

SUMMARY

The Learner Travel (Wales) Measure 2008 (“the Measure”) was passed by the National Assembly for Wales on 30 September 2008 and approved by Her Majesty in Council on 10 December 2008.

The Measure covers, amongst other things, duties on local authorities to assess learner travel needs and to make transport arrangements for defined groups of learners. It provides a basis for a better joined up approach for pre and post-16 learners. Within a common framework for Wales there is now a defined minimum level of transport entitlement with authorities having discretion to do more.

The Measure replaces provisions applying to Wales in sections 509, 509AA, 509AB, 509AC and 509A of the Education Act 1996 (as amended) in relation to the provision of transport for children and others receiving education and training at schools and other institutions.

This guidance is issued under section 15 of the Measure (and section 32 of the Education Act 2002 as amended by the Measure) and takes account of the changes to school transport arrangements required by the Measure. The guidance is statutory, except for Part 6 where Welsh Ministers do not have the necessary powers to issue statutory guidance. Local authorities must have regard to the guidance in undertaking their functions under the Measure. It replaces the non statutory *‘Home to School Transport’* guidance issued in April 2008 and statutory guidance for post-16 transport policy statements.

This guidance describes the Welsh Assembly Government’s interpretation of the law for school transport and provides a view about how local authorities should discharge their legal duties. It cannot provide a definitive guide to the law as this is a matter for the courts and it is not a substitute for seeking independent legal advice.

THIS GUIDANCE IS EFFECTIVE FROM 1 APRIL 2009.

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Part 1: The Learner Travel (Wales) Measure

Overview

1.1 The Education Act 1996 (as amended) sets out the law for the **attendance** of pupils at school and the Learner Travel (Wales) Measure 2008 ('the Measure') sets out related provisions for **school/learner transport** in Wales.

1.2 The Measure sets out specific requirements for home to school transport in Wales. Its main provisions are:-

- to provide from September 2009 a higher level of entitlement to free transport for all children receiving primary education by setting a threshold of **two** miles or further from home to the nearest suitable school;
- to maintain the current distance threshold of 3 miles for pupils receiving secondary education to qualify for free transport between home and the nearest suitable school;
- to require local authorities to specifically assess and meet the needs of looked after children;
- to require local authorities and the Welsh Ministers, when carrying out their functions under the Measure, to promote access to Welsh medium education;
- to provide the means to make provision at a later date for travel in relation to entitlement for children in nursery education and post-16 students;
- to place collaboration between authorities and schools and further education providers and environmental sustainability at the core of planning and delivery of travel arrangements;
- to facilitate common standards across Wales for behaviour and discipline for those travelling to and from their place of learning or training - whatever means are being used - and to clarify enforcement arrangements;
- to provide local authorities with the power to change school session times if that can help make transport arrangements more effective, efficient or environmentally sustainable; and
- to enable Welsh Ministers to issue directions and statutory guidance.

Assessing Needs

1.3 Section 2 of the Measure places a duty on a local authority to assess the travel needs of learners under the age of 19 (or 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.

1.4 Learner travel needs' are the needs of learners for suitable travel arrangements each day between home and schools or other places where they receive education and training (known as 'relevant places'¹). The assessment will include learners who travel to relevant places in other authority areas.

1.5 In assessing the travel needs of learners local authorities should consider what the need is for travel arrangements based on:-

- who the learners are in their area;
- where they attend or intend to attend;
- for which learners they owe duties under section 3 & 4 of the Measure;
- for which learners do they want to provide discretionary travel under section 6 of the Measure; and
- what other arrangements already exist/will exist for those for whom they will not provide transport e.g. does the further education college provide transport for 16-18 year olds?

1.6 The local authority is also required to have regard to:-

- the needs of disabled learners or learners with learning difficulties;
- any particular needs of learners who are children 'looked after' or formerly looked after by a local authority;
- the age of a learner; and
- the nature of the route that the learner is expected to take between home and the places where they receive education or training.

1.7 In assessing the travel needs of learners local authorities must 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.

1.8 The assessment will give a local authority an overview of the travel needs of learners in their area which 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 when exercising their functions under the Measure.

1.9 The Measure requires the assessment to cover the travel needs of a learner who attends different 'relevant places' on different days. This is to take account of the fact that some learners may attend different schools or further education institution for part of their education or training. However the assessment is only to be concerned with travel to and from the home to such places and is not concerned about travel within the day between places. The assessment is not to be concerned with travel needs for residential trips or day trips organised by schools or further

¹ Section 1(4) of the Measure defines relevant place. To note that 1(4)(j) has not yet been commenced.

education institutions, nor are authorities required (but they may choose to if they wish) to take account of extra-curricular activities, breakfast or after-school clubs.

1.10 The local authority must assess in each academic year the learner travel needs for the following academic year.

Entitlement

1.11 Section 3² of the Measure places a duty on a local authority to make transport arrangements for children of compulsory school age in specified circumstances and subject to specified conditions. The section makes provision for a system of entitlement to free transport defined by reference to whether children receive primary or secondary education and whether they live at, or further than, set distances from the places at which they receive education or training.

1.12 Children receiving primary education will be entitled to free transport if they live two miles or more from their maintained school, pupil referral unit, or non-maintained special school, unless the authority has arranged for the child to become a registered pupil at a suitable establishment closer to home or has arranged for the child to board at or near the school.

1.13 Where a child has a statement of special educational needs which names an independent school, then if that school is two miles or more from the child's home, a local authority will have to provide free transport unless it has arranged for the child to become a registered pupil at a suitable establishment closer to home, or has arranged for the child to board at or near the school.

1.14 A similar entitlement is provided for children receiving secondary education, but in this case if they live three miles or more from their 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 child to become a registered pupil at a suitable establishment closer to home, or has arranged for the child to board at or near the school, the duty to provide free transport does not apply.

1.15 The entitlement includes transport for any child of compulsory school age who attends a further education institution as a full time student if it is three miles or more from home and the local authority has not arranged for the child to attend a suitable institution closer to home.

1.16 The entitlement also includes travel between home and a relevant place other than the one at which a child is a registered pupil. This takes account of the fact that some children attend different places on different days, and would for example cover travel at the beginning or end of the day to a different school or a further education institution for certain courses.

² In force 1 September 2009

Making Other Travel Arrangements

1.17 Section 4³ of the Measure places a duty on a local authority to make other travel arrangements for children of compulsory school age if the authority judges that it is necessary in order to facilitate a child's attendance at school or college. These arrangements must be free of charge (except in relation to looked after children where it can recoup costs from another authority).

1.18 Section 4 provides the basis for local authorities to support travel for children if they have any particular 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.

1.19 An authority may consider it necessary to make arrangements under section 4 of the Measure for a child who is not entitled to free transport under section 3 because of that child's individual circumstances e.g. a child with a disability may not be able to walk half a mile to a school, so it may be necessary to make travel arrangements for that child; or an authority may consider it necessary to make arrangements under section 4 in addition to the provision of transport required under section 3, for example, to arrange for an escort or for equipment for a disabled child. An authority does not have to provide transport, it could, for example, provide a learner with a bus pass or arrange for children to be accompanied while walking to the relevant place.

