



## City and County of Swansea

### Notice of Meeting

You are invited to attend a Meeting of the

## Appeals & Awards Committee

**At:** Remotely via Microsoft Teams

**On:** Tuesday, 16 November 2021

**Time:** 2.00 pm

**Chair:** Councillor Des Thomas

**Membership:**

Councillors: J E Burtonshaw, J P Curtice, J A Hale, J W Jones and H M Morris

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<b>2</b>	<b>Disclosures of Personal and Prejudicial Interests.</b> <a href="http://www.swansea.gov.uk/disclosuresofinterests">www.swansea.gov.uk/disclosuresofinterests</a>	
<b>3</b>	<b>City and County of Swansea - Home to School Transport Policy.</b> <b>(For Information)</b>	<b>1 - 9</b>
<b>4</b>	<b>Welsh Government - Learner Travel - Statutory Provision and Operational Guidance. (For Information)</b>	<b>10 - 136</b>
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<b>6</b>	<b>School Transport Appeal.</b>	<b>141 - 170</b>

A handwritten signature in black ink that reads 'Huw Evans'.

**Huw Evans**

**Head of Democratic Services**

**Tuesday, 9 November 2021**

**Contact: Democratic Services - 636923**

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# HOME TO SCHOOL TRANSPORT POLICY

## September 2015

(Amended on 1 June 2015)



The Learner Travel (Wales) Measure 2008 requires Local Authorities to provide home to school transport for eligible children. Your child will be entitled to receive free school transport if the following apply:

### **1. Primary school age pupils:**

- Of compulsory school age (i) and
- Resident in the authority or is looked after by the authority (ii) and
- Attending their nearest suitable or designated school (iii) and
- Living two miles or more from their school. The distance is measured according to the shortest available walking route, and may include footpaths. (iv)

### **2. Secondary school age pupils:**

- Who are of compulsory school age (v) and
- Resident in the authority or looked after by the authority (ii) and
- Attending their nearest suitable or designated school (iii) and
- Living three miles or more from the school. (iv) The distance is measured by the shortest available walking route.

### **3. Other pupils, and who are:**

- Of compulsory school age; and
- Resident in the authority or looked after by the authority; and
- Attending their nearest suitable or designated school; but
- Who live within the walking distance of their school but whose route is deemed unavailable because it would be unsafe, even if they were accompanied as necessary given the age of the child and his/her abilities and any disabilities or learning difficulties.(vi)

The Local Authority may in wholly exceptional circumstances exercise its discretion to provide free transport to pupils who do not meet the above criteria. (vii)

### **Transport arrangements for eligible pupils/learners**

Transport arrangements for eligible pupils are in accordance with the Learner Travel (Wales) Measure 2008 and the Learner Travel Statutory Provision and Operational Guidance (2014).

The type of transport and any supervision provided will be dependent upon the needs of the child/learner, and his/her age (viii). The most cost effective and suitable mode(s) of transport will be used. This could include a ticket for use on a local bus service, a place on a contracted vehicle, parental allowance or cycle allowance. Transport arrangements and pupils' transport needs will be reviewed on a regular basis (ix) to ensure they are suitable and cost effective.

For eligible children transport will be provided from home to school (or college) at the start and end of the day. It is not provided for part time/lunchtime or travel between school sites. (xi) The Authority will provide transport from reasonably near the child's home to reasonably near school/college. (xii) A child, depending upon their age and ability may be required to walk to a pick up and set down point.

The Authority may withdraw transport if they are satisfied that a learner has failed to comply with the Code of Conduct. (xiii)

## How to apply

Application forms are available from your child's school or college, or on City and County of Swansea's website. [www.swansea.gov.uk](http://www.swansea.gov.uk)

## Appeals

If free transport is refused, parents/carers may challenge that decision either if it is thought the authority has not applied the policy correctly, or because there are exceptional circumstances.

Appeals should be made in writing setting out the reasons for the appeal, and providing copies of any supporting information. Full details of the Appeals process can be obtained by writing to the address below:

The Manager School Governor and Student Services  
School and Governor Support Unit  
Education Department  
Civic Centre  
SWANSEA SA1 3SN

or by e-mail to: [Schoolgovernorunit@swansea.gov.uk](mailto:Schoolgovernorunit@swansea.gov.uk)

## Local Arrangements

### Post 16 students

The Learner Travel Measure (Wales) 2008 requires Local Authorities to consider the needs of learners who are aged 16-19 years; however, there is **no** requirement for Local Authorities to provide school or college transport free of charge to any learner who is more than compulsory school age. The authority, however, uses its discretionary powers and will provide transport for learners over compulsory school age who meet the criteria of minimum distance or lack of a safe/available route to their designated school or college, or special educational need. The Council provides eligible learners with bus passes to travel to their designated school.

The Council delegates funding and responsibility for the provision of post-16 college transport to the two Further Education colleges.

If the designated school or linked college does not offer the particular course of study that the student requires, transport will be provided to the nearest school/college that offers the course if it meets the minimum distance criteria.

### Transport to Welsh/English Medium Schools

In considering whether a school is suitable, the Learner Travel Wales Measure 2008 states that neither the child's or parent's language preference or mother tongue should have any bearing on whether a school is suitable. However, the measure requires Local Authorities to promote access to education and training through the medium of Welsh. For this reason, City and County of Swansea will provide free transport to the nearest suitable school which provides education through the medium of either Welsh or English provided that the pupil meets the distance criteria or non-availability of a safe walking route. **Welsh Government Learner Travel Statutory Provision and Operational Guidance (2014) 1.40,1.74 – 1.79**

### Transport to Faith Schools

The Learner Travel Wales Measure, Operational Guidance states that the child's or parent's religious faith or conviction should have no bearing on whether a school is suitable. However the City and County of Swansea will provide free transport to the nearest suitable faith school provided that the pupil meets the distance criteria or non-availability of a safe walking route.. **Learner Travel Statutory Provision and Operational Guidance (2014) 1.40, 1.80-1.82**

### **Transport for learners with Special Educational Needs**

Pupils who have a statement of Special Educational Need (or equivalent level of educational need should Statements be replaced with a different assessment and provision mechanism following the outcome of any proposals by Welsh Government for ALN reform).

Not all pupils with special educational needs will automatically receive transport and the same eligibility criteria will apply to children with special educational needs as for all pupils of statutory school age.

City and County of Swansea recognises that children and young people with special educational needs are likely to have a range of additional transport needs and these needs may change during their school careers. For this reason, a child or young person who has a statement who may meet the criteria for free school transport will be individually considered by the LA to ascertain their transport requirements. Some children who do not meet the criteria for free school transport may also be assessed and considered if their special needs suggest that they may require support with transport to and from school.

Learners with special educational needs will have their transport needs reviewed at the Annual Review.

### **Children and Young People who attend Pupil Referral Units, Inclusion Centres, or Tuition Centres**

Free home to school transport is provided for pupils who attend these establishments who meet the qualifying distances in respect of primary and secondary aged pupils. Such children who live less than the minimum distance from their nearest suitable provision may also be offered transport if it is considered necessary for their successful attendance. This will require individual consideration and use of the LA's discretionary powers. Any transport provision would be subject to regular review.

### **Looked After Children**

The Authority has a responsibility as a corporate parent for Looked After Children. All efforts are made to provide continuity and stability for those children as far as school provision is concerned. If Social Services decide that the child should continue to attend their normal school, free home to school transport will be provided to maintain attendance at the child's normal school where the carer's home is further than 2 miles away in the case of a primary school child or 3 miles in the case of a secondary school child. This arrangement will also be made available for those children who are being cared for at addresses in neighbouring authorities. However, Social Services should be mindful of the recommended maximum travel times/distances when deciding the needs of the child. Public transport will be used whenever possible. **See Learner Travel Statutory Provision and Operational Guidance (2014) 1.29, 1.49-1.51**

### **Passenger Assistants**

Routes will be assessed on an individual basis but passenger assistants will not normally be provided on mainstream routes for either secondary or primary pupils. Travellers will be expected to conform to the code of conduct and it will be the responsibility of the parents/carers to ensure that their child gets onto the bus safely and that the child is met off the bus after school as necessary. They will however, be employed to support pupils on certain routes and the decision to employ a passenger assistant on a specific route will depend on a number of factors in accordance with the Learner Travel Statutory Provision and Operational Guidance. These include the individual needs of the pupils, the length and nature of the route etc. **See Learner Travel Statutory Provision and Operational Guidance (2014) 1.15**

### **Promoting Independent Travel**

City and County of Swansea supports a number of initiatives which are designed to ensure that as many of our pupils as possible become confident users of public transport and other sustainable travel methods such as walking or cycling by the time they leave school.

### **Absent Parents or Carers**

Vulnerable children such as very young children or some children with Special Educational Needs who have no one to meet them when they arrive at their destination will be kept on the vehicle so that other children on the route are not delayed. The Authority will be informed by the driver and arrangements will be made for the child to be collected by their parent or carer at the end of the route. If a parent or carer cannot be contacted either the Social Services Duty Officer or police will be contacted. **(See SWITCH Home to School Code of Conduct page 12 or SWITCH Special Educational Needs Transport Code of Conduct page 15).**

### **Payment of mileage allowance**

Where an entitlement to school transport exists or discretion has been exercised, in certain circumstances e.g. where it is the most economic option, or if the needs of the child demand it, the Authority may agree to offer a mileage allowance where the parent/carer of a child/ren transports the child/ren themselves. If a mileage allowance has been agreed with the parent or carer to take their child to school, the rate would be for one return journey per day.

Please note that any agreement would be subject to the parent or carer having a driving licence, the vehicle having an MOT (if applicable depending on the age of the vehicle) and evidence of appropriate insurance (either class 1 business use or a letter from their insurers waiving the need for class 1 business use to transport their child for an allowance).

### **Discretionary Travel**

Where the Council chooses to provide discretionary transport arrangements, then these can also be removed at a later date. In doing this the Council should follow the correct procedures for withdrawal of transport provision in line with their relevant policy protocols, for instance, public consultation.

If the Council decides to change or remove the discretionary transport provision it provides, it must publish the information before 1 October of the year preceding the academic year in which the changes will come into force in accordance with the Learner Travel Information Regulations 2009. **See Learner Travel Statutory Provision and Operational Guidance (2014) 1.104 - 1.105**

### **Sale of Spare Seats on School Transport**

School transport is provided taking into account the efficient and effective use of the Authority's resources. The LEA will group pupils to share vehicles and this may result in some vehicles having spare capacity. These additional seats are offered for sale to parents and carers of children who would not otherwise be entitled to free transport. These seats are offered on a termly or annual basis. No seats are sold for pre-school age pupils.

If during the course of the year, a child starts at the school with an entitlement to free transport through the statutory criteria of minimum distance or the lack of a safe walking route it could become necessary to rescind the decision to sell a spare seat if the vehicle is full. The decision on how this seat is chosen will be taken by the Transport Team in accordance with the Sale of Spare Seats Scheme. For further information on the purchase of spare seats, please contact the Transport Team, Civic Centre, Swansea, SA1 3SN.

## GUIDANCE NOTES

**i. Transport for those under compulsory school age:** City and County of Swansea extends the entitlement to full time pupils below compulsory school age from the commencement of the academic year in which they achieve their fifth birthday.

**ii. Residence:** Residence is the child's permanent home i.e. residence is not temporary such as staying with relatives on a short term basis.

Transport is provided between home and school only, not for example between child minders' and school.

Where there are shared custody arrangements/looked after arrangements and the child is eligible to transport from both addresses (both satisfying the distance criteria, or the route is not available/ unsafe , etc.) transport will be provided if this is a regular, on-going and permanent arrangement i.e. for more than one term. Application for transport from more than one address should be supported by evidence of residence.

**iii. Nearest suitable or designated school:** The child must be a registered pupil at the school. The nearest suitable or designated school includes the named school for a child with special educational needs or additional needs, a maintained school or a PRU

Transport will not be provided where a parent chooses a more distant school and there is a place available at a school nearer home.

Note that the nearest school may be in an adjacent authority.

**iv. Measurement of two/three miles:** The walking distance of two/three miles should be measured by the shortest available walking route. This may include footpaths.

It is measured from where home meets highway/boundary of the property i.e. end of drive or private lane to the front or nearest school gate. Note that many schools have large grounds and if there is a pedestrian entrance to school premises/grounds this may be the nearest gate rather than the main entrance, if that is useable.

**v. Compulsory school age:** Transport will be provided for eligible pupils to the end of the academic year in which the child reaches age 16.

**vi. Safety of route/availability of walking route:** A walking route is deemed to be available if it can be walked in relative safety by the child/learner alone or accompanied by an adult, as necessary, taking into account the nature of the route and the age and abilities of the child/learner.

The safety of the route should be assessed with reference to the Risk Assessment Procedure set out in the Learner Travel Statutory Provision and Operational Guidance (2014) to determine whether a route is unavailable irrespective of whether a parent accompanies a child, given the age of the child. This takes into account factors such as speed limit, traffic volume, social factors, etc.

In determining whether a route is available or unavailable, officers will need to consider the nature of the route, the ability of an adult to accompany and the child's abilities/age.

The key questions are:

### 1 Route safety

- Is the route safe for any child even if they were unaccompanied?
- Is the route safe for a child accompanied as necessary?
- Could the route be improved e.g. new crossing, to make it safe for any child unaccompanied or accompanied as necessary?

If the answer to these is yes then it will be necessary to consider the ability/disability of a parent/guardian/carer to accompany and the ability/disability and specific needs of the child and their age.

### 2. Adult to accompany as necessary

**Even if a parent is working this does not fail to make them available to accompany their child as necessary.** Many parents will say they are unavailable to accompany their child. Unfortunately the guidance and case law have concluded that just because a parent is working, the Authority does not have to provide transport.

However, there may be circumstances where an appropriate adult is not available to accompany the child – for example if the parent is so disabled they themselves are unable to walk the route, or the authority is already requiring the parent to accompany another sibling to ensure their route is safe to travel to school.

### 3. The child's disabilities/learning difficulties are such that they are unable to walk even accompanied along a safe route?

- If this is the case, can travel training and/ or support be provided to develop child's ability?
- If travel training is not appropriate then transport will be required, and the Authority will need to look at the needs of the child, but review regularly the child's ability and any opportunity to train/support them.

### vii. Other discretionary circumstances:

The type of transport and entitlement to transport provision should be regularly reviewed.

It is likely there will be some limited discretionary exceptions where free transport will be provided to pupils who would ordinarily not be entitled. These may include temporary medical condition, supported by medical (normally at consultant level) evidence that confirms the conditions, its impact on travel to school and the expected duration of the condition, or where a child is a young carer and where attendance at school would be unlikely without additional travel support. Specific discretions will depend on local practice/circumstances.

### viii. Suitable transport/specific needs assessment:

The guidance is that transport should be 'non stressful' and safe.

Transport should be provided in accordance with the Learner Travel Statutory Provision and Operational Guidance.

For pupils with additional needs their transport requirements will be assessed on an individual basis at least annually. This will determine the suitable vehicle, route and need for any specialist equipment and/or supervision, based on information provided as part of the statutory assessment process, and / or annual review.

