St Peter's C.V. Junior & Infants
Llanfoist C.P. School
Shirenewton Junior & Infant School
Eveswell Primary School
Brynglas Primary School
Caerleon (Lodge Hill) Junior School
Ysgol Gymraeg Casnewydd

St David's R.C. Junior & Infants School
Millbank Primary School
Marlborough Infant School
Grange Town Primary
St Monica's C.I.W. Primary School
Ysgol Maes-Y-Dderwen
Ysgol Dyffryn Nantlle
St Brigid's School
Castell Alun High School
Ysgol Maes Garmon
Ysgol Clywedog
Ysgol Uwchradd Tregaron
Ysgol Bro Gwaun
Ysgol Glan-Y-Mor School
Olchfa School
Penyrheol Comprehensive School
Cymer Afan Comprehensive School
Ysgol Gyfun Ystalyfera
Bryn Hafren Comprehensive School
Blaengwawr Comprehensive School
Cardinal Newman R.C. Comprehensive School
Blackwood Comprehensive School
Cwmcam High School
Llantarnam School
St Julian's Comprehensive School
Willows High School
Ysgol Gyfun Gymraeg Glantaf