1.20 In considering whether travel arrangements are suitable, the local authority must have regard to the needs assessment undertaken under section 2, the transport arrangements it is duty bound to make under section 3, the age of the child, any disability or learning difficulty and the nature of the route. Arrangements must be safe, not take an unreasonable amount of time, and must not cause unreasonable levels of stress.

1.21 In deciding whether travel arrangements are necessary, the local authority can consider whether a child is attending the nearest suitable educational establishment to his or her home. If not it may conclude that arrangements are not necessary.

Nearest Suitable School, Unit or Institution

1.22 Local authorities need to consider the suitability of the school, unit or institution taking into account the child's age, ability and aptitude, and any learning difficulties.

1.23 Neither the child's or parent's language preference or mother tongue, nor religious faith or conviction of the child or his or her parent have any bearing on whether a school is suitable. However the Measure (section 10) does require each local authority to promote access to education and training through the medium of Welsh when exercising their functions under the Measure.

³ In force 1 September 2009.

1.24 Transport must be provided to a school outside a local authority's area if that school is the nearest suitable school and if the pupil lives further than the walking distance. The obligation to provide transport falls on the authority where the pupil is ordinarily resident, not the authority in which the school is situated.

Parental Preference and Admission to School

1.25 Section 86 of the School Standards and Framework Act 1998 requires a local authority to enable parents to express a preference for the school they wish their child to attend. Parental preference does not give a right to a place in a school however. Nevertheless, if there are places available, the admission authority's decision must usually be to accept an application for admission. This can mean that children living some distance away from a school can secure a place.

1.26 If the school is not the nearest suitable school, the pupil generally does not have a right to free school transport even if they live beyond walking distance. In such cases, parents are responsible for making their own transport arrangements, although an authority has discretion (using its powers under section 6 of the Measure) to provide free or assisted transport for such pupils.

1.27 If a child cannot be admitted to the nearest suitable school, and as a result has to attend a school beyond the walking distance from their home, then the local authority is under a duty to provide free home to school transport to the next nearest suitable school.

Children's Preference

1.28 Local authorities should bear in mind sections 17 of the Children Act 1989 (as amended by section 53 of the Children Act 2004) under which a local authority has a duty to safeguard and promote the welfare of children in need in their area by providing suitable services to those children. Section 17 of the 1989 requires a local authority to ascertain any such child's wishes in relation to those services and to give those wishes due consideration before determining what (if any) services to provide.

Attendance of Pupils at School

1.29 Section 444 of the 1996 Act 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 of the 1996 Act by substituting a new subsection (4) so as to refer to a local authority's duties under this Measure. A parent will have a defence to a prosecution if a local authority has failed to discharge a duty under this Measure to make travel arrangements.

Looked After Children

1.30 Under section 3 & 4 of the Measure, the same age and distance criteria apply to 'looked after' children as to children who are not looked after, but there is no qualification that they attend the nearest suitable establishment to their home. It will

be for the local authority looking after a child to determine where he or she should go and, for instance, that might be a school other than the nearest suitable one because of a need to maintain continuity in education or contact with siblings and friends. If that is the decision transport must be provided. Section 18 of the Measure allows for the cost of making the travel arrangements to be recouped from the authority that looks after the child.

Ordinary Residence

1.31 Section 19 of the Measure sets out provisions for determining a person's ordinary residence in particular circumstances. If a person has no ordinary residence then they should be treated as being ordinarily resident at the place at which s/he is for the time being resident.

1.32 If a child or young person has more than one home, because the child's parents are not living together but the child **lives** partly with each parent, or with a parent and also at a children's home, then both places of residence should be regarded as their place of ordinary residence for the purposes of the Measure. If there are more than two such places then only those two places nearest to their school or further education institution will count.

1.33 'Living' means more than occasionally visiting. Only permanent established arrangements should be considered. These would include a child who stays 2 nights of every school week with one parent and three nights of every school week with the other, or alternate weeks with each parent. The provision is concerned only with periods during which the child/young person receives education or training i.e. the school week. It does not apply where a child spends weekends with a different parent from where the child lives during the school week.

1.34 In some cases each parent's home may be closer than the 2 or 3 mile walking distance, so a local authority would not generally be under a duty under section 3 to provide free transport. In other cases, one parent's house may be further than the walking distance and one may be closer so generally the duty under section 3 will be engaged in relation to the further away home.

1.35 The Welsh Assembly Government would not expect a learner to travel an unreasonable distance to attend school. Proper consideration should be given by all involved as to the choice of the nearest suitable school to both parents' homes.

1.36 A 'parent' in this Measure includes any person who is not a parent but who has parental responsibility or who has care for the child or young person. This would include a foster parent or a grandparent with whom a child lives, but not a child minder or other relative who does not have parental responsibility or care of a child.

1.37 Where a child has two places of ordinary residence for the purpose of the Measure in two different local authorities, then each of those local authorities will be responsible for the child's travel arrangements when in its area. The local authorities should work closely together to ensure that appropriate arrangements are made.

Walking Distance and Safe Walking Routes

1.38 The distances set out in section 3 of the Measure and which give rise to the entitlement to free transport to school are referred to as ‘walking distances’ in this guidance. The walking distance should be measured by the “shortest available route”. A route is considered to be ‘available’ 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 such an escort.

1.39 If a route is not ‘available’, then a child 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, and therefore the child is entitled to free transport.

1.40 In assessing the comparative safety of a route, a local authority should conduct an assessment of the risks a child might encounter along the prescribed route (including, for example, canals, rivers, ditches, street lighting, pavements and speed of traffic along roads, etc.). The assessment of a route should take place at the time of the day and on the days of the week that pupils would be expected to use the route.

1.41 In conducting the risk assessment, the Welsh Assembly Government recommends that local authorities should follow guidelines such as the Road Safety Officers’ Association guidelines on Identification of Hazards and the Assessment of Risk of Walked Routes to School⁴.

1.42 Route assessments should feed into the local authority duty to promote sustainable modes of transport.

1.43 Whilst the duty to make travel arrangements does not mean door to door service, arrangements that anticipate a child being expected to walk an unreasonably long distance to catch a public service bus, or a bus journey that ended an unreasonably long distance from the relevant school are unlikely to be suitable. Again, the maximum distance will depend on a range of circumstances, including the age of the child, their individual needs and the nature of the routes they are expected to walk to the pick up or set down points.

Suitable Transport Arrangements

1.44 The local authority must make suitable transport arrangements to facilitate the attendance of the child each day at the relevant place where the child receives education or training. Transport arrangements are not suitable if they cause unreasonable levels of stress for the child; they take an unreasonable amount of time; or they are unsafe.

1.45 If a journey causes such stress that a child is unable to benefit from the education provided at the school then it is considered that would be unreasonable. A journey may cause unreasonable stress if for example a bus takes such a circuitous route that it takes over an hour and a half to arrive at the school whereas a

⁴ <http://www.larsoa.org.uk/index.php>

direct route might take only 15 minutes, or if a child attending a primary school is required to change bus unaccompanied during the journey.