### ix. Review of transport arrangements:

For pupils who are applying for transport on the basis of an unavailable/ unsafe route, transport entitlement and transport needs will be reviewed on an annual basis. For those with special educational needs this will form part of their Annual Review.



**x. Transport to a Residential Placement:**

Where the child is in a residential placement transport will be provided at the beginning and the end of the week/half term or termly as appropriate. , Assistance will be provided with the cost of one return trip for one adult each half term for visiting purposes and one return trip for the Annual Review. Reimbursement will be paid either as a mileage allowance or as standard class public transport fares supported by receipts.

**xi. Transport provided for the Am and Pm journey only:**

For those eligible to receive free transport, it is provided to and from school or college at the start and end of the school day. Transport is not provided for part time attendance or for pupils to attend at other hours for example to attend an evening class. There is also no duty on the Authority to provide travel during the day or between sites. Transport will not ordinarily be provided for those on assessment.

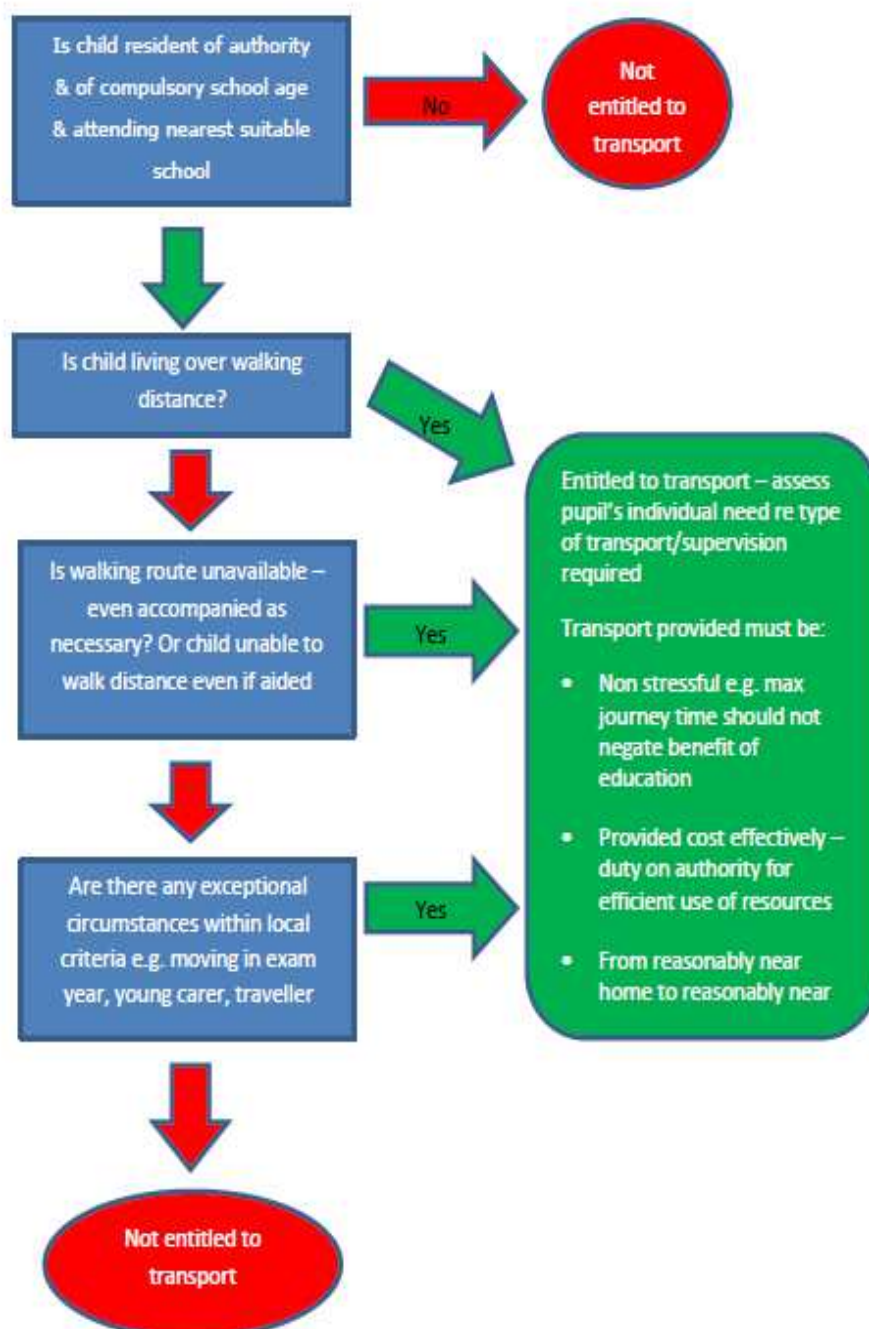
**xii. Pupils will usually be expected to walk to the nearest pick up point:**

The Authority will consider the needs of the child, but it would be expected for parents to accompany the child as necessary to any pick up point. (see also vii)

**xiii. Withdrawal of transport:**

The process for withdrawal of transport is set out in the Welsh Government Travel Behaviour Code Statutory Guidance 2009

## FLOW CHART FOR SCHOOL TRANSPORT ENTITLEMENT





Llywodraeth Cymru  
Welsh Government

[www.cymru.gov.uk](http://www.cymru.gov.uk)

# Learner Travel

## Statutory Provision and Operational Guidance

June 2014





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## Section 1: Statutory Provisions.

### Summary

In 2004, the Welsh Government adopted the United Nations Convention on the Rights of the Child (UNCRC)<sup>1</sup> as a basis of all policy making for children and young people in Wales. In 2011 Welsh Ministers passed the Rights of Children and Young Persons (Wales) Measure 2011<sup>2</sup> which provides that Welsh Ministers must have due regard to the requirements of the Convention when exercising any of their functions.

The safety of children is of paramount importance and the Learner Travel (Wales) Measure 2008<sup>3</sup> (“the 2008 Measure”) requires local authorities to assess the suitability of travel for learners between home and places of education and training.

It is also important to secure the views of children and young people in accordance with the Rights of Children and Young Persons (Wales) Measure 2011. The views and perceptions of children can inform the local authority officers who have responsibility for assessing home to school travel provision. Working collaboratively with partners, such as governing bodies, head teachers, schools, Local Safeguarding Children’s Boards, operators, parents and other agencies to share information and best practice can assist safeguarding of children travelling to and from school.

The Welsh Government has adopted the social model of disability however, much of the legislation is not written to reflect this model. Consequently this document contains non social model terminology.

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<sup>1</sup> <https://www.gov.uk/government/policies/creating-a-fairer-and-more-equal-society/supporting-pages/the-united-nations-convention-on-the-rights-of-the-child-uncrc>

<sup>2</sup> 2011 nawm 2. <http://www.legislation.gov.uk/mwa/2011/2/contents>

<sup>3</sup> 2008 nawm 2. <http://www.legislation.gov.uk/mwa/2008/2/contents>

## Section 1: Statutory Provisions.

### Chapter 1: The Learner Travel (Wales) Measure 2008.

#### Overview

- 1.1 The Education Act 1996 (as amended) sets out the law in Wales and England for the **attendance** of pupils at school and the Learner Travel (Wales) Measure 2008 (as amended) ('the Measure') sets out the legal framework specifically related to **travel and transport** provisions for learners<sup>4</sup> travelling from home to school<sup>5</sup> in Wales.
- 1.2 This Statutory Guidance ("the Guidance") is published by Welsh Ministers under section 15 of the Learner Travel (Wales) Measure 2008.
- 1.3 Under section 15 of the Learner Travel (Wales) Measure 2008, Welsh Ministers have the power to issue statutory guidance. Where guidance is statutory, local authorities are required to have regard to the guidance and will only be able to depart from such guidance where they can provide justification for doing so.
- 1.4 The Guidance has no special authority in regards to matters of legal interpretation. Where there appear to be differences between the Measure and the Guidance, the Measure always takes precedence.
- 1.5 Where the Guidance says that something **must** be done, this means that it is a requirement in either primary or secondary legislation and a footnote gives the appropriate provision.
- 1.6 Section 1 of this guidance document outlines the statutory provisions, specific duties and key responsibilities for Welsh Ministers, local authorities, governing bodies of maintained schools, head teachers, learners, parents and any other relevant body as appropriate.

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<sup>4</sup> Definition of 'learner' is provided in the glossary (Section 2).

<sup>5</sup> For the purposes of this document the term 'school' has the same meaning as the term "relevant places" defined in Section 1(4) of the Measure. For ease of reference, the definition of 'relevant places' is provided in the glossary (Section 2).

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

1.8 Legal Duties of the Welsh Ministers.

The Welsh Ministers **must**:

- Make an All-Wales Travel Behaviour Code ('Travel Code'<sup>6</sup>)
- Promote access to Welsh Medium education<sup>7</sup> and training
- Promote sustainable modes of travel<sup>8</sup>
  
- Welsh Ministers may also issue direction and/or make statutory guidance<sup>9</sup>.

1.9 Legal Duties of the local authority.

Local authorities<sup>10</sup> **must**:

- Assess the travel needs of learners in their authority area<sup>11</sup>
- Provide free home to school transport for learners of compulsory school age attending primary school who live 2 miles or further from their nearest suitable school<sup>12</sup>
- Provide free home to school transport for learners of compulsory school age attending secondary school who live 3 miles or further from their nearest suitable school<sup>13</sup>
- Assess and meet the needs of "looked after"<sup>14</sup> children in their authority area<sup>15</sup>
- Promote access to Welsh medium education<sup>16</sup>
- Promote sustainable modes of travel<sup>17</sup>

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<sup>6</sup> Section 12 of the Measure

<sup>7</sup> Section 10 of the Measure

<sup>8</sup> Section 11 of the Measure

<sup>9</sup> Section 15 of the Measure

<sup>10</sup> Local authority means all relevant departments within the authority and is not limited to learner travel teams

<sup>11</sup> Section 2 of the Measure

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

<sup>13</sup> Section 3 of the Measure

<sup>14</sup> Definition of 'looked after' children is provided in Chapter 1 paragraph 1.49

<sup>15</sup> Sections 2 and 3 of the Measure

<sup>16</sup> Section 10 of the Measure

<sup>17</sup> Section 11 of the Measure

Under section 32 of the Education Act 2002<sup>18</sup> (which was amended by section 21 of the Measure), local authorities have the power to change school session times<sup>19</sup>, **if the change is considered necessary or expedient to promote the use of sustainable modes of travel, or to make travel arrangements more effective or efficient**<sup>20</sup>. The Welsh Government has made regulations setting out the appropriate procedure.<sup>21</sup>

Where learners are not entitled to free transport, local authorities have the power to provide transport on a discretionary basis<sup>22</sup>.

### 1.10 Legal Duties of Head-teachers.

They **must**:

- Ensure compliance with the Travel Code<sup>23</sup>

Head Teachers should also:

- Promote knowledge and awareness of the Travel Code<sup>24</sup>
- Incorporate the Travel Code into the school's overarching school behaviour policy<sup>25</sup>

## Assessing Needs

1.11 Section 2 of the Measure places a duty on a local authority to assess the travel needs of learners under the age of 19. This includes those who have reached 19 but started a course when under 19 and continue to attend that course

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<sup>18</sup> 2002 c.32. <http://www.legislation.gov.uk/ukpga/2002/32/section/32>

<sup>19</sup> This provision applies to community special schools, maintained nursery schools, foundation schools, voluntary aided schools and foundation special schools.

<sup>20</sup> Change can only be made if it meets these criteria

<sup>21</sup> The Changing of School Session Times (Wales) Regulations 2009 (S.I. 2009/572).

<http://www.assemblywales.org/bus-home/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid.htm?act=dis&id=119939&ds=4/2009>

<sup>22</sup> Section 6 of the Measure

<sup>23</sup> Section 89(2A) of the Education and Inspections Act 2006 states that in determining a behaviour policy for a school the head teacher must require pupils to comply with the travel behaviour code. <http://www.legislation.gov.uk/ukpga/2006/40/section/89>

<sup>24</sup> <http://wales.gov.uk/topics/transport/integrated/learnertravel/travelcode/?lang=en>

<sup>25</sup> Section 89 Education and Inspections Act 2006  
<http://www.legislation.gov.uk/ukpga/2006/40/section/89>

who receive education or training and who are ordinarily resident in the authority's area<sup>26</sup>.

1.12 Assessing the travel needs of learners does not mean providing free transport. Learners will only qualify for free transport provision if they meet the entitlement criteria outlined in Chapter 1 paragraphs 1.21 – 1.26 and 1.51 of this document.

1.13 Learner travel needs are the specific needs of learners in terms of the travel arrangements between home and school each day. Those learners whose travel needs are assessed by the local authority also include those whose nearest suitable schools are in other local authority areas.

1.14 It is recommended that in assessing the travel needs of learners, local authorities should consider:-

- Who the learners are in their area
- Where those learners currently attend or are due to attend school
- Which learners they are under a legal duty to provide with transport under Sections 3 and 4 of the Measure
- Which learners they want to provide with travel on a discretionary basis under Section 6 of the Measure
- What other arrangements already exist / will exist for those for whom they do not provide transport (e.g. does the further education college provide transport for 16-18 year olds?)

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

- The needs of disabled learners<sup>27</sup> and learners with learning difficulties<sup>28</sup>
- Any particular needs of learners who are 'looked after' or formerly looked after by a local authority<sup>29</sup>

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<sup>26</sup> Local authorities are required to assess the travel needs of learners under the age of 5 (nursery age) and aged 16-19, but there is currently no legal duty to provide free or assisted transport arrangements for nursery or post-16 learners.

<sup>27</sup> Section 24(1) of the Measure. The definition of disability can be read as that from the Equality Act 2010, which is explained in the glossary (see Section 2)

<sup>28</sup> Section 24(1) of the Measure

<sup>29</sup> The statutory definition of 'looked after' children is defined in section 22(1) Children Act 1989 and is provided in Chapter 1 paragraph 1.49.

- The age of a learner
  - The nature of the route that the learner is expected to take between home and the places where they receive education or training.
- 1.16 In assessing the travel needs of learners, local authorities must<sup>30</sup> take into account the fact that the travel arrangements they make in light of the assessment must not cause unreasonable levels of stress; take an unreasonable amount of time or be unsafe.
- 1.17 The assessment will give a local authority an overview of the travel needs of learners in their area. This will allow them to make travel arrangements for learners in an efficient and effective manner and enable them to provide information to others about the travel arrangements available. Local authorities must also promote sustainable modes of travel<sup>31</sup> when exercising their functions under the Measure as far as reasonably practicable.
- 1.18 The assessment is only required to take into account travel to and from the learner's home to the nearest suitable school and not the learner's travel needs during the day between different places of education or training, including:
- residential trips or day trips organised by schools.
  - travel between schools or between different sites of the same school (i.e. travel incurred by learners during the school day to access courses in relation to the learning pathways programme)
- 1.19 When exercising functions under the Measure the local authority is not required to take account of extra curricular activities, breakfast or after-school clubs when assessing learner travel needs.
- 1.20 In each academic year, the local authority must assess the learner travel needs for the following academic year<sup>32</sup>.

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<sup>30</sup> Sections 3(5) (transport arrangements) and 4(6) of the Measure (travel arrangements)

<sup>31</sup> Definition of 'sustainable modes of travel' is outlined in Section 11 of the Measure and is provided in the glossary (Section 2)

<sup>32</sup> Section 2(2) of the Measure

## Entitlement

- 1.21 Section 3 of the Measure places a duty on a local authority to make transport arrangements for learners of compulsory school age in specified circumstances and subject to specified conditions. The section makes provision for free transport defined by whether children receive primary or secondary education and whether they live further than set distances from the schools at which they receive education or training.
- 1.22 Learners receiving primary education will be entitled to free transport if they live two miles or more from their nearest suitable maintained school; pupil referral unit; or non-maintained special school. The exception is if the authority has arranged for the learner to board at or near the school.
- 1.23 Where a learner receiving primary education has a statement of special educational needs (SEN), which names an independent school, then should that school be two miles or more from the learner's home, a local authority will have to provide free transport. The exception is if the authority has arranged for the learner to board at or near the school.
- 1.24 A similar entitlement is provided for learners receiving secondary education, but in this case if they live three miles or more from their nearest suitable maintained school; pupil referral unit; non-maintained special school or independent school named in a statement of special educational needs. Where the local authority has arranged for the learner to board at or near the school, the duty to provide free transport does not apply.
- 1.25 The entitlement includes transport for any learners of compulsory school age who attend their nearest suitable further education institution as a full time student if it is three miles or more from the learner's home and the local authority has not arranged for the learner to attend a suitable institution closer than three miles from the learner's home.
- 1.26 The entitlement also includes travel between home and school, where a learner is registered at more than one school and needs to attend different schools on different days of the week. For example this would cover travel at the

beginning and/or end of the day to a different school. Transition may include when a learner is moving from a special needs unit into mainstream education.

## **Making Suitable Transport Arrangements**

1.27 The local authority must<sup>33</sup> make suitable transport arrangements to facilitate the attendance of the learner each day at their nearest suitable school where they receive education and training. Under Sections 3(5) and 4(6) of the Measure transport arrangements are not suitable if:

- they cause unreasonable levels of stress for the learner
- they take an unreasonable amount of time
- they are unsafe

### 1.28 Unreasonable Levels of Stress

Local authorities must provide suitable transport arrangements to ensure that, as far as reasonably practicable, they do not cause unreasonable levels of stress to the learner<sup>34</sup>. There is no legal definition of 'stress', nor is there a definitive list of what criteria local authorities should take into account to determine if the journey causes an unreasonable level of stress. It is for local authorities to determine how stress assessments are carried out, in accordance with their own learner travel policy.

### 1.29 Journey Times

The Measure does not specify a time limit for journeys, however, local authorities are required to assess the individual needs of learners when considering if a journey time is reasonable. An assessment should take into account the nature, purpose and circumstances of each journey. It is recommended that local authorities consider the following whilst assessing learner journey times<sup>35</sup> :-

- the learner's age

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<sup>33</sup> Section 3 of the Measure.

<sup>34</sup> Section 3(5) of the Measure.

<sup>35</sup> Information on what might be considered suitable journey times is provided in Section 3 (Question 4)



- whether the learner has any disability or learning difficulties that need to be accounted for<sup>36</sup>
- for the purposes of this document the locality of the learner's home in relation to available schools in the vicinity<sup>37</sup>

### 1.30 Safe Travel

For the purpose of this document 'safe travel' is defined as 'providing appropriate travel arrangements to ensure that as far as reasonably practicable a learner is not placed at risk<sup>38</sup>, whether known or foreseen, which might result in them or other persons sustaining a trauma and or serious physical injury'.

1.31 Further information on safe travel with regards to available walking routes is provided in Chapter 1 paragraphs 1.60-1.64 and Chapter 5 of this document..

1.32 It is recommended that local authorities ensure that appropriate health and safety checks and risk assessments on learner transport are carried out. The assessment should take into account stress factors; appropriate journey times and safe travel arrangements<sup>39</sup> when determining what transport provisions are suitable for learners.

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

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<sup>36</sup> Both the journey time and the suitability of the school (which the learner may need access to) need to be accounted for – especially if a named specialist school is specified in the learner's statement of special education needs.

<sup>37</sup> 'Vicinity' refers to suitable schools both within and outside the authority's area.

<sup>38</sup> For the purposes of this document the definition of 'risk' is provided in the glossary (Section 2)

<sup>39</sup> Section 3(5) of the Measure

### 1.34 Making Other Travel Arrangements

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

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

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

1.37 In considering whether travel arrangements are suitable, the local authority must<sup>40</sup> have regard to:

- the needs assessment undertaken under Section 2 of the Measure (outlined in Chapter 1 paragraphs 1.11 -1.20 of this document)
- the transport arrangements it is duty bound to make under Section 3 of the Measure
- the age of the learner
- any disability or learning difficulty<sup>41</sup>
- the nature of the route a learner is expected to take

### **Nearest Suitable School**

1.38 The definition of nearest "suitable school" is where the "education or training provided is suitable having regard for the age, ability and aptitudes of the learner and any learning difficulties he or she may have<sup>42</sup>".

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<sup>40</sup> Section 4(5) of the Measure.

<sup>41</sup> This includes taking into account a learner's disability and / or a learner's parent's disability. See Chapter 1 paragraphs 1.83- 1.97 for further information on this provision

<sup>42</sup> Section 4(9) of the Measure

1.39 Local authorities need to consider the suitability of the school when deciding if the placement is appropriate for the learner. Deciding which suitable school is the learners 'nearest' is a matter for the local authority to determine in accordance with their own learner travel and education policy. Local authorities need to set out how the nearest suitable school is identified and publish this information in their learner travel policy in accordance with provisions outlined in the Learner Travel Information (Wales) Regulations 2009<sup>43</sup>.

1.40 Parents and learners may express a preference for a particular school, a particular type of language provision or faith school, but the Measure does not confer on those parents and learners any rights to free transport to their preferred school and or location, unless that school is determined by the local authority to be the learner's nearest suitable school and the learner meets the distance criteria. Further information regarding parental and learner preference is provided in Chapter 1 paragraphs 1.44 – 1.47 and Chapter 6 paragraphs 6.6 – 6.9.

1.41 Transport must be provided free of charge<sup>44</sup> to a school outside a local authority's area if that establishment is deemed (under provisions outlined in Chapter 1 paragraphs 1.38 and 1.41) to be the learner's nearest suitable school and if the learner lives:

- further than the statutory distances specified for their age (see Chapter 1 paragraph 1.9 (bullet points 1 and 2)); or
- under the statutory distance specified for their age where the prescribed route the learner is expected to travel has been classified unavailable by the relevant authority

#### 1.42 Admission to School

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

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<sup>43</sup> <http://www.legislation.gov.uk/wsi/2009/569/regulation/4/made>

<sup>44</sup> This relates to learners of compulsory school age only.

1.43 The School Admissions Code 2013<sup>45</sup> (the ‘2013 Code’) outlines in more detail the statutory requirements governing school admissions. The 2013 Code came into force on 8 July 2013 and applies to admission arrangements for intakes from September 2014/15 onwards. Paragraphs 2.48 – 2.55 of the 2013 Code outline how distance between home and school can be used as a determinant for entitlement to admission at a school where demand for places means that the oversubscription criteria applies<sup>46</sup>.

#### 1.44 Parental Preference

Section 86 of the School Standards and Framework Act 1998<sup>47</sup> requires a local authority to enable a parent to express a preference for the school they wish their child to attend. For the purpose of this document this is defined as ‘enacting parental preference’.

1.45 Parental preference does not give a right to a place in their chosen school. If there are places available at the parents’ preferred school, the admission authority’s decision should usually be to accept an application for admission. This can mean that some learners do not attend their nearest suitable school and live some distance away from the school they attend.

1.46 If a parent exercises their parental preference when determining which school their child attends and the chosen school is not the nearest suitable school agreed by the local authority, the learner is not entitled to free transport provision – even if the learner meets the distance or age criteria usually entitling them to free transport provision. In these circumstances, a local authority may provide discretionary transport provision under section 6 of the Measure. If the local authority decides to use this power in accordance with section 9 of the Measure, which outlines that transport arrangements must not favour certain types of education or training, they must ensure that they provide the same provision to all learners in the same circumstance within their

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<sup>45</sup> 005/2013.

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

<sup>46</sup> Further information regarding the oversubscription criteria is outlined in Section 3 (Question 44) of this document

<sup>47</sup> 1998 c. 31. <http://www.legislation.gov.uk/ukpga/1998/31/section/86>

authority. Further information regarding this provision is provided in Chapters 5 – Risk Assessing Walked Routes to School paragraph 5.54 and 5.56 and Chapter 6 – ‘Parental Responsibilities’ paragraphs 6.1 - 6.9 and 6.11 - 6.12.

### Children’s Preference

Local authorities should also bear in mind the United Nations Convention on the Rights of the Child (“UNCRC”)<sup>48</sup> and any commitments made in relation to it.

- 1.47 When a child exercises their preference for a school they would like to attend, if it is not their nearest suitable school the learner is not entitled to free transport provision even if they meet the distance and age criteria usually applied to receive free transport provision. Further information regarding this provision is provided in Chapter 6 – ‘Parental Responsibilities’ paragraphs 6.1– 6.9 and 6.11– 6.12.

### **Attendance of Pupils at School**

- 1.48 Section 444 of the Education Act 1996 creates the offence on the part of a parent of failing to secure the regular attendance at school of a registered pupil. Section 20 of the Measure amends section 444<sup>49</sup> to provide that a parent will have a defence to a prosecution if a local authority has failed to discharge, where required, their statutory duties under this Measure to make travel arrangements to facilitate the attendance of their child at school.

### **Looked After Children**

- 1.49 The definition of a ‘looked after’ child is the term used within the Children Act 1989 to describe a person (under the age of 18) who is in the care of the local authority, or who is provided with accommodation for more than 24 hours by a local authority<sup>50</sup> in the exercise of its social services

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<sup>48</sup> <https://www.gov.uk/government/policies/creating-a-fairer-and-more-equal-society/supporting-pages/the-united-nations-convention-on-the-rights-of-the-child-uncrc>

<sup>49</sup> <http://www.legislation.gov.uk/ukpga/1996/56/section/444>

<sup>50</sup> As defined by Section 22(1) of the Children Act 1989  
<http://www.legislation.gov.uk/ukpga/1989/41/section/22>

functions<sup>51</sup> This could be a placement with foster carers; in residential homes or with parents or other relatives ('kinship care').'

1.50 A learner who is classified as a 'looked after child' is different to a child (learner) with dual residency<sup>52</sup>.

1.51 Under Section 3 and 4 of the Measure, the same age and distance criteria apply to 'looked after' children (learners) as to those who are not looked after. But the provision that the learner must attend their nearest suitable school to their home does not apply to 'looked after' learners (in the same way it applies to learners who are not looked after). Further information explaining the justification for this difference in provision is provided in Section 3 (Question 6) of this document.

## Ordinary Residence

1.52 Section 19 of the Measure sets out the provisions for determining a person's ordinary residence in particular circumstances. There is no statutory definition of the term 'ordinary residence'. However for the purposes of this document, 'ordinary residence is defined as 'where a learner usually lives, or if under 16, where those with parental responsibility for the learner live.'

1.53 'Living' means more than occasionally visiting. If a learner has no ordinary residence they should be treated as being ordinarily resident at the place at which they are for the time being resident<sup>53</sup>.

## 1.54 Dual Residency

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<sup>51</sup> These are social services functions within the meaning of the Local Authority Social Services Act 1970 (apart from functions under Section 17, 23B and 24B of the Children Act 1989). From the commencement of the Social Services and Well-being (Wales) Act 2014, "looked after" child will be defined in the Act to refer to a child who is in the care of the local authority or who is provided with accommodation for more than 24 hours by a local authority in the exercise of its social services functions as described in Schedule 2 to the Act (apart from functions under section 15, Part 4 or section 109, 114 or 115 of the Act).

<http://www.legislation.gov.uk/ukpga/1989/41/part/III>

<sup>52</sup> Further information on looked after children is provided in Section 3 (Questions 5 and 6) of this document. Further information of what transport entitlement is given to learners in dual residency is outlined in Chapter 1 paragraphs 1.54 – 1.59

<sup>53</sup> Section 19(1) of the Measure.

Dual residency means a learner who has more than one home (ordinary place of residence). This provision applies to learners whose parents are not living together with the learner living partly with each parent<sup>54</sup>, or with a parent and other carer, foster placement etc.

- 1.55 Where a learner has dual residence both places of residence should be regarded as the learner's ordinary residence. If a learner lives at more than two such places then only those two places nearest to their school will qualify<sup>55</sup>.
- 1.56 Sections 3 and 19 of the Measure place a duty on a local authority to provide free transport for learners (of dual residence) to their nearest suitable school if the learner is of compulsory school age and the residence(s) meet the statutory distance criteria (see paragraphs 1.21– 1.26 and 1.51). If the statutory criteria is not met local authorities still have the option of providing discretionary transport under section 6 powers. Further advice regarding this provision is provided in Section 3 (Questions 7 and 8) of this document.
- 1.57 Section 9 of the Education Act 1996<sup>56</sup> states that local authorities must have regard to the general principle that learners are to be educated in accordance with the wishes of their parents so far as reasonably practicable and so far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure.
- 1.58 Where a learner has two places of ordinary residence which are located in two different local authorities, each of those local authorities will be responsible for the learner's travel arrangements when the learner is residing in its area.
- 1.59 Further information regarding dual residency is provided in, Chapter 6 – 'Parental Responsibilities' – paragraph 6.11 and Section 3, Questions 7 and 8.

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<sup>54</sup> 'Parent' means a parent within the meaning of section 576(1) of the Education Act 1996 who is an individual and includes any person who is not a parent but who has parental responsibility, or who has care for the child.

<http://www.legislation.gov.uk/ukpga/1996/56/section/576>

<sup>55</sup> Section 19(6) of the Measure.

<sup>56</sup> <http://www.legislation.gov.uk/ukpga/1996/56/section/9>

## Walking Distances and Available Walking Routes

- 1.60 Section 3 of the Measure sets out the distance criteria whereby learners are entitled to free transport to and from their nearest suitable school. Distances below these thresholds for the purpose of this document are referred to as 'walking distances'.
- 1.61 Under section 3(7) of the Measure the walking distance should be measured by the 'shortest available route'. A route is considered to be available if it is safe (as far as reasonably practicable) for a learner without a disability or learning difficulty to walk the route alone or with an accompanying adult if the learner's age and levels of understanding requires this.
- 1.62 If a route is not 'available' and there is no alternative 'available' walking route within the respective distance threshold applicable to the learner's age, which can be used instead as prescribed within section 3 of the Measure, the learner cannot be expected to walk to their nearest suitable school, even though the distance from home to school is less than the distance limit that applies to the learner's age.
- 1.63 In such cases the local authority has a duty to provide the learner with free transport to and from their nearest suitable school, but only if the learner is attending their nearest suitable school. If a learner does not attend their nearest suitable school and if the walking route is not 'available' the local authority is not required to provide free transport.
- 1.64 It is recommended that assessment of walking distances and routes to school be carried out by local authorities in accordance with:
- the risk assessment procedure outlined in Chapter 5 of this document
  - the Health and Safety Executive guidance and other relevant legislation governing health and safety provision<sup>57</sup>

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<sup>57</sup> <http://www.hse.gov.uk/workplacetransport/separating.htm>



Further advice on when risk assessments should be undertaken is provided in Section 3 (Question 2) of this document.