Journey Times

1.46 Sections 3 and 4 of the Measure state that transport arrangements are not suitable if “they take an unreasonable amount of time”. Although the Measure does not specify a time limit for all journeys, Welsh Ministers consider that normally journey times should be no more than 45 minutes for primary school travel and 60 minutes for secondary school travel. There may be some exceptional circumstances when those time limits cannot be adhered to such as delays due to heavier than normal traffic, roadworks, diversions and breakdowns.

1.47 It is also necessary to consider circumstances, perhaps in rural areas and especially in the secondary sector, where the nearest suitable school may be further away than such travel time limit would allow. In other circumstances children with special needs, additional learning needs or looked after children may need transport to establishments some distance away. There may also be circumstances where for those children that live part of the week with one parent and part of the week with another some distance away from their school the time limits cannot be met.

1.48 The statutory requirement that arrangements are not suitable if they take an unreasonable amount of time does not apply to arrangements made by local authorities under section 6 of the Measure, but local authorities should apply the same principles to those arrangements too.

Responsibility for the Care of Pupils Travelling to School

1.49 A local authority, a transport operator, a driver and a school, may all have responsibility in law for the care of pupils in transit or when they are waiting to, or in the act of, embarking on or alighting from a vehicle. It is not possible to provide definitive guidance about who is responsible for the care of a pupil at any particular stage of the journey between home and school because the Courts have determined that responsibility depends on the facts of a case (for example who was responsible for the cause of the incident – such as a fault in the bus engine, or a defect in the road or pupil behaviour).

1.50 The Measure (sections 3(5) and 4(6)) now sets out that travel arrangements are not suitable if they cause unreasonable levels of stress, take an unreasonable amount of time or are unsafe. In general terms, therefore, an authority should be satisfied that contracted arrangements are safe, that processes are in place to monitor contracts, and that prompt action is taken to remedy problems. Local authorities, bus operators and schools should consider jointly the risks pertaining to embarkation/disembarkation points on or immediately outside school premises. Guidance on risk assessing dedicated school service contracts will be available during 2009⁵.

⁵ All Wales Home to School Transport Risk Assessment Framework
<http://wales.gov.uk/topics/transport/?lang=en>

Embarkation and Disembarkation at School Premises

1.51 Embarkation and disembarkation areas are potentially dangerous because they can be crowded, busy, confined, and on roads rather than on school premises. Private cars will often be arriving or departing at the same time and may share or pass through or near the embarkation/disembarkation area. Risk may be compounded because pupils may not be as aware of hazards as adults. Accidents are more likely if pupils are not adequately supervised either because of traffic hazards or from crushing on entering or leaving buses.

1.52 Local authorities, schools and operators should work together to undertake risk assessments and follow up action to ensure that:-

- there are appropriate levels of supervision of areas in school grounds where pupils congregate before embarking and disembarking;
- there are appropriate levels of supervision of bus bays where pupils congregate off site to embark or disembark transport services;
- there are clear road markings for embarkation areas;
- there is, as far as practicable, segregation of pedestrians and vehicles;
- there are safe crossing points; and
- embarkation areas are kept clear of obstructions.

1.53 Advice on how to undertake home to school transport risk assessment, including embarkation and disembarkation will be published by the Welsh Assembly Government in 2009⁶. The Health and Safety Executive have also published guidance on risk assessments generally, and on “Workplace Transport Safety”⁷.

1.54 Local authorities should liaise with schools and operators to ensure that risks are reviewed regularly and that clear procedures are in place for schools, parents, pupils, and transport operators to report problems or concerns. These should be evaluated promptly and appropriate action taken quickly.

1.55 The Welsh Assembly Government regards it as good practice that head teachers ensure that there is supervision of embarkation and disembarkation, whether on, outside, or near the school premises. The level of supervision will depend on local circumstances and the age of pupils. The head teacher should contact the authority immediately about any concerns or matters reported to him or her.

Overcrowding

1.56 It is for bus drivers to determine whether a bus is full and to decline to take more pupils. The driver or other person supervising embarkation should check bus passes for all journeys. An annual photo pass will facilitate easy identification of

⁶ All Wales Home to School Transport Risk Assessment Framework
<http://wales.gov.uk/topics/transport/?lang=en>

⁷ <http://www.hse.gov.uk/pubns/indg199.pdf>

pupils who are entitled to travel. If pupils not entitled to travel on a bus get on it there is more likelihood of overcrowding. Authorities might consider having a 'no pass, no travel' rule, although a common sense approach is needed. Local authorities and schools should have a system in place to deal with genuine mistakes (e.g. the use of emergency one day pass) to avoid stranding children who have simply forgotten or lost their pass.

1.57 When making transport arrangements local authorities should consider pupils who carry musical instruments or large sports equipment. Adequate space for them is important 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.

Use of Escorts on Buses

1.58 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 can help the driver by supervising pupil behaviour during the journey. Escorts should have suitable experience and training in how to work with and supervise pupils effectively, particularly those with special educational needs or who may be particularly vulnerable such as those who are looked after. If the transport operator provides escorts, the local authority should ensure that there are clear arrangements in the contract for their provision and for the training and monitoring of their work.

Criminal Records Bureau Checks

1.59 Under the terms of the Safeguarding Vulnerable Groups (SVG) Act (2006) a new vetting and barring Scheme for England and Wales covering those who work or volunteer, or seek to work or volunteer with children or vulnerable adults will be introduced. The Scheme will start from 12 October 2009 and will be phased in over a period of time to allow for a smooth transition to the new requirements.

1.60 From October all the existing Protection of Vulnerable Adults (PoVA), Protection of Children Act (PoCA) and List 99 barred lists will be replaced by two new Independent Safeguarding Authority (ISA) lists containing full details of all those individuals barred from working with children or with vulnerable adults in any setting. This extends safeguarding to the full range of activities outlined in the SVG Act with added protections for thousands of additional vulnerable people.

1.61 Additionally employers, social services departments, professional regulators and register holders will be under a new statutory duty to refer information to the ISA about individuals who may pose a risk to vulnerable groups.

1.62 The next stage of the phasing process will be in July 2010 when applications from the relevant workforce will commence along with the monitoring elements of the scheme.

1.63 The new Scheme will cover escorts and those people who drive a vehicle that is being used only for the purpose of carrying children or vulnerable adults. This will include taxi drivers who are used by schools and care homes to transport children. It will also include minibuses and bus drivers who take children on school trips.

1.64 The new Scheme does not include bus drivers who drive public service vehicles that may or may not pick up children or vulnerable adults on a route. It also excludes taxis hailed or hired by children or vulnerable adults independently. Further information on the new vetting and barring scheme can be found at www.isa.gov.org.uk/ <<<<http://www.isa.gov.org.uk/>>>>.

1.65 The Welsh Assembly Government welcomes the introduction of the new scheme that will ensure vetting of all staff employed in contracted school transport services. As a matter of good practice, the Welsh Assembly Government would expect that staff employed on contracted school transport services should comply with the enhanced disclosure procedures of the Criminal Record Bureau. The level of the enhanced disclosure check should feature in the contract with the service operator.

Post-16

1.66 It is important to consider the position of pupils of sixth form age. Section 2 of the Measure requires local authorities to assess the travel needs of all learners up to the age of, and sometimes including, 19. Although there is no duty to provide transport arrangements for those over 16, under section 6 local authorities can do so and many do, and are encouraged to continue to do so, particularly for 'looked after learners'.

1.67 Welsh Ministers will be able to make regulations under the Measure about travel arrangements for post-16 learners who live in Wales and are attending courses in Wales or elsewhere where the education or training is funded by the Welsh Ministers. The regulations could make provision similar to that made in the Measure in relation to children of compulsory school age.

1.68 The Measure repeals section 509AA of the Education Act 1996 so local authorities in Wales will no longer have to publish a separate transport policy statement for learners of sixth form age. But, under the Learner Travel Information (Wales) Regulations 2009, local authorities will need to include information about post-16 learners in the information to be published about general arrangements and policies in respect of travel to and from relevant places. (Further information on the publishing of learner travel information is contained in Part 5 of the guidance).

Change in School Session Times

1.69 Section 21 of the Measure amends section 32 of the Education Act 2002 so as to allow local authorities to change school session times where it would promote sustainable modes of travel or would improve the efficiency and effectiveness of

travel arrangements. The Welsh Assembly Government has made regulations⁸ that set out the procedures to follow when the local authorities intend to change school session times.

1.70 In using these powers, local authorities should also consider very carefully any impact proposed changes to school session times would have on educational needs of pupils and school operational issues. When considering changing school session times local authorities should bear in mind the flexibility of timetabling between different education establishments and the implications of the 14-19 Learning Pathways.

1.71 Relatively small changes to times can have a substantial effect on congestion and sustainability. There should continue to be an expectation that governing bodies will usually set start and finish times of the school day. We expect local authorities to use their powers judiciously, as most governing bodies work well with authorities and are prepared to be flexible.

Travel Behaviour Code

1.72 The Measure requires Welsh Ministers to publish an All Wales Travel Behaviour Code that will apply to all travel connected with learning by those under 19. The Code will be a part of a school's general behaviour policy and compliance with it will be compulsory. It is proposed that the Code will be published in autumn 2009 and will be effective from January 2010.

1.73 Where the local authority provides the travel arrangements, the Measure empowers local authorities, subject to conditions, to withdraw travel arrangements for specified periods if they are satisfied that a learner has failed to comply with the Code. In other cases, enforcement action will rest with the head teacher. Further guidance on the Code and enforcement procedures will be available⁹.

General Powers

1.74 Welsh Ministers have power under section 15 of the Measure 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 given from time to time by the Welsh Ministers.

1.75 Furthermore, Welsh Ministers may require authorities to make learner travel arrangements, or when making them, to comply with a direction. Such directions can be given to one or more authorities or generally. It permits Welsh Ministers to direct on individual cases or about more 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, or affect, the more general powers of direction that Welsh Ministers have under sections 496-497A of the Education Act 1996.

⁸ The Changing School Session Times (Wales) Regulations 2009
<http://www.opsi.gov.uk/legislation/wales/w-stat.htm>

⁹ <http://wales.gov.uk/topics/transport/?lang=en>

1.76 Under powers contained in the Transport (Wales Act) 2006, Regional Transport Consortia prepare Regional Transport Plans that will include inter alia component strategies for public transport and smarter choices that are relevant to the provision of school transport. Local Authorities that provide school transport may find it useful to discuss arrangements with the Regional Transport Consortia to ensure that their proposals are consistent with these component strategies.

1.77 The Welsh Assembly Government has no functions in relation to the '3 for 2 concession', seat belt legislation or vehicle standards, inspection, enforcement or licensing of vehicles or drivers. These matters are the responsibility of the UK Government.

Part 2: Discretionary Transport Arrangements

Overview

2.1 This Part provides guidance on circumstances in which local authorities may decide to make discretionary arrangements for pupils who would not otherwise qualify for free home to school transport.

2.2 Local authorities must publish in accordance with the Learner Travel Information (Wales) Regulations 2009 information about their policies for providing discretionary travel.

Power of Local Authorities to make Learner Travel Arrangements

2.3 Section 6 of the Measure gives a local authority a 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. This could include transport for those under 5 or over 16, or to schools other than the nearest suitable school – for instance it could include transport to schools with or without a religious character or to Welsh or English medium schools in cases where the nearest suitable school has not met parental preferences in these respects.

2.4 Local authorities may provide free transport for travel over a shorter walking distance than the statutory distances of 2 or 3 miles. When this is the case, the policy must apply to all pupils in similar circumstances living in the authority's area.

2.5 If a local authority does make use of the powers in section 6 of the Measure, it must ensure that any policies are fair, reasonable, and comply with relevant legislation including equality legislation and the Human Rights Act 1998. Local authorities must not discriminate unlawfully between learners when using their section 6 powers.

2.6 The Measure also prohibits the travel arrangements made by a local authority from discriminating between various categories of learners. Children of compulsory school age, at establishments that are not maintained schools but fall within section 1(4) of the Measure, must not be treated less favourably than children of the same age at maintained schools. Other learners receiving full-time education or training at establishments which are not maintained schools (but fall within section 1(4) of the Measure), must not be treated less favourably than learners of the same age at maintained schools. So if a local authority makes travel arrangements for a person of 17 to attend a maintained school they must treat a similarly aged learner attending an Further Education Institution in the same way. Likewise there should be no discrimination between those of the same age with learning difficulties, with a disability or who are 'looked after' by a local authority attending establishments other than maintained schools and those attending maintained schools.

Allowances and Concessionary Fare Schemes

2.7 Local authorities may assist pupils for whom free transport is not provided in a number of ways. For example, if there are spare seats, an authority may allow pupils not entitled to free transport to travel as fare paying passengers on a school bus. Local authorities 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.

2.8 Local authorities may reimburse parents or pupils for the full cost or part of the cost of providing 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 do this, local authorities need to set out in their policies, and make clear to parents and pupils, the arrangements for payment and reimbursement.

Transport to Welsh Medium Schools

2.9 Section 2 of the Measure requires local authorities to assess travel needs and effective local authorities will consider parental preference with regard to Welsh or English medium education when deciding whether to provide free, or assisted, school transport. In addition section 10 of the Measure places a duty on local authorities in Wales and on Welsh Ministers “to promote access to education and training through the medium of the Welsh language when exercising functions under this Measure”. Authorities 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.

2.10 This duty complements that contained in section 78 of the Government of Wales Act 2006 (Welsh Ministers’ duty to promote and facilitate the use of the Welsh language) and builds on the Welsh Assembly Government’s plan for a bilingual Wales as set out in “Iaith Pawb”. Section 5 of the Welsh Language Act 1993 places a duty on local authorities in Wales to prepare Welsh Language Schemes specifying the measures they will take to ensure the English and Welsh languages are treated on the basis of equality. All authorities also have Welsh Education Schemes (WES) which form part of the main language scheme and are approved by the Welsh Language Board. The WES deal specifically with the authorities’ aims and targets for making educational provision that develops learners’ Welsh language skills and offers choice regarding the use of language.