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

### Post-16 Learners

- 1.65 Section 2 of the Measure requires local authorities to assess the travel needs of all learners under the age of 19 who receive education or training and who are ordinarily resident in the authority's area. This includes those who have reached 19 but started a course when under 19 and continue to attend that course.
- 1.66 There is no statutory duty for a local authority to provide free transport to post - 16 learners who continue their studies in mainstream further education or training.
- 1.67 There is no statutory duty on a local authority to provide free transport to a learner with a disability or learning difficulty in post-16 further education or training, although in assessing learner travel needs under section 2(4) of the Measure, a local authority "must have regard in particular" to the needs of learners who are disabled or with learning difficulties. Further information on transport costs for children with statements is provided at 8.87 to 8.90 of the SEN Code of Practice for Wales<sup>58</sup>.
- 1.68 Section 6 of the Measure provides local authorities with the power to provide discretionary transport arrangements for post-16 learners. Further information on discretionary transport provisions is provided in Chapter 1 paragraphs 1.98 – 1.105.
- 1.69 The Measure repeals Section 509AA of the Education Act 1996 so local authorities in Wales are no longer required to publish a separate transport policy statement for learners of sixth form age. However, under the Learner Travel

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<sup>58</sup> <http://learning.wales.gov.uk/resources/special-education-needs-code-of-practice/?lang=en>

Information (Wales) Regulations 2009<sup>59</sup>, local authorities are required to include information on post-16 learners' travel provisions within the information they publish about general arrangements and policies in respect of home to school learner travel. Further information on the Learner Travel Information (Wales) Regulations 2009 is provided in Chapter 3 paragraphs 3.1 -3.6.

#### 1.70 Children Under 5 Years of Age (Nursery)

Section 2(1) of the Measure requires local authorities to assess the travel needs of learners who are under the compulsory school age (under five years of age), attending nursery education<sup>60</sup> and who are ordinarily resident in the authority's area.

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

1.72 Section 6 of the Measure provides local authorities with the power to provide discretionary transport arrangements for learners under the age of five who attend nursery. Further information on discretionary transport provisions are provided in Chapter 1, paragraphs 1.98 – 1.105.

1.73 Under the Learner Travel Information (Wales) Regulations 2009, local authorities are required to include information about nursery learners' travel provisions within the information they publish on general arrangements and policies in respect of home to school learner travel. Further information on the Learner Travel Information (Wales) Regulations 2009 is provided in Chapter 3 paragraphs 3.1 - 3.6).

### **Welsh Medium / English Medium Education**

1.74 When deciding which schools are the nearest suitable schools for learners in their area, local authorities and Welsh

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<sup>59</sup> <http://www.legislation.gov.uk/wsi/2009/569/contents/made>

<sup>60</sup> This provision covers all children aged under 5 (those aged 3 and 4) who receive education in any school or nursery setting whether the learning establishment is maintained or non-maintained.

Ministers have a duty under Section 10 of the Measure to 'promote access to education and training through the medium of Welsh'.

- 1.75 Section 6 of the Measure provides local authorities with the power to provide discretionary transport arrangements for learners who are not attending their nearest suitable school because of language preference. Further information regarding discretionary transport provision is provided in Chapter 1, paragraphs 1.98– 1.105.
- 1.76 Authorities should make clear in their school admissions documents their policy on providing free or assisted travel to schools teaching through the medium of Welsh or English. Preference for either language should be treated equally. Authorities should also take into account the authority's Welsh Language Scheme<sup>61</sup> and Welsh in Education Strategic Plan (WESP).<sup>62</sup>
- 1.77 Under the Learner Travel Information (Wales) Regulations 2009, local authorities are required to include information about learners' travel provisions with regard to accessing Welsh and English medium schools. This information must be included within the information they publish about general arrangements and policies in respect of home to school travel. Information on the Learner Travel Information (Wales) Regulations 2009 is provided in Chapter 3 paragraphs 3.1 - 3.6.
- 1.78 The School Standards and Organisation (Wales) Act 2013 places a duty on local authorities in Wales<sup>63</sup> to prepare a Welsh in Education Strategic Plan (WESP) for their area. A WESP sets out a local authority's proposals on how it will carry out its education functions to:

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<sup>61</sup> From November 2014 Welsh Language Schemes will be replaced by Welsh Language Standards. In accordance with the Welsh Language (Wales) Measure 2011.  
<http://wales.gov.uk/topics/educationandskills/publications/guidance/welshmededstrat/?lang=en>

<sup>62</sup>  
<http://wales.gov.uk/topics/educationandskills/publications/guidance/welshmededstrat/?lang=en>

<sup>63</sup> Section 84 of the School Standards and Organisation (Wales) Act 2013  
<http://www.legislation.gov.uk/anaw/2013/1/section/84/enacted>

- improve the planning of the provision of education through the medium of Welsh (“Welsh medium education”) in its area
- improve the standards of Welsh medium education and of the teaching of Welsh in its area

1.79 In setting out how this will be delivered, the travel of learners to access this provision may need to be taken into account and incorporated into the plan.

## **Transport to Denominational Schools**

1.80 Under current school transport legislation, a learner is entitled to free transport to a denominational school if that school is considered by the local authority to be the learner’s nearest suitable school. Section 6 of the Measure provides local authorities with the power to provide discretionary transport arrangements for learners who are not attending their nearest suitable school because of denominational preference. Further information regarding discretionary transport provision is provided in Chapter 1, paragraphs 1.98 – 1.105.

1.81 Paragraph 1 of the Schedule to the Learner Travel Information (Wales) Regulations 2009 (SI 2009/569)<sup>64</sup> requires local authorities to make clear in their school admissions documents their policy on providing free or assisted travel to denominational schools.

1.82 Under the Learner Travel Information (Wales) Regulations 2009, local authorities are required to include information about learners’ travel provisions to denominational schools. This information should be included within the information they publish about general arrangements and policies in respect of home to school travel. Information on the Learner Travel Information (Wales) Regulations 2009 is provided in Chapter 3, paragraphs 3.1 -3.6.

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

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<sup>64</sup> <http://www.legislation.gov.uk/wsi/2009/569/contents/made>

- 1.83 Under Sections 2 (4) (a) and (4) (b) of the Measure a local authority must consider a learner's disabilities and learning difficulties when assessing the travel needs of learners in their area.
- 1.84 With regard to the provision of learner transport, when determining whether a child is attending their nearest suitable school, a local authority must take into account the suitability of that school by having regard to (amongst other things) any learning difficulties the learner may have, irrespective of whether the learner has a SEN statement<sup>65</sup>. The definition of "learning difficulty" within the Measure<sup>66</sup> includes reference to any disability the learner may have which either prevents or hinders that person from using facilities provided at a school or other educational establishment.
- 1.85 Under Section 3 of the Measure, if an independent school is named in a statement for a child<sup>67</sup> or a non-maintained special school is determined to be a learner's nearest suitable school and the learner meets the eligibility criteria for free transport, a local authority is required to provide free home to school transport provision for the learner.
- 1.86 The transport arrangements for a learner with SEN will depend on their individual circumstances and the route they must travel. Under Section 4 of the Measure, if a learner of compulsory school age cannot walk (accompanied or unaccompanied) to their nearest suitable school, because of a disability or learning difficulty which they have, even if the distance to their nearest suitable school is less than the statutory limit for their age group, section 4 of the Measure places a duty on local authorities to make suitable travel arrangements for that child. The local authority will need to consider what arrangements are appropriate to facilitate the learner's attendance at school in accordance with their learner travel policy.

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<sup>65</sup> Section 3(6) of the Measure

<sup>66</sup> Section 24(1) of the Measure

<sup>67</sup> Under section 324 of the Education Act 1996.

<http://www.legislation.gov.uk/ukpga/1996/56/section/324>

- 1.87 The Equality Act 2010<sup>68</sup> contains a number of duties which are relevant when local authorities are complying with their duties under the Measure.
- 1.88 The Public Sector Equality Duty (PSED) in section 149 of the Equality Act 2010<sup>69</sup> places a duty on local authorities, when carrying out their powers and duties, *to have due regard* to the need to promote equality and opportunity for people with protected characteristics and to eliminate unlawful discrimination. The Measure specifically requires local authorities to have regard to any disability or learning difficulty of learners in making various assessments and decisions under it. However, this does not replace the need to also comply with the PSED in making assessments and decisions under the Measure. Therefore, local authorities should always consider whether there are any wider adverse impacts on protected groups of the assessments and decisions which they make under the Measure and, if there are, whether it would be appropriate to take steps to mitigate the effects of those.
- 1.89 Separately from the PSED, section 29(7) of the Equality Act 2010,<sup>70</sup> places a duty on local authorities to make certain reasonable adjustments in relation to disability when providing services or carrying out public functions. An authority cannot charge for any reasonable adjustments it makes under this duty.
- 1.90 Section 4 of the Measure in effect creates a specific requirement for local authorities to adjust their travel arrangement provision so that if a child with a disability or learning difficulty lives closer to their nearest suitable school than the distances specified in section 3, but travel arrangements are necessary to facilitate the child's attendance at that school, the authority has a duty to make those arrangements.
- 1.91 However, the reasonable adjustments duty is still relevant to the nature of transport or travel arrangements which the local authority make under the Measure. The local authority should ensure that the arrangements they make allow

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<sup>68</sup> <http://www.legislation.gov.uk/ukpga/2010/15/contents>

<sup>69</sup> <http://www.legislation.gov.uk/ukpga/2010/15/section/149>

<sup>70</sup> <http://www.legislation.gov.uk/ukpga/2010/15/section/29>

disabled learners to benefit in the same way as those who are not disabled – for example, by ensuring that the transport provided is accessible and safe for the particular disabled learner.

- 1.92 Local Authorities have a duty to assess the travel needs of all learners under the age of 19 who receive education or training within their area<sup>71</sup>. Local authorities do not have a duty to provide free or subsidised school transport arrangements for learners over the age of 16, regardless of any additional learning needs they may have. Local authorities may use their discretionary powers in section 6 of the Measure to provide assistance if they wish. Section 9 of the Measure places a duty on local authorities to ensure that transport arrangements must not favour certain types of education or training. Therefore if a local authority provides discretionary transport, this provision should apply to all learners in similar circumstances within their authority area.
- 1.93 ‘The Special Educational Needs Code of Practice for Wales’<sup>72</sup> sets out the issues to be considered by authorities when providing transport for learners with a SEN statement. An authority should review a learner’s entitlement and transport needs on a regular basis, irrespective of whether or not the statement specifically includes transport provision.
- 1.94 It is recommended that local authorities have a clear and consistent policy on transport provision for pupils with SEN. Further information on this provision is provided in Section 3 (Questions 14 to 16).
- 1.95 As part of the procurement procedures for tendering, including where they are procuring transport which may be used for disabled learners, local authorities need to bear in mind their duties under the Data Protection Act 1998<sup>73</sup> in relation to personal data, including sensitive personal data<sup>74</sup>. Tender documents should not identify learners to be transported or information that could be used to identify the learner.

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<sup>71</sup> Section 2(2) of the Measure.

<sup>72</sup> Reprinted in January 2004 (ISBN 0 7504 2757 4) (paragraphs 8:87 to 8:90) [SEN code of practice].

<sup>73</sup> <http://www.legislation.gov.uk/ukpga/1998/29/contents>

<sup>74</sup> [http://www.ico.gov.uk/upload/documents/library/data\\_protection/practical\\_application/guidance\\_on\\_data\\_security\\_breach\\_management.pdf](http://www.ico.gov.uk/upload/documents/library/data_protection/practical_application/guidance_on_data_security_breach_management.pdf)

- 1.96 It is recommended that local authorities work with schools and operators appropriately to ensure that the only information which is made available to operators about learners is that which it is necessary for the operators to have to ensure that appropriate transport provision for the learner can be made.
- 1.97 Further information on the provision of disclosure and barring of information is provided in Chapter 1, paragraphs 1.106 – 1.116 and Section 3 (Questions 19 – 22).

### **Discretionary Transport Arrangements**

- 1.98 Section 6 of the Measure gives local authorities the power to make any arrangement they think fit to facilitate the travel of learners to and from a place where they receive education or training. The power applies in relation to a learner living or studying in the authority's area.
- 1.99 Discretionary travel provisions are not the same as statutory transport provisions<sup>75</sup>. A local authority does not have to use their discretionary powers to provide free or assisted travel, if they do not think the provision is appropriate to facilitate the transport of learners within their authority.
- 1.100 Examples of when discretionary transport provision might be used include:
- Transport for learners who are not of compulsory school age (i.e. under the age of five attending nursery school or in post-16 education or training)
  - Transport for learners who are not attending their nearest suitable school
  - Transport for learners who live below the statutory distance limit relevant to the learner's age
- 1.101 If a local authority does make use of their Section 6 powers, in accordance with section 9 of the Measure, the authority must ensure that the policy applies to all learners in similar circumstances living in that authority's area. The local

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<sup>75</sup> Statutory provisions are those which a local authority must provide to specific learners who meet the eligibility criteria entitling those learners to free transport.



authority should ensure that any policy is fair, reasonable and complies with relevant equality legislation to ensure that they do not discriminate unlawfully between learners when using their section 6 powers.

- 1.102 Travel arrangements made by a local authority cannot discriminate between different categories of learners. Learners of compulsory school age, at establishments that are not maintained schools but do fall within Section 1(4) of the Measure as “other relevant places”, must not be treated less favourably than learners of the same age at maintained schools<sup>76</sup>. Other learners receiving full-time education or training at establishments which are not maintained schools (but do fall within Section 1(4) of the Measure) must not be treated less favourably than learners of the same age at maintained schools. Likewise there should be no discrimination between learners attending maintained schools and those of the same age with learning difficulties, a disability or who are ‘looked after’ by a local authority attending learning establishments other than maintained schools.
- 1.103 In accordance with the Learner Travel Information (Wales) Regulations 2009, local authorities must<sup>77</sup> publish information about their policies for providing discretionary travel within their learner travel policy. Further information on these Regulations is provided in Chapter 3 paragraphs 3.1 - 3.6.
- 1.104 If a local authority chooses to make use of the Section 6 power to provide discretionary transport arrangements, the local authority also has the power to remove this provision at a later date. In doing this, the authority should follow the correct procedures for withdrawal of transport provision in line with their relevant policy protocols, for instance, public consultation.
- 1.105 If a local authority decides to change or remove the discretionary transport provision it provides, it must publish<sup>78</sup> the information before 1 October of the year preceding the academic year in which the changes will come into force in

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<sup>76</sup> Section 9 of the Measure

<sup>77</sup> Regulation 4 of the Learner Travel Information (Wales) Regulations 2009

<sup>78</sup> In accordance with regulation 4 of the Learner Travel Information (Wales) Regulations 2009 (SI 2009/569) <http://www.assemblywales.org/sub-ld8637-e.pdf>

accordance with the Learner Travel Information (Wales) Regulations 2009.