2.11 Within this broader context this guidance relates to how local authorities can meet the new duty to promote access to education and training through the medium of the Welsh language.

2.12 There is a diversity of provision of Welsh medium education across Wales reflecting local demand, opportunities and needs. Thus, in some areas there are schools which teach entirely through the medium of Welsh, whilst other areas have Welsh medium streams (or classes) within schools which also offer teaching through the medium of English. The duty in the Measure is intended to support this diversity

of provision, which has been arrived at through local knowledge and decision taking in response to local demand and circumstances.

2.13 Welsh Ministers wish to see a continuation of a pattern of provision, which is responsive to parental preference for Welsh medium education and to local circumstances. Transport to school can play an important part in facilitating parental choice. Accessing Welsh medium schools can involve longer journeys in those local authority areas where the Welsh medium schools are fewer and farther between. Unless free school transport is provided, these journeys would be at the parents' expense. Generally, in these circumstances, the authorities concerned have clear policies and use their discretion to provide free transport even where the chosen Welsh medium school is not the nearest school.

2.14 This duty will also apply in relation to any regulations the Welsh Ministers may make under section 7 of the Measure about travel arrangements for learners in post-16 education or training and any regulations under section 8 of the Measure in relation to travel for nursery education.

2.15 The strides taken by many authorities in Wales to establish Welsh medium schools in response to parental demand and, where it is considered necessary, to arrange discretionary free transport to Welsh medium schools mean that, in our view, authorities in Wales are already complying with this new duty. The varying distributions of Welsh medium schools and varied patterns in the provision of Welsh medium education referred to above means that the same travel measures do not necessarily suit all areas, and Welsh Ministers are not currently inclined to legislate further on arrangements at the local level.

2.16 However, if there should be any changes in learner travel arrangements, which decrease access to Welsh medium education or seem likely to lead to a reduction in uptake of places at Welsh medium schools then Welsh Ministers would be prepared to use other provisions in the Measure to secure a turnaround. Welsh Ministers would consider issuing directions under section 15 if for instance it appeared that changes in the provision of learner transport were affecting the effectiveness or viability of a Welsh medium school. They could also make regulations under section 3(9) setting new conditions requiring the provision of transport to schools providing education through the language medium meeting a parent or pupil's preference.

2.17 Good practice in terms of the duty to promote access to education and training through the medium of Welsh would include the following:-

- a) considering children's and parents' wishes when local authorities assess learner travel needs under section 2 of the Measure (even though this is not listed as a specific matter in that section¹⁰);

¹⁰ Local authorities are already required under section 9 of the Education Act 1996 to have regard to the general principle that pupils should be educated in accordance with their parents' wishes where that is compatible with the provision of efficient education and training and the avoidance of unreasonable public expenditure.

- b) considering the travel implications as part of the local authority's overall policy on the Welsh language and the aims and objectives of their Welsh Education Scheme;
- c) where they already do this, making use of the discretionary power in section 6 of the Measure to continue to provide transport to Welsh medium schools and to consider very carefully whether any charges for the transport would have an undue disincentive effect;
- d) carefully managing the travel arrangements involved at the transition from primary to secondary Welsh medium schools particularly as in several authorities these may involve out of county arrangements;
- e) ensuring that the child's needs in the round are taken into account so that for instance children and young people with special educational needs also receive linguistic equality of opportunity;
- f) providing information bilingually for parents and students on transport and other aspects of school admission arrangements regarding Welsh-medium education and training; and
- g) not acting or advising in any way that would detract from learners accessing education or training through the medium of Welsh.

Transport to Denominational Schools

2.18 Section 9 of the Education Act 1996 places a general duty on local authorities to have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents so far as that is compatible with the provision of effective instruction and training and the avoidance of unreasonable public expenditure. Consequently, many authorities in Wales have a policy of providing free transport to pupils attending church schools who live beyond the walking distances set in the Measure and these policies have been developed to meet local circumstances and needs. Section 6 of the Measure will allow local authorities to continue to be able to provide such transport and Welsh Ministers expect this to be the case.

2.19 The Welsh Assembly Government, like local authorities, recognise the value and role of faith based education and want local authorities to continue to use their discretionary powers to make transport arrangements which take account of parental preferences for schools with a religious character. This reflects current policy on entitlement to free transport and Welsh Ministers are not currently inclined to legislate further on arrangements at the local level. However, if there should be any changes in learner travel arrangements at the local level, which adversely impact on choice, then Welsh Ministers will consider taking action such as further guidance, directions or regulations.

2.20 If an authority provides free or subsidised transport to church schools, it must be non-discriminatory. For example, if the authority's policy is to provide free transport to denominational schools, it must provide transport equally to both Roman Catholic and Church in Wales's schools in similar circumstances, even if this may mean transport to a school outside the authority. In the case of Church in Wales' schools, the local authority should not make a distinction between Voluntary

Aided and Voluntary Controlled schools. An authority should make clear in its composite school admissions documents any policy to provide free or assisted travel to denominational schools.

Transport for Children Under Statutory School Age

2.21 There is no legal obligation on local authorities to provide free transport to school for children under the age of five, but they may provide transport for such pupils. Section 8 of the Measure is a regulation making power allowing Welsh Ministers to make provision about travel arrangements for nursery age children. Under this power a local authority could be required to make travel arrangements for children under compulsory school age to and from places where they receive nursery education. The regulations could make provision similar to that made in the Measure for children of compulsory school age and require any person to provide information and assistance that a local authority might reasonably require.

Charging for Transport

2.22 Local authorities may not charge for transport arrangements that it is **required** to make for children of compulsory school age (under section 3 & 4 of the Measure), except in relation to looked after children where it can recoup costs from another authority (under section 18 of the Measure).

2.23 When the local authority uses its discretion in making learner travel arrangements (under section 6), a charge can be made for these arrangements. For learners who are not of compulsory school age, there is no restriction on charging. With regard to children of compulsory school age, charging must be in accordance with sections 455 and 456 of the Education Act 1996 (as amended by section 22 of the Measure). The means to charge, or pay all or part of a learner's travel expenses, provides flexibility for local authorities to put in place travel arrangements that exceed the statutory requirements set by sections 3 and 4 of the Measure.

2.24 Section 6 of the Transport Act 1985 provides for the compulsory registration of local bus services with the Traffic Commissioner. LEAs must register all services carrying fare paying passengers (under section 46 of the Public Passenger Vehicles Act 1981) and contracted operators must register any services where pupils not entitled to free school transport are carried on payment of a fare. The Department of Transport intends to make a Regulatory Reform Order which removes the requirement to register where the only fare-paying passengers are pupils or others connected with a school, but the timing of this Order is not known.