## **The Disclosure and Barring Arrangements**

- 1.106 The Protection of Freedoms Act 2012<sup>79</sup> ('the 2012 Act') sets out the new pre-employment vetting processes that must be followed by local authorities and education providers when checking the records of people who want to work with vulnerable groups which include children. The purpose is to ensure they are suitable and do not pose a risk.
- 1.107 The new disclosure and barring arrangements came into force on 10 September 2012. For individuals who do not work in regulated activity, but work (paid or unpaid) with children and vulnerable people, employers can, but are not required to, obtain criminal records checks.
- 1.108 In December 2012, the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) merged and are now called the Disclosure and Barring Service (DBS)<sup>80</sup>. CRB checks are now called DBS checks.
- 1.109 The DBS helps employers make safer recruitment decisions and prevent unsuitable people from working with children and vulnerable groups, through its criminal record checking and barring functions:
- 1.110 The checking service allows employers to access the criminal record history of people working, or seeking to work with children or adults. The DBS issues three types of disclosure, each representing a different level of check. The level of check is determined by the duties of the particular position or job involved. Jobs that involve caring for, supervising or being in sole charge of children or adults require an enhanced DBS check.
- 1.111 The barring side of the DBS provides expert caseworkers who process referrals about individuals who have harmed or pose a risk of harm to children and/or vulnerable groups. They make decisions about who should be placed on the

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<sup>79</sup> <http://www.legislation.gov.uk/ukpga/2012/9/contents/enacted>

<sup>80</sup> <https://www.gov.uk/disclosure-barring-service-check/overview>

children's barred list and/or adults barred list and prevented by law from working with children or vulnerable groups. It is against the law for employers to employ someone or allow them to volunteer in this kind of work if they are on one of the barred lists.

1.112 The DBS will only issue certificates to applicants. Employers will need to ask applicants for sight of their DBS Certificate. Someone who is aged under 16 cannot apply for a DBS check.

### **New definition of 'Regulated Activity'**

1.113 The DBS only covers those who may have regular or close contact with children and vulnerable adults, defined as 'Regulated Activity' in legislation. Importantly for schools and FE colleges, the definition and scope of Regulated Activity with children has changed. Being clear about the definition of Regulated Activity is important because:

- Roles that fall within the new definition of Regulated Activity will require an enhanced DBS check and the appropriate barred list check (for children, adults or both)
- An organisation which knowingly allows a barred person to work in regulated activity will be breaking the law
- If you dismiss or remove someone from regulated activity (or you would have done had they not already left) because they harmed or posed a risk of harm to vulnerable groups, including children, you are legally required to forward information about that person to the DBS (known as the 'duty to refer'). It is a criminal offence not to do so. If you believe that the person has committed a criminal offence, you are also strongly advised to pass the information to the police

1.114 Regulated Activity<sup>81</sup> (i.e. work that a barred person must not do) in relation to children can be summarised as unsupervised activity in a limited range of establishments with the opportunity for contact with children. These specified establishments include schools, children's homes, childcare premises and pre-school establishments.

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<sup>81</sup> Section 5 and Schedule 4, Part 1 of the Safeguarding Vulnerable Groups Act 2006  
<http://www.legislation.gov.uk/ukpga/2006/47/schedule/4>

1.115 Under the new disclosure and barring arrangements the scope of Regulated Activity includes unsupervised activities such as driving a vehicle only for children (dedicated learner transport).

1.116 In addition, in order to be regarded as Regulated Activity such unsupervised activity performed must be done frequently. 'Frequently' means carried out by the same person frequently (once a week or more often), or on more than three<sup>82</sup> days in a 30 day period (or in some cases, between the hours of 2am and 6am).

## Vehicle Standards

1.117 Vehicles used for learner transport are required to comply with UK road safety and transport legislation requirements. Local authorities and Governing Bodies of Maintained schools should liaise with the Driver and Vehicle Standards Agency (DVSA) (Formerly the Vehicle and Operator Services Agency (VOSA))<sup>83</sup>, the Health and Safety Executive (HSE)<sup>84</sup> and the Traffic Commissioner<sup>85</sup> about any concerns they have about suspected breaches of legal standards.

1.118 Local authorities should put in place robust monitoring and evaluation procedures to ensure that current legislation requirements are clearly set out in their contracts and are met. This includes the provision that seat belts must be fitted to every seat on dedicated buses used to transport learners to and from school (Safety on Learner Transport (Wales) Measure 2011). This requirement had to be met by 1 October 2014. Further information on the Safety on Learner Transport (Wales) Measure 2011 and seat belt provision is provided in Chapter 4 paragraphs 4.6 – 4.22.

## Licensing and Training of Bus Drivers

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<sup>82</sup> Amended by SI 2010/1154 The Safeguarding Vulnerable Groups Act 2006 (Regulated Activity, Devolution, Miscellaneous Provisions) Order 2010.  
<http://www.legislation.gov.uk/ukSI/2010/1154/contents/made>

<sup>83</sup> Further information about the DVSA and VOSA are provided in the glossary (Section 2) and Section 3 (Question 23)

<sup>84</sup> <http://www.hse.gov.uk/>

<sup>85</sup> <https://www.gov.uk/government/organisations/traffic-commissioners>

1.119 In 2008 under the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007<sup>86</sup> the Driving Standards Association (DSA) required that by 10 September 2013 all coach and bus drivers in the UK must have a 'Driver Certificate of Professional Competence' (CPC)<sup>87</sup>. To obtain a CPC, a driver must complete a minimum of 35 hours periodic driver training within a 5 year period<sup>88</sup>. Once a driver has successfully completed the CPC training, they will be issued with a 'Driver Qualification Card' (DQC), which they will need to keep with them when driving professionally. The CPC and DQC will need to be renewed every 5 years, therefore a bus or coach driver will need to undertake 35 hours (minimum) of driver training over the next 5 year time period (2013-2018) to qualify for renewal. The DSA has agreed a 'one off arrangement' that dual category drivers (meaning drivers of both bus and coaches and lorries) once having completed their initial September 2013 training deadline, will have 6 years to undertake their next block of training – meaning this training session will need to be completed between September 2013 and September 2019.

1.120 There is currently no legal requirement that the bus and coach or dual category CPC training has to include a specific learner transport training module for drivers who work on buses or coaches used for learner travel. Further guidance on driver training is provided in Section 3 (Question 3)

## **Change in School Session Times**

1.121 Section 11 of the Measure requires local authorities and the Welsh Ministers to promote the use of sustainable modes of travel when exercising their functions under the Measure. This means that a local authority should consider sustainability when assessing needs and making travel arrangements.

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<sup>86</sup> derived from EU Directive 2003/59/EC on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods and passengers.

<http://www.legislation.gov.uk/ukxi/2007/605/contents/made>

<sup>87</sup> <https://www.gov.uk/driver-certificate-of-professional-competence-cpc>

<sup>88</sup> In 2009, CPC for lorry drivers was also introduced, with a requirement that by 10 September 2014 a lorry driver will be required to have completed a minimum of 35 hours driver training to obtain a CPC certificate.

1.122 Section 21 of the Measure amends Section 32 of the Education Act 2002 to allow local authorities to issue a notice to governing bodies of certain schools to change school session times where it would promote sustainable modes of travel or improve the effectiveness or efficiency of travel arrangements. The Changing of School Session Times (Wales) Regulations 2009<sup>89</sup> set out the procedures to follow when the local authority intends to change school session times.

1.123 Section 32 of the Education Act 2002<sup>90</sup>, as amended by the Learner Travel (Wales) Measure 2008, sets out who is responsible for determining:

- the dates of school terms
- school holidays
- the times of school sessions

1.124 For foundation, voluntary aided and foundation special schools, the governing body determines the above<sup>91</sup>. For community, voluntary controlled, community special schools and maintained nursery schools, the governing body determines the times of school sessions and the local education authority determines the dates of the school terms and holidays<sup>92</sup>.

1.125 Where a local authority considers that a change in a school's session times is necessary or expedient in order to promote the use of sustainable modes of travel, or improve the effectiveness or efficiency of travel arrangements made or to be made, it can give written notice to the governing body that they will determine the time the school's first session begins and its second session ends (or if there is only one session, its start and end<sup>93</sup>).

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

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<sup>89</sup> <http://www.assemblywales.org/bus-home/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid.htm?act=dis&id=119939&ds=4/2009>

<sup>90</sup> <http://www.legislation.gov.uk/ukpga/2002/32/section/32>

<sup>91</sup> Section 32(2) Education Act 2002

<sup>92</sup> section 32(1) Education Act 2002

<sup>93</sup> section 32(5) to (9) Education Act 2002

nursery school, foundation school, voluntary aided school or foundation special school.

These procedures include:

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

1.127 In accordance with the Learner Travel Information (Wales) Regulations 2009, any changes to learner travel arrangements, which occur as a result of amendments to school session times must<sup>94</sup> be made available and published by 1 October preceding the academic year to which the information relates.

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

1.129 Governing bodies must<sup>95</sup> consult with the local authority and school staff, prepare a statement outlining the changes and hold a meeting with the parents of pupils at the school before making a change. This regulation does not apply to foundation, voluntary aided and foundation special schools. If the change is to the time that a school session begins in the morning or ends in the afternoon, the governing body must give at least three months' notice of the change and the change must only take effect at the beginning of a school year. Otherwise it must give at least six weeks' notice, and the change can only take effect at the beginning of a school term.

## Charging for Transport

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<sup>94</sup> Regulation 4 of the Learner Travel Information (Wales) Regulations 2009.  
<http://www.legislation.gov.uk/wsi/2009/569/contents/made>

<sup>95</sup> Regulation 4 of the Changing of School Session Times (Wales) Regulations 2009.  
<http://www.assemblywales.org/sub-ld7424-e.pdf>

- 1.130 Local authorities may not charge for transport arrangements that it is required to make for learners of compulsory school age under Section 3 and 4 of the Measure, except in relation to looked after children where the authority making the travel arrangements for a child who is looked after by another authority. In these cases it can recoup costs from the placing local authority (under section 18 of the Measure).
- 1.131 When a local authority uses its section 6 powers to provide discretionary travel arrangements for learners not entitled to free transport provision, a charge can be made for these arrangements.
- 1.132 For learners who are not of compulsory school age, there is no restriction on charging. With regard to learners of compulsory school age, charging must be in accordance with Section 455 and 456 of the Education Act 1996<sup>96</sup> (as amended by Section 22 of the Measure<sup>97</sup>). Further information on this provision is provided in Section 3 (Question 26).
- 1.133 Section 6 of the Transport Act 1985<sup>98</sup> provides for the compulsory registration of local bus services with the Traffic Commissioner. Local Education Authorities must register all services carrying fare paying passengers under section 6 of the 1985 Act. Under Section 46 of the Public Passenger Vehicles Act 1981<sup>99</sup>, a local authority can use a school bus to carry fare paying passengers when it is (or is not) being used to carry children entitled to free school transport. Contracted operators must register any services where learners not entitled to free learner transport are carried on payment of a fare.

## General Powers

- 1.134 Under Section 15 of the Measure Welsh Ministers have the power to give guidance and directions. When exercising any of their functions under the Measure, local authorities and governing bodies of maintained schools and further

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<sup>96</sup> <http://www.legislation.gov.uk/ukpga/1996/56/section/455>

<sup>97</sup> <http://www.legislation.gov.uk/mwa/2008/2>

<sup>98</sup> <http://www.legislation.gov.uk/ukpga/1985/67/section/6>

<sup>99</sup> <http://www.legislation.gov.uk/ukpga/1981/14>



education institutions must have regard to guidance issued by the Welsh Ministers.

1.135 Welsh Ministers may also issue a direction under section 15 to require authorities to make learner travel arrangements under sections 3, 4 or 6 of the Measure. Such directions can be given to one or more local authorities or local authorities generally. It allows Welsh Ministers to direct on individual cases or on general policy matters. The power may be exercised irrespective of whether a local authority is in default of its duties. It does not take the place of, or affect, the more general powers of direction that Welsh Ministers have under sections 496-497A of the Education Act 1996<sup>100</sup>.

1.136 The Welsh Government has no functions in relation to vehicle standards, inspection, enforcement or licensing of vehicles or drivers. These matters are the responsibility of the UK Government.

## **Other Legal Considerations**

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

Equality and human rights legislation and policy such as:

- Equality Act 2010 - <http://www.legislation.gov.uk/ukpga/2010/15/contents>
- Welsh Language Act 1993 - <http://www.legislation.gov.uk/ukpga/1993/38/contents>
- Human Rights Act 1998. - <http://www.legislation.gov.uk/ukpga/1998/42/contents>
- Welsh Language (Wales) Measure 2011 - <http://www.legislation.gov.uk/mwa/2011/1/contents>
- Data Protection Act 1998 - <http://www.legislation.gov.uk/ukpga/1998/29/contents>
- Protections of Freedom Act 2012 - <http://www.legislation.gov.uk/ukpga/2012/9/contents>
- Children Act 1989 - <http://www.legislation.gov.uk/ukpga/1989/41/contents>

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<sup>100</sup> <http://www.legislation.gov.uk/ukpga/1996/56/part/IX/chapter/II/crossheading/general-functions>

- Children Act 2004 - <http://www.legislation.gov.uk/ukpga/2004/31/contents>
- United Nations Convention of the Rights of the Child (UNCRC) - <https://www.gov.uk/government/policies/creating-a-fairer-and-more-equal-society/supporting-pages/the-united-nations-convention-on-the-rights-of-the-child-uncrc>
- Rights of Children and Young People (Wales) Measure 2011 - <http://www.legislation.gov.uk/mwa/2011/2/contents>
- Children's Rights Scheme 2014 <http://wales.gov.uk/topics/childrenyoungpeople/rights/uncrc/?lang=en>
- Children and Young Persons Plan (Wales) Measure 2007 - <http://www.legislation.gov.uk/wsi/2007/2316/contents/made>
- Criminal Justice Act 2003 - <http://www.legislation.gov.uk/ukpga/2003/44/contents>

Health and safety legislation, policy and guidance such as:

- Health and Safety at Work etc Act 1974 - <http://www.legislation.gov.uk/ukpga/1974/37/contents>
- Management of Health and Safety at Work Regulations 1999 (SI 1999/3242) - <http://www.legislation.gov.uk/uksi/1999/3242/contents/made>
- Workplace Health, Safety and Welfare Regulations 1992 (SI 1992/3004) = <http://www.legislation.gov.uk/uksi/1992/3004/contents/made>
- Guidance in 'Workplace Transport Safety' (HSG 136), published by the Health and Safety Executive in 2005 - <http://www.hse.gov.uk/pubns/books/hsg136.htm>
- Safeguarding Vulnerable Group Act 2006 - <http://www.legislation.gov.uk/ukpga/2006/47/contents>
- Safeguarding Vulnerable Groups Act (Regulated Activity, Devolution, Miscellaneous Provisions) Order 2010 - <http://www.legislation.gov.uk/uksi/2010/1154/contents/made>