Part 3: Pupils with Special Educational Needs

Overview

3.1 A local authority must consider a pupil's special educational needs when making school transport arrangements.

Children with Special Educational Needs (SEN) and Disabilities

3.2 A local authority must consider a pupil's special educational needs, irrespective of whether the pupil has a SEN statement, when deciding which is the nearest suitable school. Suitable schools for pupils with SEN are often further away than the nearest local school and a high proportion of pupils with SEN will be entitled to free transport. The transport requirements of pupils with SEN or a disability will depend on individual circumstances and the route they must travel. If a pupil cannot walk to school because of the nature of their special education needs or disability, the local authority must provide free home to school transport even if the distance is less than the statutory limit (section 4 of the Measure).

3.3 Local authorities should have a clear and consistent policy on transport provision for pupils SEN and for those with disabilities, covering for example, conditions such as autistic spectrum disorder for whom disruption of routine can cause great stress. For practical advice, authorities may wish to consider the Audit Commission's document 'Improving Mainstream Home-to-School Transport'¹¹.

3.4 The Special Educational Needs Code of Practice for Wales¹² sets out the issues to be considered by authorities when providing transport for pupils with a SEN statement. An authority 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.

3.5 It is suggested that the following matters are covered by authorities' 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;

¹¹ <http://www.audit-commission.gov.uk/Products/NATIONAL-REPORT/F624E5F1-A7E4-419a-94BA-7DF2FC096CE2/goingplacesschool.pdf>

¹² Reprinted in January 2004 (ISBN 0 7504 2757 4) (paragraphs 8:87 to 8:90) [SEN code of practice]

- standards for staff and vehicles, including child protection arrangements;
- good practice on transporting children in wheelchairs or special seats;
- training for drivers and escorts in disability equality and access to specific additional training for escorts;
- training for drivers and escorts to use special equipment and communication tools to support pupils in managing their 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.

3.6 As part of their procedures for tendering, authorities must bear in mind their duties under the Data Protection Act 1998 in relation to sensitive personal data¹³. Tender documents must not identify pupils to be transported or information that could be used to identify them.

3.7 Depending upon the needs of the pupil, authorities should work with schools and operators to ensure that detailed but confidential information is available so that appropriate provision can be 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 wheelchair 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;
- restricted access to addresses or people as a result of a court order; and
- emergency contact telephone numbers.

¹³ http://www.ico.gov.uk/upload/documents/library/data_protection/practical_application/guidance_on_data_security_breach_management.pdf

Part 4: Planning Home to School Transport

Overview

4.1 Part 4 of this guidance provides the Welsh Assembly Government's policy guidance about how local authorities should manage and monitor an effective, safe and efficient home to school transport service.

Planning of Home to School Transport by Local Authorities

4.2 Local authorities have discretion as to how to make the actual transport arrangements that they deem suitable for the needs of pupils as long as those arrangements comply with the law. Home to school transport may be provided for, by example:-

- contracted vehicles providing a dedicated home to school service;
- arrangements for pupils to use public transport (train, bus, community transport operators as well as taxis);
- payment of a mileage or cycle allowance to pupils or parents, or reimbursement of their costs; or
- local authorities making use of their own vehicles.

4.3 Exact arrangements will depend on pupil needs and local geography. School transport arrangements should fit with other transport responsibilities of local authorities such as the duty to provide socially necessary bus services and the plans and policies of Regional Transport Consortia.

4.4 There will be many common issues between local authority areas and authorities should share information, good practice and consider opportunities for joint arrangements where that can lead to service improvements for pupils and the public. Cooperation is important and section 17 of the Measure requires local authorities to provide each other with information or assistance that might be reasonably required for them to carry out needs assessments and to make travel arrangements. This will ensure that functions can be carried out effectively when learners travel between authorities or when a child lives in two different authorities.

4.5 Section 17 also places a duty on the governing body of a maintained school or a further education institution to co-operate with a local authority. They must provide the local authority with information or other assistance necessary for the local authority to carry out their duties under the Measure. Head teachers must also give local authorities information and assistance to enable local authorities to perform their functions in relation to the enforcement of the travel behaviour code¹⁴, as must training providers and other providers of alternative educational packages.

¹⁴ It is proposed that the Travel Behaviour Code will come into force in January 2010.

4.6 This mode of working matches the spirit of ‘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.

4.7 At a local level, an authority should plan home to school transport in conjunction with schools and other educational institutions. It should seek opportunities for co-ordinated arrangements which may have cost-efficiency benefits and ease traffic congestion.

4.8 In particular section 11 of the Measure requires 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 in making travel arrangements. For example, this could mean encouraging learners to travel by bus rather than by car as well as promoting walking and cycling. Sustainable modes of transport are defined as ones that the authority or Welsh Ministers consider may improve the physical well-being of those who use them and/or the environmental well-being of the whole or part of the local authority’s area, in the case of an authority, or the whole or part of Wales in the case of Welsh Ministers.

4.9 Local authorities should encourage schools to prepare school travel plans that will set out a range of measures to reduce congestion and encourage more sustainable travel choices. Individual school travel plans will need to be tailored to local circumstances and should contain details of proposed measures that would make travel to and from school more sustainable and safe. The plan could include ‘hard’ measures such as traffic calming, creation of safe routes, secure cycle parking, lockers, showers and changing facilities and ‘soft’ measures such as crossing patrols, walking buses, cycle trains, cycle training and classroom activities. Increasing and encouraging bus use is another measure that can be included in the plan. A detailed timetable for implementation, clearly defined responsibilities and funding options should also be included.

Contracts for Home to School Transport

4.10 In many parts of Wales the core of home to school transport arrangements are dedicated contracts between local authorities and transport operators. A local authority may enter into contracted services that it deems fit for pupils’ needs. An authority should test the market regularly to secure value for money and should adhere to procurement best practice.

4.11 There is often a balance to be struck between the length of a contract, the age and quality of vehicles that a contractor is prepared to offer and the investment that an operator is willing to make in training opportunities for drivers and escorts. Generally, contractors are more likely to offer better quality, younger vehicles if they have a longer contract to help to assure a return on their investment. Contractors are also more likely to invest in staff training if there is certainty that those skills are useful for longer. It is for a local authority to determine where the balance lies when it tenders for a contract and evaluates operators’ responses, though the

Welsh Assembly Government does expect local authorities to make securing a high quality service a high priority.

4.12 Successful tendering and management of contracts should cover:-

- objective criteria for the selection of contractors using best value for money and procurement practices;
- clear specifications about required standards (e.g. matters such as the type and age of vehicles to be used, the provision of equipment such as seat belts and Closed Circuit Television (CCTV));
- specification of the roles and responsibilities of contractors, drivers and the provision of 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 relevant contractor staff;
- completion of risk assessments for the home to school journey;
- any requirement to meet disability needs a child may have;
- procedures for contractors to bring matters to the attention of the authority and/or schools;
- stipulation of the frequency and types of monitoring activities that a local authority, or its 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 local authority deems that necessary.

4.13 The provisions of section 88 of the Transport Act 1985 also places a duty on local authorities to secure, in the interests of local ratepayers, the best value for money from expenditure on public passenger transport as a whole.