Social Service legislation, policy and guidance such as:

- Local Authority Social Service Act 1970 - <http://www.legislation.gov.uk/ukpga/1970/42/contents>
- Shared Planning for Better Outcomes Guidance 2007 <http://wales.gov.uk/topics/educationandskills/publications/guidance/sharedplanningforbetteroutcomes?lang=en#>

- Stronger Partnerships for Better Outcomes Guidance 2006 - <http://wales.gov.uk/topics/childrenyoungpeople/publications/strongerpartnerships/?lang=en>
- Social Service and Wellbeing (Wales) Act 2014 - <http://www.legislation.gov.uk/anaw/2014/4/enacted>

Education legislation, policy and guidance such as:

- Education Acts (1996 and 2002) - <http://www.legislation.gov.uk/ukpga/1996/56/contents>  
<http://www.legislation.gov.uk/ukpga/2002/32/contents>
- Educations and Inspections Act 2006 - <http://www.legislation.gov.uk/ukpga/2006/40/contents>
- Learning and Skills Act 2000 - <http://www.legislation.gov.uk/ukpga/2000/21/contents>
- School Standards and Framework Act 1998 - <http://www.legislation.gov.uk/ukpga/1998/31/contents>
- School Standards and Organisation (Wales) Act 2013 - <http://www.legislation.gov.uk/anaw/2013/1/contents/enacted>
- Special Educational Needs Code of Practice for Wales 2004 (reprint) - [http://www.ipsea.org.uk/AssetLibrary/Downloadable%20documents/specialeducationneedse\[1\].pdf](http://www.ipsea.org.uk/AssetLibrary/Downloadable%20documents/specialeducationneedse[1].pdf)
- Statutory School Organisation Code 2013 - <http://wales.gov.uk/topics/educationandskills/publications/guidance/school-organisation-code/?lang=en>
- Statutory School Admissions Code 2013 - <http://wales.gov.uk/topics/educationandskills/publications/guidance/schooladmission/?lang=en>
- Statutory School Admissions Appeals Code 2013 - <http://wales.gov.uk/topics/educationandskills/publications/guidance/schooladmission/?lang=en>
- Welsh in Education Strategy Plan and Assessing Demand for Welsh-medium Education (Wales) Regulations 2013 - <http://www.assemblywales.org/sub-ld9585-e.pdf>
- Social Inclusion (Inclusion and Pupil Support) Guidance 2006 - <http://wales.gov.uk/topics/educationandskills/publications/circulars/2463797/?lang=en>
- Changing of School Session Times (Wales) Regulations 2009 - <http://www.legislation.gov.uk/wsi/2009/572/contents/made>

- Education (Start of Compulsory School Age) Order 1998 - <http://www.legislation.gov.uk/uksi/1998/1607/contents/made>
- The Education (school leaving date) Order 1997 - <http://www.legislation.gov.uk/uksi/1997/1970/contents/made>

Transport legislation, policy and guidance such as:

- Transport Act 1985 - <http://www.legislation.gov.uk/ukpga/1985/67/contents>
- Public Passenger Vehicles Act 1981 - <http://www.legislation.gov.uk/ukpga/1981/14/contents>
- Road Vehicles (Construction and Use) Regulations 1986 (SI 1986/1078) - <http://www.legislation.gov.uk/uksi/1986/1078/contents/made>
- Motor Vehicles (Wearing of Seat Belts) Regulations 1993/176 - <http://www.legislation.gov.uk/uksi/1993/176/contents/made>
- Road Traffic Reduction (National Targets) Act 1998 - <http://www.legislation.gov.uk/ukpga/1998/24/contents>
- The Learner Travel (Wales) Measure 2008 - <http://www.legislation.gov.uk/mwa/2008/2/contents>
- The Learner Travel Information (Wales) Regulations 2009 - <http://www.legislation.gov.uk/wsi/2009/569/contents/made>
- Travel Behaviour Code Statutory Guidance 2009 - <http://wales.gov.uk/topics/transport/integrated/learnertravel/travelcode/tbcstatutoryguidance/?lang=en>
- The Travel Code - <http://wales.gov.uk/travelcode>
- Active Travel (Wales) Act 2014 - <http://www.legislation.gov.uk/anaw/2013/7/contents/enacted>
- Vehicle Drivers (Certificates of Professional Competence) Regulations 2007 <http://www.legislation.gov.uk/uksi/2007/605/contents/made>
- Safety on Learner Transport (Wales) Measure 2011 - <http://www.legislation.gov.uk/mwa/2011/6/contents>
- Guidance on Home to School Transport Risk Assessment 2009 (Welsh Government publication) - <http://wales.gov.uk/topics/transport/integrated/learnertravel/hometoschooltransport/?lang=en>

## Section 1: Statutory Provisions.

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

#### Overview

- 2.1. The Learner Travel (Wales) Measure 2008 (“the Measure”) places a legal duty<sup>101</sup> on the Welsh Ministers to make a Travel Behaviour Code and to publish it. The statutory All Wales Travel Behaviour Code (the “Travel Code<sup>102</sup>”) was introduced by section 12 of the Measure and has been in operation since January 2010.
- 2.2. The Travel Code sets out learners’ responsibilities when travelling. It is accompanied by statutory guidance issued under section 15 of the 2008 Measure, which provides advice on how to ensure, as far as reasonably practicable, a safe journey and describes the rights of learners when travelling.
- 2.3. The purpose of the Travel Code and associated Guidance is to promote safety when travelling, by laying down a set of behavioural standards across Wales, for all learners. The Guidance outlines the procedures local authorities, governing bodies and head teachers must adhere to under the Travel Code.
- 2.4. The Travel Code is divided into two Sections. Section one applies to behaviour when travelling on all modes of transport (i.e. buses, trains, cycling, walking, passengers in a parent’s or other person’s car or any other mode of travel). Section two covers behaviour specific to bus travel and is known as the “Bus Travel Code”. The latter provides additional instruction on behavioural requirements for learners travelling on buses to and from school.
- 2.5. The Travel Code supersedes all other learner travel codes of conduct used by local authorities prior to the Travel Code’s introduction. However local authorities may wish to publish supplementary travel information and policies in accordance with the Travel Code provided that they do not contradict the statutory provisions outlined within the Travel Code.

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<sup>101</sup> Section 12 of the Measure

<sup>102</sup> <http://wales.gov.uk/topic/transport/publications/travelbehaviourcode/?lang=en>

- 2.6. The Travel Code sets out specific requirements regarding the behavioural conduct of learners. It outlines a set of common behaviour standards which apply to all modes of travel by learners irrespective of whether the travel is provided by a local authority, governing body or other modes of travel or transport used by learners (such as taxis, public buses, trains, bicycles, walking, parents' cars or any other modes of travel).
- 2.7. It is a compulsory code of conduct for all learners under the age of 19 years (or who have reached 19 but started a course when under 19 and continue to attend that course)<sup>103</sup>.
- 2.8. It is recommended that local authorities, education institutions, parents, train and bus service operators, taxi and other contracted operators in Wales promote awareness and understanding of and compliance with the Travel Code. (Further information regarding parents' and schools' responsibilities in relation to the Travel Code are provided in Chapter 6 paragraph 6.10 and Chapter 7 paragraphs 7.2 – 7.5 (respectively) and Section 3 Questions 13, 29 and 31).
- 2.9. Section 12 of the Measure states that the Travel Code applies to home to school journeys and journeys undertaken between places of learning during the day<sup>104</sup>.
- 2.10. The Travel Code statutory guidance<sup>105</sup> sets out a framework for the sanctions regime within the Travel Code and provides for the removal of free or subsidised transport for set periods of time if a learner misbehaves on learner transport.
- 2.11. Welsh Ministers have a statutory duty to review the Travel Code from time to time<sup>106</sup>. Prior to reviewing the Travel Code, Welsh Ministers must consult such persons as they consider

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<sup>103</sup> Section 89(2A) of the Education and Inspections Act 2006 provides that head teachers must include the Travel Code within their behaviour policy and ensure compliance with the Travel Code. <http://www.legislation.gov.uk/ukpga/2006/40/section/89>

<sup>104</sup> Such as travel to attend courses in line with the Learning and Skills (Wales) Measure 2009 (14-19 Pathways) - Further information on the Learning and Skills (Wales) Measure 2009 is provided in Section 3 (Question 28).

<sup>105</sup> <http://wales.gov.uk/topics/transport/integrated/learnertravel/travelcode/tbcstatutoryguidance/?lang=en>

<sup>106</sup> This duty is set out in Section 12(4) of the Measure.

appropriate, for example, local authorities, schools and learners<sup>107</sup>.

## Enforcement of the Travel Code - Sanctions<sup>108</sup>

2.12. Where a local authority is under a duty (under Section 3 and 4 of the Measure) to provide transport, it must follow the requirements set out in Section 14 of the Measure, before withdrawing transport provision, namely:

- Be satisfied that the learner has failed to comply with the travel behaviour code (table below)

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

**and that the following conditions applicable to the learner are met:**

- 1. Provide the learner and the parent of the learner with an opportunity to make representations and take those representations into account

<sup>107</sup> Section 12(6) of the Measure.

<sup>108</sup> Guidance about the recommended procedures for enforcing sanctions with relation to the Travel Code are provided in Section 3 (Question 29).

- 2. Consult with the head teacher of the school or relevant place of learning at which the learner is a registered pupil, and give the head teacher notice of the decision at least 24 hours before the withdrawal takes place.
- 3. Ensure that the decision to withdraw transport arrangements is reasonable in the circumstances. In determining whether this is the case, the local authority must take the following matters into account:
  - whether the period of withdrawal of transport is proportionate in the circumstances of the case
  - whether there are any special circumstances relevant to the withdrawal of travel arrangements which are known to the local authority (or of which the authority ought to be aware of) including:
    - the learner's age
    - any special educational needs the learner may have
    - any disability the learner may have
    - whether the learner would lose an opportunity to take a public examination and
    - whether suitable alternative arrangements can be reasonably made by the learner's parents
- 4. Give the learner's parents at least 24 hours notice before the withdrawal of transport provision takes place (Chapter 6 – 'Parental Responsibilities' paragraph 6.10 explains the parental obligations regarding what provisions must be put in place where transport is removed)
- 5. Ensure the period of withdrawal of transport provision does not exceed 10 consecutive schools days
- 6. Ensure that the period of withdrawal would not result in the learner having travel arrangements withdrawn for more than 30 school days in the school year in which the withdrawal takes effect

2.13. The Measure provides Welsh Ministers with the power to make regulations to<sup>109</sup>:

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<sup>109</sup> Section 14(15) of the Measure.



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

2.14. Where a learner has special educational needs, local authorities should consider what constitutes reasonable steps, as detailed in this document. The Special Educational Needs Code of Practice for Wales<sup>110</sup> and sections 2 and 3 of the National Assembly for Wales Circular 47/2009 – Inclusion and Pupil Support<sup>111</sup> guidance provide further guidance on dealing with misbehaviour for disabled learners and those with learning difficulties.

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

2.15. Local authorities are under a duty to publish the Travel Code in accordance with section 12(5) of the Measure and the requirements within the Learner Travel Information (Wales) Regulations 2009<sup>112</sup>. Chapter 3 paragraphs 3.1 -3.6 provide further information on what provisions needs to be covered by these Regulations.

### **Raising Awareness of Issues**

2.16. School Councils have a key role to play and in particular could usefully raise the issue of bullying each year and discuss the progress that has been made in taking forward action to address the issue. In doing so, this would be in accordance with article 12

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<sup>110</sup>

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

<sup>111</sup> <http://wales.gov.uk/topics/educationandskills/publications/circulars/2463797/?lang=en>

<sup>112</sup> Paragraph 4, Schedule 1 to the 2009 Regulations

of the UNCRC which states children should have their opinions taken into account when adults make decisions that affect them<sup>113</sup>

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<sup>113</sup> <http://wales.gov.uk/topics/childrenyoungpeople/rights/uncrc/?lang=en>

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

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

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

- 3.1. The Learner Travel Information (Wales) Regulations 2009<sup>114</sup> (“the 2009 Regulations”) replace paragraphs 8, 19 and 20 of Schedule 1 to the Education (School Information)(Wales) Regulations 1997<sup>115</sup>. The Regulations require local authorities to publish and make available information on travel arrangements made under the Measure. They set out not only what information local authorities are required to publish but also when and how the information should be published and made available to parents, learners, governing bodies, head teachers and/or other persons.
- 3.2. Travel arrangements for learners during the school day (e.g. travel to attend courses at other places of learning such as those as a consequence of the (14-19) Learning Pathways Programme) are not covered by the Regulations and are not subject to these provisions.
- 3.3. In addition to the Travel Behaviour Code, local authorities are required under the 2009 Regulations to publish the following information:-
- the general policy on providing free transport
  - the general policy on any travel arrangements made for learners for whom free transport is not provided
  - the circumstances that payment of reasonable travelling expenses will be made
  - arrangements and policies in relation to learners with learning difficulties/disabilities
  - information on how to make enquiries/complaints about travel arrangements, and any local authority appeals procedure
  - any other information that the local authority considers would be useful for learners in its area about travel arrangements made by other organisations.

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<sup>114</sup> <http://www.legislation.gov.uk/wsi/2009/569/contents/made>

<sup>115</sup> S.I. 1997/1832.

3.4. The information must be made available by the 1 October preceding the academic year to which the information relates<sup>116</sup>. The information must be made available<sup>117</sup>:-

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

3.5. Local authorities must also provide free of charge<sup>118</sup> and on request from a governing body, a head teacher, a parent of a child or any other learner in the local authority area the following information:-

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

3.6. Parents should be able to understand their options and any cost implications of the choice of school they make for their child. Accordingly it is recommended that local authorities provide parents with information about transport arrangements alongside,

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<sup>116</sup> Regulation 4(2) of the 2009 Regulations.

<sup>117</sup> Regulation 4(3) of the 2009 Regulations.

<sup>118</sup> Regulation 5 of the 2009 Regulations.

or as part of, the information made available about school admissions. (Further information on school admission criteria and publication of admission arrangements is provided in section 2.2, 2.11 and 2.12 of the Statutory School Admissions Code 2013<sup>119</sup>)

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

## Section 1: Statutory Provisions.

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

#### Overview

- 4.1. The Safety on Learner Transport (Wales) Measure 2011<sup>120</sup> (“the 2011 Measure”) makes amendments to the Learner Travel (Wales) Measure 2008. The purpose of those amendments is to enhance the safety of all learners, as far as reasonably practicable, on dedicated transport used for learner travel.
- 4.2. The 2011 Measure incorporates into the Measure a number of provisions about vehicle specification used for dedicated learner transport.
- 4.3. The 2011 Measure also introduces criminal offences and penalties to be used for breaches of requirements imposed under the Measure<sup>121</sup>.
- 4.4. To date the only provision introduced by the 2011 Measure to have been enacted is the requirement that every bus used for dedicated learner transport to and from school, which has been secured by a local authority or governing body of a maintained school must have seat belts fitted to every passenger seat by 1 October 2014.
- 4.5. Other provisions introduced by the 2011 Measure which have not been enacted to date include:
- the recording of visual images or sound on dedicated learner transport
  - safety risk assessments of dedicated learner transport
  - driver training (specific for dedicated learner transport)
  - Supervisors on dedicated learner transport
  - powers of entry and inspection of vehicles or premises owned or controlled by relevant bodies for the use of dedicated learner transport

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<sup>120</sup> <http://www.legislation.gov.uk/mwa/2011/6/contents/enacted>

<sup>121</sup> This provision includes the use of criminal and civil sanctions.

## Seat Belt Provision.

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

### Legislation Governing Seat Belt Provision before 1 October 2014

- 4.7. The requirements for the installation of seat belts are set by the Road Vehicles (Construction and Use) Regulations 1986<sup>122</sup> (as amended). Seat belts must be fitted in all minibuses<sup>123</sup>. Seat belts must also be fitted in coaches (defined as a large bus with a maximum gross weight of more than 7.5 tonnes and with a maximum speed exceeding 60 mph first used on or after 1 October 1988<sup>124</sup>). Buses with a gross vehicle weight exceeding 3500kg and first used on or after 1 October 2001 must have seatbelts fitted to every forward and rearward facing seat<sup>125</sup>.

### Legislation Governing Seat Belt Provision after 1 October 2014

- 4.8. The 2011 Measure requires relevant bodies<sup>126</sup> to ensure that every bus used for dedicated learner transport<sup>127</sup> has a seat belt fitted to every passenger seat used on or after 1 October 2014.
- 4.9. Buses not procured by a local authority or governing body for the purpose of home to school transport will be exempt from this requirement, even where learners use these vehicles in travelling to and from home and school.
- 4.10. The seat belt provision applies to all buses used for dedicated learner transport between home and school, including public service buses<sup>128</sup> if they are used for any dedicated learner

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<sup>122</sup> <http://www.legislation.gov.uk/uksi/1986/1078/made>

<sup>123</sup> Regulation 3 of the 1986 regulations defines a minibus as a vehicle adapted to carry more than 8 but not more than 16 passengers in addition to the driver.

<sup>124</sup> Regulation 3 of the Road Vehicles (Construction and Use) Regulations 1986 (as amended).

<sup>125</sup> Regulation 47 of the Road Vehicles (Construction and Use) Regulations 1986 (as amended).

<sup>126</sup> Statutory definition of 'relevant body' are each of the following 'a local authority' and or 'a governing body of a maintained school' as stated in section 14N of the 2011 Measure.

<sup>127</sup> Section 3 (Questions 35 and 36) sets out which vehicles are not covered by the 2011 Measure seat belt provision.

<sup>128</sup> Statutory definition of 'public service buses' is provided in the glossary (Section 2)

transport services, even if the majority of their journeys are non dedicated learner transport service routes.

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

### The Wearing of Seat Belts

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

- 4.13. In relation to passengers under the age of 14, the driver of a vehicle is responsible for making sure that those passengers are wearing seat belts.<sup>129</sup> However, the drivers of the following types of vehicles are not bound by this requirement.<sup>130</sup>

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

- 4.14. Section 15B of the Road Traffic Act 1988 sets out that where a bus is fitted with seat belts, a bus operator must take all reasonable steps to ensure that all passengers are notified of the fact that it is a legal requirement to wear a fitted seat belt. Passengers may be notified that they must wear seat belts through any of the following ways:

- An official announcement by the bus driver, escort(s) or pupil
- An audio visual presentation (made when pupils join the bus or within a reasonable time of doing so)
- A pictorial sign or text prominently displayed at each passenger seat equipped with a seat belt

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<sup>129</sup> section 15(3) Road Traffic Act 1988

<http://www.legislation.gov.uk/ukpga/1988/52/section/15>

<sup>130</sup> Section 3 (Question 37) provides advice on how to persuade young children and learners how to wear seatbelts.



4.15. Those passengers with medical conditions may be exempt from wearing a seat belt, but must<sup>131</sup> carry their certificate of exemption with them while travelling.

4.16. Bus operators who fail to provide the required notification face a fine of up to £2,500.

### EU Legislation

4.17. EU Directive 2003/20/EC<sup>132</sup> requires learners aged 3 to 13 to wear seat belts whilst on a bus or a coach. The UK Government's Department for Transport is currently consulting on how to transpose and enforce this legal requirement in the UK.

### **Criminal Sanctions**

4.18. The 2011 Measure introduced a criminal sanctions regime to the 2008 Measure<sup>133</sup> where:

- A relevant body fails to ensure that the buses it provides or secures for learner transport have seat belts fitted to each seat
- Where a 'person' (for example, a bus operator) providing the bus for learner transport fails to ensure that it has seat belts fitted to each passenger seat

4.19. Section 14H of the 2008 Measure provides Welsh Ministers with the power to appoint an enforcement body should they wish to do so. The Welsh Ministers have not established a specific enforcement body and have determined that the police would be best suited to fulfil the role of the enforcement authority for ensuring the seat belt provision of the 2008 Measure is enforced in Wales.

4.20. The police have the power to carry out spot checks, carried out by the roadside during the school journey or at the school premises before or after a journey to verify that seat belts are fitted to each passenger seat on dedicated learner transport.

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<sup>131</sup> Motor Vehicles (Wearing of Seat Belts) Regulations 1993/176  
<http://www.legislation.gov.uk/ukxi/1993/176/regulation/2/made>

<sup>132</sup> Information on the EU Directive is provided in the Glossary (Section 2).

<sup>133</sup> section 14A 2008 Measure

4.21. When available, vehicle examiners of the Driver and Vehicle Standards Agency (DVSA) (formerly VOSA) assist the police whenever and wherever they run school transport checks or operations in Wales. (Further information on the DVSA and VOSA is provided in Section 3 Question 23)

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

4.22. Where a prosecution for an offence is carried out under the provisions of the 2008 Measure, it would be the local authority or governing body of a maintained school as a whole who would be responsible and there would be no individual liability. However, in some cases it would be possible for an individual to be prosecuted separately alongside the company/ local authority. For instance in the case of a bus company (or a local authority), where it could be proved that the offence was the result of individual negligence or that the offence was committed with the consent of the individual within the company (or local authority)<sup>134</sup>.

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<sup>134</sup> Section 14L of the 2008 Measure (as amended)

## Section 1: Statutory Provisions.

### Chapter 5: Risk Assessment of Walked Routes to School

#### Overview

5.1 Local authorities are under a legal duty to assess the travel needs of learners who walk to school<sup>135</sup>. In making an assessment local authorities are recommended to take into account the following provisions.

#### **Part 1: Risk Assessment Procedure In Relation To Physical/Traffic Risks**

5.2 The scope of this section covers the relationship between learners and traffic. As pedestrians, learners face a number of hazards which are identified below. Walking the route will enable risk assessors to identify hazards.

#### **Route Conditions**

5.3 For a route to be classed as available Welsh Ministers recommend that the route needs to be:

- A continuous adequate footway on roads which carry medium to heavy traffic flow<sup>136</sup> **or**
- “Step offs”<sup>137</sup> on roads which have low traffic flow but adequate sight lines to provide sufficient advance warning to drivers and pedestrians **or**
- On roads with very low traffic flow, no “step offs”, but sufficiently good sight lines to provide adequate advance warning

5.4 If there is a need to cross roads Welsh Ministers recommend that there should be one of the following safety measures:

- Pedestrian refuges **or**
- Visibility – it should be good enough to allow vehicles to stop given the 85<sup>th</sup> percentile speed rule (or the speed at which no

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<sup>135</sup> Section 2 of the Measure

<sup>136</sup> Traffic flows are defined in Chapter 5 paragraphs 5.8 – 5.12

<sup>137</sup> For the purposes of this document the definition of “Step-offs is provided in the glossary (Section 2).

more than 15% of the traffic is exceeding) – vehicle stopping distances are set out in the Highway Code<sup>138</sup> **or**

- Sufficient gaps<sup>139</sup> in the traffic flow and sight lines to allow enough opportunities to cross safely **or**
- Sufficient crossing facilities (for example, zebra, pelican crossings) **or**
- Sufficient pedestrian phases at traffic lights (including necessary refuges) **or**
- Sufficient school Crossing Patrols (lollipop people)

5.5 Risk assessments of walked routes enable local authorities to determine whether a route to school is ‘available’ (safe) to walk. Further in cases where a route is deemed to be ‘unavailable’ (unsafe) the assessment process can determine what safeguards could be put in place to ensure that the route is or can become ‘available’ (safe) to walk. In deciding whether to undertake a risk assessment exercise the local authority will need to take into account whether the route has previously been assessed. If it has been assessed previously what has changed that would mean that a further assessment is required. For example:

- An accident or similar incident
- High accident statistics
- The opening or closure of schools
- Changes made to a route – road works, infrastructure changes
- Changes to traffic composition and volumes, including cyclists
- Changes affecting the route – new builds/housing developments, large scale construction projects
- Changes to the characteristics of the people walking the route – such as a wheelchair user using the route

## **Traffic**

5.6 It is recommended that assessments take place at the usual time learners travel to and from school, namely in the morning at the time before schools start, when traffic flow is generally heaviest (unless it can be shown that the afternoon flow is

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<sup>138</sup> <https://www.gov.uk/browse/driving/highway-code>

<sup>139</sup> Sufficient gaps in traffic flow are outlined in more detail in Chapter 5 paragraphs 5.8 – 5.12

heavier); at the end of the normal school day finishing time - a minimum of three surveys should be taken.

- 5.7 Speed limits on roads around or near schools should also be taken into account in relation to traffic flow to determine what safety measures are necessary.

### Traffic Flow on Roads

- 5.8 The flow of traffic along roads is a significant factor in determining the safety<sup>140</sup> of a walked route.
- 5.9 Low traffic flow occurs on roads that have a traffic flow below 400 vehicles in a 1 hour period; medium traffic flow occurs on roads with a traffic flow between 400 to 840 vehicles per hour; and heavy traffic flow occurs on roads with a traffic flow of over 840 vehicles per hour.
- 5.10 It is recommended that risk assessors undertake a gap analysis. This records the number of gaps in traffic flow and should record data in five minute consecutive intervals. Four such gaps within a 5 minute period are considered acceptable.
- 5.11 It is recommended that traffic counts are recorded as “passenger car” equivalent values (Passenger Car Units - PCUs), by using the following factors:

3 pedal cycles	1 PCU
2 motorcycles	1 PCU
1 Car	1 PCU
1 light goods vehicle (up to 3.5 tonnes gross weight)	1 PCU
1 Bus/Coach (over 3.5 tonnes)	2 PCUs
Goods Vehicles (over 3.5 tonnes)	2 PCUs
Goods Vehicles (over 7.5 tonnes/multi-axle lorries)	3 PCUs

- 5.12 All vehicle counts are two-way except on one-way systems. Dual carriageways are counted as one-way on each side. Where the two-way (one-way of a dual carriageway) traffic flow

<sup>140</sup> For the purposes of this document the definition of ‘Safety’ is provided in the glossary (Section 2)

is below 240 vehicles per hour the road is assessed as safe to cross. This is equivalent to 1 vehicle every 15 seconds, allowing a reasonable gap time to cross a 7m wide road at a walking speed of 0.92 m per second.

## **Collision History**

- 5.13 It is recommended that the road casualty record along the route is noted with special attention to accident danger spots. If the route is also used for public transport a note should be made of stopping places and the level of increased pedestrian use that could impact on foot path availability. Risk assessors could, for example, incorporate a 3 year collision history into the assessment of the whole route.
- 5.14 If a risk<sup>141</sup> is identified, it is recommended that suitable measures are considered – for example the introduction of speed humps or speed cameras<sup>142</sup>.

## **Footpaths**

- 5.15 Welsh Ministers consider that a footway, roadside strip of reasonable width and condition, a public footpath or bridleway will all normally be assumed to provide an available route. The footway will need to be wide enough to allow passage and, in the case of young children or those that should be accompanied, it should be wide enough to allow supervision to be carried out safely. The condition of the path should be examined to ensure it is clear of obstacles underfoot and from excessive foliage.
- 5.16 On a road with low traffic flow, a verge that can be stepped on by a child and accompanying parent when traffic is passing can normally be assumed to provide an available route. Many available routes may lie along roads that have neither a footway nor verge. On these roads, it is recommended that the width of the carriageway, traffic speed and type of traffic (e.g. frequent long or heavy goods vehicles) as well as visibility/sight lines that may be affected by sharp bends, high hedgerows or other obstructions ought to be considered.

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<sup>141</sup> For the purposes of this document the definition of 'Risk' is provided in the glossary (Section 2).

<sup>142</sup> Speed humps and speed cameras are normally only put in place in response to Road Traffic Collision statistics.

5.17 Where a route is found to be lacking in 'step offs' there may also be issues with adequate visibility– the features that affect the availability of 'step offs' often impact on visibility – hedges, gradients etc. In such cases, it is recommended that these be considered within the assessment criteria carried out by the local authority.

5.18 If a risk is identified the following may provide a solution:

- removing vegetation **or**
- resurfacing or widening the available foot path **or**
- providing a new foot path **or**
- providing lighting.

### **Crossing points**

5.19 Where roads need to be crossed, it is recommended that the availability of crossing facilities such as central refuges, pedestrian crossings or traffic signals be taken into consideration. Where there are no crossing facilities, the route's risk assessment ought to consider each required road crossing, bearing in mind traffic speed and flows, sight lines etc.

5.20 If there is a need to cross roads there ought to be:

- Sufficient gaps in the traffic flow and sight lines to allow enough opportunities to cross safely. The gap time analysis should be used where necessary **or**
- Pedestrian refuges **or**
- Crossing facilities (e.g., zebra, pelican, puffin crossing etc.) **or**
- Pedestrian phase at traffic lights **or**
- School Crossing Patrol.

5.21 If a road needs to be crossed the visibility at the location should allow a vehicle to stop, given the 85<sup>th</sup> percentile speed (the speed at which 85% of the vehicles travel below) of the traffic flow. Vehicle stopping distances should be taken as those given in the Highway Code. In many rural areas, the exercise of continuous judgement is likely to be required. No criteria can provide all the guidance or answers to every situation that may be encountered.