Controlling Costs

4.14 All arrangements for home to school transport, however provided, should be monitored and evaluated regularly. All local authority departments with an interest in transport matters, and neighbouring authorities, should exchange information. Thorough planning, good contracting, and stream-lined processes for managing contracts will make arrangements more efficient and effective. Local authorities should consider:-

- having longer contracts that provide more certainty to operators and encourage them to invest in vehicles and staff training;

- complementary planning that brings together school transport and transport arrangements put in place by other local authority services or providers such as the voluntary sector, social services, or health authority;
- having contracts that give flexibility to plan routes to save mileage or time and optimise vehicle use; and
- how to make the tender and contract management process simple so that new and/or small operators are not discouraged from tendering.

Part 5: Communication with Users and Schools

Overview

5.1 Part 5 of the guidance 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

5.2 Paragraphs 8, 19 and 20 of Schedule 1 to the Education (School Information) (Wales) Regulations 1999 have been revoked by the Learner Travel Information (Wales) Regulations 2009. The 2009 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 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.

5.3 The local authorities are required 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; and
- any other information that the local authority considers would be useful for learners in its area about travel arrangements made by other organisations.

5.4 The information must be made available by the 1 October preceding the academic year to which the information relates. The information must be made available:-

- on the local authority website;
- at the local authority's offices;
- at every school maintained by the local authority,
- at public libraries;
- at any other relevant place which learners in the area may consider attending; and

- distributed to parents of pupils who are in the final year of school and may transfer to other local authority maintained school. (The local authority only needs to give the information that is relevant to the school to which the pupil may transfer).

5.5 Local authorities must also provide 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;
- information relating to decisions as to the suitability of transport or travel arrangements where the local authority has a duty to make travel arrangements;
- 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); and
- information relating to decisions to make travel arrangements using their discretionary powers (section 6 of the Measure).

5.6 Parents/guardians must be able to understand their options and any cost implications of the choice of school they make for their child. Local authorities should therefore provide parents/guardians with information about transport arrangements alongside, or as part of, the information made available about school admissions.

5.7 The education and transport departments of local authorities often have shared interests in school transport. Local authorities should ensure that communication arrangements are as easy as possible for the user. To this end, authorities may consider establishing a 'one stop shop' with a single point of contact for schools, bus operators, parents and the general public. It is very important that parents, schools, social workers, operators and pupils know who to contact to obtain information and advice. 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;
- any specific advice on guidance for parents of pupils with SEN or with disabilities;

- child protection arrangements; and
- codes of behaviour for pupils and the sanctions that apply.

Changes to School Transport Policies – Liaison with Pupils and Parents

5.8 An authority should only change an existing transport policy and/or arrangements at the beginning of a school year (unless an emergency such as road works necessitates change). Any changes that reduce discretionary provision of free school transport should only apply to pupils reaching compulsory school age or changing school. An authority could be judged to be acting unreasonably if entitlement to free school transport were withdrawn during a pupil's education at a particular school and parents had not been aware of this possibility at the time their application for admission was accepted. An authority could also be judged to have acted unreasonably if it changed other aspects of its arrangements, such as timing of services or pick up/drop off points, if it failed to give parents adequate and timely notification of the change.

5.9 If an authority is considering changing its school transport policy, the Welsh Assembly Government recommends that, as a matter of fairness and good practice, there should be consultation with the schools, parents of pupils, and any other relevant parties likely to be affected, before a decision is taken.

5.10 Consultation should also take place with pupils, where appropriate, so that they have a chance to contribute. Local authorities could ask school councils or their youth forum for views. The methods of obtaining pupils' views should be as inclusive as possible and their input should be sought in a way appropriate to their age. Those consulting pupils should ensure that they give a clear picture of how their views will be taken into account and that later feedback is provided on decisions.

General Liaison with Schools

5.11 Schools have a crucial role to play in helping to ensure the smooth operation of transport arrangements. For schools to play their part effectively, authorities need to work closely with them. Every effort should be made by both parties to ensure that there are good communications and a positive relationship. Schools should play their part as follows:-

- the head teacher should be the contact point for the authority and operator for transport issues or, if someone else carries out that role it should be communicated clearly;
- there must be prompt reporting of any shortcomings in the transport service to the authority;
- there should be appropriate supervision of embarkation/disembarkation points where these are on, outside, or near school premises; and
- the school should assist the authority to identify pupils suspected of misconduct on buses.

Part 6: Other Safety Issues

Overview

6.1 Part 6 does not constitute statutory guidance issued under section 15 of the Measure (and local authorities are therefore not under a statutory obligation to have regard to it), but sets out what is considered to be good practice and the Welsh Assembly Government would generally expect local authorities to follow it.

Vehicle Standards

6.2 Vehicles must meet road safety and transport legislation requirements at all times. Local authorities should liaise with VOSA, the Health and Safety Executive (HSE) and the Traffic Commissioner about any concerns they have about suspected breaches of legal standards.

6.3 Local authorities should put in place robust monitoring and evaluation procedures to ensure that requirements set in their contracts are met. Contracts should be monitored by spot checks, visits to schools and operators, and by investigation of feedback from schools, pupils and parents.

6.4 The Welsh Assembly Government considers that an authority should review the operation of its contractual arrangements once a term to ascertain that they are working and to identify and rectify any shortcomings.

6.5 The appearance, maintenance and comfort of school buses are an important consideration – some local authorities have successfully raised standards by addressing particular issues in the bus contracts. Up to date technology provides opportunity to include special features that appeal to different age groups, for example younger children tend to get bored whilst travelling and videos on overhead televisions may be used to keep them entertained and reduce problem behaviour.

Seat Belts

6.6 The requirements for the installation of seat belts are set by the Road Vehicles (Construction and Use) (Amendment) (No. 2) Regulations 2001 (SI 2001/1043). Seat belts must be fitted in all minibuses (defined as a motor vehicle constructed or adapted to carry 9 to 16 seated passengers, excluding the driver). Seat belts must also be fitted in coaches (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) first used after 1 October 1988. Buses that do not meet the weight or speed criteria of a coach are not required to be fitted with seat belts.

6.7 The wearing of seat belts is stipulated by the Motor Vehicles (Wearing of Seat Belts) (Amendment) Regulations 2006 (SI 2006/1892) which came into force on 18 September 2006. These require seated passengers aged 14 years or older in a bus or coach to use a seat belt if one is installed. Operators of buses and coaches where seat belts are fitted must notify passengers of the need to use seat belts by a

variety of specified means. There is no requirement at present for passengers aged 3-13 to wear seat belts on such vehicles, however the local authority should encourage the wearing of such belts. The Department for Transport expects regulations to be ready later in 2009 that will require 3-13 year olds to use seat belts where they are fitted.

6.8 It is for a local authority to make judgements as to the type of vehicle that should be provided for a particular route and to stipulate in tender documentation any requirements it might have for seat belts. The decision should take into account the age of pupils, the nature of the route, and any relevant information that might bear upon the authority's duty of care to the pupils.

'3 for 2' Concession

6.9 Under the Public Service Vehicles (Carrying Capacity) Regulations 1984, bus operators may use the '3 for 2' concession that permits three children under the age of 14 to occupy a bench seat designed for two adults.

6.10 The Welsh Assembly Government recognises that the law permits the use of the '3 for 2 concession' for school transport but 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). The Welsh Assembly Government also notes that several authorities in Wales have committed to not using the concession and wishes to encourage such good practice as that should improve safety particularly when suitable seat belts are available on the vehicle.

Double Decker Buses

6.11 The Welsh Assembly Government is also generally not in favour of the use of double deck buses unless there are exceptional reasons. However, if they are to be used the Welsh Assembly Government expect them to be to the highest safety specification with CCTV, safety belts etc.

Closed Circuit Television (CCTV)

6.12 CCTV on buses is becoming more commonplace and some authorities have made it a contractual condition. CCTV can provide evidence to identify pupils behaving badly so that action may be taken to improve behaviour. CCTV may also have a deterrent value. Where CCTV is used on buses contracted to provide home to school transport, local authorities should make clear that the footage is confidential but may be used as evidence in cases of pupil misbehaviour or driver misconduct. Authority contracts with operators should make it clear who holds the footage, how it is stored, for how long, and what arrangements are in place for destroying it. Further guidance on the use of CCTV can be found at www.ico.gov.uk.

Licensing and Training of Bus Drivers

6.13 Local authorities should ensure that arrangements for checking that drivers are licensed appropriately are included in contracts with transport operators and that there is rigorous compliance monitoring during the life of the contract.

6.14 Local authorities should consider with transport operators what action is needed to ensure that drivers respond to pupils in an appropriate and effective manner. Tact, good humour, and conflict resolution skills are important as well as knowledge about safety, emergency procedures and child protection issues. The Welsh Assembly Government encourages local authorities to make driver training in appropriate matters a condition of contract. It is for authorities to decide whether to arrange or fund training for drivers centrally, or require operators to make their own arrangements. It may be possible for the training to be part of the Driver Certificate of Professional Competence which requires drivers to complete 35 hours of periodic training every 5 years.

Other Legal Considerations for Local Authorities

6.15 Equality legislation such as: the Equality Act 2006; the Sex Discrimination Act 1975; Race Relations Act 1976; Welsh Language Act 1993; Disability Discrimination Acts 1995 and 2005; the Human Rights Act 1998.

6.16 Health and safety legislation such as: the Health and Safety at Work Act 1974; the Management of Health and Safety at Work Regulations 1999 (SI 1999/3242); the Workplace Health, Safety and Welfare Regulations 1992 (SI 1992/3004); and guidance in 'Workplace Transport Safety' (HSG 136) published by the Health and Safety Executive in 2005.

6.17 Local authorities should also note in particular, that since December 2006, the Disability Discrimination Act 2005, has placed a duty on the public sector to promote equality of opportunity for disabled people to eliminate discrimination. This duty is anticipatory, meaning that public authorities must review all their policies, practices, procedures and services to make sure they do not discriminate against disabled people, and to ensure that all their services are planned with disabled people's needs fully considered in advance.

Definitions of Main Terms used in this Guidance

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.

Relevant Places – 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.

Learner Travel Needs – 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 and training.

Disability and disabled person – has the same meaning as section 1 of the Disability Discrimination Act 1995.

Compulsory school age – means the period starting at the beginning of the term following a child’s fifth birthday, until the last Friday in June of the school year in which they reach the age of 16.

Learning difficulty – means 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.

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

Non-Maintained Special School – means a school approved under section 342 of the Education Act 1996.

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).

Sustainable Modes of Travel – modes of travel which may improve the physical well-being of those who use them; and/or the environmental well being of the area.

Available Routes – 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.

Suitable school – education or training provided is suitable having regard to the age, ability and aptitudes of the child and any learning difficulties he or she may have.

Links to Useful Information

1. Audit Commission - Improving Mainstream Home to School Transport:
<http://www.audit-commission.gov.uk/Products/NATIONAL-REPORT/F624E5F1-A7E4-419a-94BA-7DF2FC096CE2/goingplacesschool.pdf>
2. Changing School Session Times (Wales) Regulations 2009:
<http://www.opsi.gov.uk/legislation/wales/w-2009>
3. Data Protection Act 1998:
http://www.opsi.gov.uk/Acts/Acts1998/ukpga_19980029_en_1
4. Education Act 1996:
http://www.opsi.gov.uk/acts/acts1996/ukpga_19960056_en_1
5. Education Act 2002:
http://www.opsi.gov.uk/acts/acts2002/ukpga_20020032_en_1
6. The Education (Areas to which pupils and students Belong) Regulations 1996:
http://www.opsi.gov.uk/si/si1996/Uksi_19960615_en_1.htm
7. Government of Wales Act 2006:
http://www.opsi.gov.uk/acts/acts2006/ukpga_20060032_en_1
8. Human Rights Act 1998:
http://www.opsi.gov.uk/ACTS/acts1998/ukpga_19980042_en_1
9. Iaith Pawb:
<http://wales.gov.uk/topics/welshlanguage/publications/iaithpawb/?jsessionid=HG s8J1hcWQ57bnlJhY3rvJXh6sCkdvrHLGtYd5svVtsJy6m9xcjv!1614610361?lang=en>
10. Independent Safeguarding Authority:
<http://www.isa-gov.org.uk/>
11. Learner Travel Information (Wales) Regulations 2009:
<http://www.opsi.gov.uk/legislation/wales/w-2009>
12. Learner Travel (Wales) Measure 2008:
http://www.opsi.gov.uk/legislation/wales/mwa2008/mwa_20080002_en_1
13. Learner Travel (Wales) Measure 2008 Explanatory Notes:
http://www.opsi.gov.uk/legislation/wales/mwa2008/en/mwaen_20080002_en.pdf
14. Learner Travel (Wales) Measure 2008 (Commencement No. 1) Order 2009:
<http://www.opsi.gov.uk/legislation/wales/w-2009>
15. The All Wales Home to School Transport Risk Assessment Framework:
<http://new.wales.gov.uk/topics/transport/?lang=en>

16. Making the Connections : Delivering Better Service:
<http://new.wales.gov.uk/topics/improvingservices/strategy/?skip=1&lang=en>
17. Review of Local Services Delivery:
<http://www.wlga.gov.uk/english/council-meeting-documents/beechem-review-of-local-service-delivery-in-wales/>
18. Safeguarding Vulnerable Group Act 2006:
http://www.opsi.gov.uk/acts/acts2006/pdf/ukpga_20060047_en.pdf
19. School Standards and Framework Act 1998:
http://www.opsi.gov.uk/Acts/acts1998/ukpga_19980031_en_1
20. Special Education Needs Code of Practice for Wales:
<http://www.wales.nhs.uk/sites3/Documents/441/SEN%20Cover.pdf>
21. Welsh Language Act 1993:
http://www.opsi.gov.uk/ACTS/acts1993/ukpga_19930038_en_1