- 5.22 If roads have to be crossed to use a footway or to improve sight lines it may be necessary to advise on safe crossing places. On some country roads the footway may not be continuous. Informed judgement will have to be made about the availability of “step off” points.
- 5.23 The difficulty of crossing at a site can be assessed by considering the number of gaps in the traffic flow that are acceptable to pedestrians. Free flowing traffic may provide gaps randomly and fairly frequently but speeds tend to be higher and gaps would need to be longer in order to cross the road safely. An acceptable gap to cross from kerb to kerb varies with each person. Most people will be able to cross two lanes of normal urban traffic in 4 to 6 seconds. Others may need larger gaps of around 10 to 12 seconds.
- 5.24 It is recommended that the survey records the number of gaps in each 5 minute period that are longer than the road crossing time, using one metre per second as the walking speed. Four gaps in each 5 minute period indicate a road that can be crossed without too much delay. Longer gaps could be classified as multiple gaps rather than as just one gap.
- 5.25 In the case of a rail crossing, particular attention needs to be paid to the type of crossing and incidents that have been recorded to assess the safety of the crossing.

### **Canals, Rivers, Ditches and Embankments**

- 5.26 It is the Welsh Ministers’ view that where appropriate, it is important to ensure that adequate barriers and safety features are included and that these are of the appropriate height to take into account the age groups of learners that may use the route. Safety features include improved barriers, better signage, more lighting or alternative available routes.
- 5.27 It will also be important to establish:
- if the route has been subject to severe flooding<sup>143</sup>
  - if this is a regular occurrence and
  - when severe flooding occurs, whether a suitable detour is available

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<sup>143</sup> For the purposes of this document the definition of ‘Flooding’ is provided in the glossary (Section 2)



5.28 Information on flood management procedures can be acquired from Natural Resources Wales<sup>144</sup>.

## **Lighting**

5.29 The level of natural lighting will differ over the year. Seasonal change may require that a review of the route assessment may be appropriate (if reported conditions present difficulties for the learner and / or companion).

5.30 It is recommended that street lighting is also taken into account.

## **Planned Changes in the Area**

5.31 The assessment ought to consider any proposals that might impact on safety. Much of this information is likely to be held by the local authority and therefore the following checks will inform the risk assessment:

- Highways departments for proposed road works that would have a short-term impact on traffic conditions (e.g. road widening schemes)
- Planning departments for developments that may have a long-term impact on traffic (e.g. housing or retail developments)
- Education departments to check any proposed school reorganisations and/ or mergers

5.32 Where proposed changes are developed and may impact on walked routes to school, it is recommended that the relevant local authority department lead consult with learner travel teams as appropriate.

## **Level Crossings**

5.33 There are more than 6,500 level crossings in Britain with 1,167 (or 18% of them) within the Network Rail Wales Route.

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<sup>144</sup> <http://naturalresourceswales.gov.uk/alerts/?lang=en>

- 5.34 It is recommended that risk assessors, where applicable, include level crossing risk consideration within the risk assessment. Network Rail have produced educational material for schools which can be accessed by clicking <http://www.networkrail.co.uk/level-crossing/>
- 5.35 Where appropriate, risk assessors should consider contacting Network Rail's team of Level Crossing Managers who can provide advice and guidance on level crossing risk assessment control measures, such as level crossing risk awareness events. Contact details are available at <http://safety.networkrail.co.uk/Services/Contacts>

## **Part 2: Risk Assessment Procedure in relation to Social Danger**

### **The nature of Social Danger**

- 5.36 'Social Danger' is open to different interpretations and is subjective. In this context, the commonest interpretations provided by children and young people are as follows: stranger danger; danger(s) posed by paedophiles; danger(s) posed by criminals (muggers, thieves, murderers, kidnappers); anti-social behaviour (the presence of bullies or of alcoholics or drug addicts on walked routes to school); and physical manifestations, such as discarded needles or places where drug abuse/misuse take place.
- 5.37 Children experience real dangers when walking to and from school. Like adults, children can also perceive dangers even if none exists, and that too will understandably influence their behaviour and needs to be taken into account. A perceived danger may feel no less real than an actual danger. It will be important that before undertaking risk assessments, local authorities determine whether the perceived danger is supported by any evidence.
- 5.38 Where appropriate, Welsh Ministers recommend that other local authority services work to alleviate some fears, for example street cleaning or dog warden services.

5.39 There may also be a need to work with the teachers and parents of children who are concerned about stranger danger so that the child can be reassured though still aware of risk averse behaviours; travelling with friends, not speaking to strangers, etc. Consequently it is recommended that the local authority transport officials refer those cases not substantiated by evidence to the relevant school.

### **Tackling Social Danger in Risk Assessments – Working with Partners**

5.40 In the conduct of risk assessments, it is recommended that local authorities work in partnership with organisations/agencies which have expertise in, including responsibility for, tackling and quantifying social danger. The Police or Police Community Support Officers have responsibility for crime, disorder and anti-social behaviour whilst the Local Safeguarding Children Boards have responsibility for safeguarding/child protection matters.

5.41 Section 25 of the Children Act 2004<sup>145</sup> places a duty on local authorities to promote co-operation between the authority and ‘relevant partners’ to improve the wellbeing of children and young people. The ‘relevant partners’ comprise the Local Safeguarding Children Boards (LSCBs). Usually, these bodies include the Police Authority; the Chief Officer of Police; the local probation board; the youth offending team; the NHS Trust; the Local Health Board; and the relevant local authority (particularly senior Directors of Education and Social Services). The Welsh Government recommends that local authority transport officials should be invited to and regularly attend these meetings of the LSCBs to cover the safety of walked routes. Alternatively it is recommended that transport issues are included as an agenda item at each meeting and where appropriate further engagement with transport officials should be made.

5.42 The Children and Young People’s Plan (Wales) Regulations 2007<sup>146</sup> require that each local authority, following consultation with partners, should publish a Children and Young People’s Plan setting out how they will improve the well being of children and young people in their authority. The Welsh Government recommends that information about how walked routes have

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<sup>145</sup> <http://www.legislation.gov.uk/ukpga/2004/31/section/25>

<sup>146</sup> S.I. 2007/2316. - <http://www.legislation.gov.uk/wsi/2007/2316/contents/made>

been risk-assessed and made safer should feature in these Plans.

- 5.43 The Welsh Government published statutory guidance<sup>147</sup>, namely ‘Stronger Partnerships for Better Outcomes’ 2006 (National Assembly for Wales Circular 35/2006)<sup>148</sup> and ‘Shared Planning for Better Outcomes’ 2007 (Welsh Assembly Government Circular 31/2007)<sup>149</sup> which outlines the requirement on local authorities to prepare and publish a plan setting out the authority’s strategy for discharging their functions in relation to children and relevant young people. Further Information about these documents is provided in Section 3 (Question 18).

### **Multi Agency Public Protection Arrangements (MAPPA)<sup>150</sup>**

- 5.44 Under sections 325-327 of the Criminal Justice Act 2003<sup>151</sup>, there is a statutory duty on the “Responsible Authorities” (the Police, Probation and Prison Services) to establish arrangements to assess, manage and reduce the risk presented by relevant sexual and violent offenders to reduce re-offending and protect the public. This includes those who are considered to pose a risk to, or potential risk of harm to, children.
- 5.45 Partner organisations, which include local authorities, health boards, youth offending teams and social housing providers have a statutory duty to cooperate with the Responsible Authorities<sup>152</sup>. The Welsh Government expects local authority risk assessors to work within the legal framework described above to obtain the relevant expertise in terms of managing the risks posed to children using walked routes to school.
- 5.46 In terms of quantifying social danger, the existence of any such dangers should be supported by evidence (either qualitative or quantitative).

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<sup>147</sup> Under sections 25(B) 26 and 27(4) of the Children Act 2004

<sup>148</sup> <http://wales.gov.uk/topics/childrenyoungpeople/publications/strongerpartnerships/?lang=en>

<sup>149</sup>

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

<sup>150</sup> <https://www.gov.uk/government/publications/multi-agency-public-protection-arrangements-mappa--2>

<sup>151</sup> <http://www.legislation.gov.uk/ukpga/2003/44/section/325>

<sup>152</sup> Section 325(3) Criminal Justice Act 2003.

5.47 When cooperating with other agencies, local authorities will need to put in place information-sharing protocols which comply with the Data Protection Act 1998<sup>153</sup> (particularly as information relating to children is sensitive)<sup>154</sup>.

### **Part 3: Seeking the Views of Learners**

Why is it important to seek the views of children?

5.48 It is important for the following reasons:

- Section 1 of The Rights of Children and Young Persons (Wales) Measure 2011<sup>155</sup> places a duty on Welsh Ministers to have due regard to Part 1 of, and the Protocols to, the United Nations Convention on the Rights of the Child when exercising any of their functions. In particular, Article 12 specifies that children have the right to say what they think should happen when adults are making decisions that affect them, and to have their opinions taken into account. The Welsh Government therefore attaches paramount importance to enabling the voice of children and young people to inform its policy development, particularly in relation to the matters which affect children and young people
- Children are the users of the walked routes to school

5.49 Local authorities can secure the views of children in a variety of ways:

- Children and Young People's Partnerships (CYPP) – these exist in each local authority area with the purpose of bringing together all services working for children and young people aged 0-25. Each partnership provides a voice for children's services and takes a lead in driving forward partnership working
- Walked routes forms for parents and children – these can be filled-in to allow views to be expressed about the safety of walked routes
- School Councils – these are a group of pupils elected by their fellow pupils to represent their opinions and raise issues with head teachers or school governors

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<sup>153</sup> <http://www.legislation.gov.uk/ukpga/1998/29/contents>

<sup>154</sup> Further information regarding this provision is outlined in Section 3 (Question 22 of this document),

<sup>155</sup> <http://www.legislation.gov.uk/mwa/2011/2/contents>

- Road Safety Officers – children and young people can feed their views to them when they visit schools
- School lessons – these can collect data to feed into School Councils, for example geography lessons that include a survey or risk audit of the local area
- Police and Communities Together (PACT) assemblies – these exist in each ward as a forum in which the Police and members of the public, including children, discuss topical issues/matters of local concern
- The All Wales Schools Core Liaison Programme – within this programme uniformed police officers deliver formal lessons in the classroom to reduce crime and disorder and to promote positive citizenship amongst children and young people
- School Travel Plans – these can be approved by a Local Authority Safety Group who would examine the Plans containing the children's views on the safety of walked home to school routes
- The use of drop-in boxes which enable teachers, parents and learners to raise concerns

Views and Information collected from these engagement exercises could be taken into account and given due regard when assessments are carried out.

5.50 The frequency with which local authorities seek the views of children and young people is a matter for them. Welsh Ministers recommend that local authorities consider the following factors to help them decide when and how often to conduct the risk assessment process:

- An accident, incident or increase in personal injury
- High accident statistics
- The opening of new schools and / or mergers of existing schools (which involves the use of new routes)
- Changes made to a route – road works, infrastructure changes, temporary road closures
- Traffic – changes to traffic composition and volumes
- Changes affecting the route – cyclists, new builds/housing developments, large scale construction projects
- Bullying/anti-social behaviour – these could be addressed by Police Community Support Officers or School Community Police Officers

## **Part 4: Helping to Ensure the Safety of Children on the Home to School Route**

5.51 There are a variety of ways in which local authorities can help ensure, as far as is reasonably practicable, the safety of children and young people on the walked route between home and school:

- The provision of more lollipop people
- Putting traffic calming measures in place
- Encouraging children to walk with adults, friends or groups (in walking buses)
- Encouraging parents to accompany their children to school
- Encouraging parents to share the school run – such a practice could be coordinated by Parent Teacher Associations or community groups)
- Providing kerb craft training for children and young people – this would be a good way of teaching children how to be safer pedestrians by taking them on to roads and showing them how the right decision-making and behaviour can help them to keep safe
- Making wider provision of travel training – this is particularly useful for those learners with additional learning needs who can be taught how to walk independently between home and school. Such training has been proven to be beneficial for recipients (who develop a greater sense of independence and confidence) and cost-effective for local authorities
- School lessons or assemblies to discuss safe behaviour
- Encouraging School Police Liaison Officers, including Police Community Support Officers, to walk the walked routes to ensure, as far as is practicable, they are safe
- Reducing speed limits around schools to 20 mph and tackle pavement parking
- Encouraging the practitioners involved in the planning, provision and approval of new residential streets or the modification of existing streets to refer to and use the Department for Transport's Manual for Streets  
<https://www.gov.uk/government/publications/manual-for-streets>. This document explains how the relationship between buildings and the street is essential for creating places that are good for people

- Promoting awareness, understanding and implementation of the statutory All-Wales Travel Behaviour Code

## **Part 5: The Mechanics of the Risk Assessment Process**

- 5.52 The Risk Assessment matrix is at Annex 1<sup>156</sup>.
- 5.53 Welsh Ministers are of the view that the various criteria used for assessing risk should be weighted equally regardless of whether they are physical, topographical, social, environmental or geographic.
- 5.54 Parents can request to accompany the Risk Assessor during the risk assessment.
- 5.55 In the event of disputes between local authorities and parents, it is recommended that the existing dispute resolution mechanisms should be used:
- Step 1 - complaints are referred to the relevant local authority Transport Department
  - Step 2 – if unresolved, disputes are referred to the local authority’s Complaints Officer or Monitoring Officer
  - Step 3 – if still unresolved, complainants should take their case to the Public Services Ombudsman for Wales. Where cases are referred to the Ombudsman, the issue must comply with the specific eligibility criteria enabling referral, this can be found at <http://www.ombudsman-wales.org.uk/Contact%20us.aspx>

## **Part 6: Roles and Responsibilities**

It is the Welsh Ministers’ view that:

### **Parents<sup>157</sup>**

- 5.56 Parents have the following responsibilities:

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<sup>156</sup> It is recommended that this matrix be taken as a basis from which a local authority can develop a more detailed risk analysis assessment form as appropriate and in accordance with this statutory guidance.

<sup>157</sup> The Definition of ‘parent’ is outlined in section 576 of the Education Act 1996. For ease of reference the definitions of ‘parent’ and ‘parental responsibility’ are provided in the glossary (Section 2)



- It is for parents to decide at what age it would be appropriate for their child to walk unaccompanied to school
- In the event of a child not being eligible to receive free transport and having to walk to school, it will be for parents to make suitable travel arrangements for their children between home and school. Within the community, parents have the option of sharing the school run. The Welsh Government recommends that parents investigate whether community groups can coordinate this activity
- Parents are advised to ensure that their children are aware of the All-Wales Travel Behaviour Code ('the Travel Code') – the Travel Code sets out the standards of behaviour learners should adhere to when travelling between home and school, regardless of the mode of travel

### **Head teachers**

5.57 Head teachers have a statutory responsibility to:

- Require pupils to comply with the Travel Code<sup>158</sup>; and
- Determine the standard of behaviour considered acceptable (where it is not determined by the governing body or the Welsh Ministers)<sup>159</sup>

It is recommended that head teachers:

- Incorporate the Travel Code into the School Behaviour Policy and ensure it is complied with
- Cooperate with the local authority, including other relevant agencies (such as the Police), should there be any breach of the Code or incidents concerning child protection issues

Under section 89(5A) of the Education and Inspections Act 2006<sup>160</sup>, head teachers have the power to impose penalties on learners who have breached the Travel Code outside of school premises – for example, when learners are out of school premises and unsupervised by teaching staff (such as on the walk between home and school).

<sup>158</sup> See section 89(2A) Education and Inspections Act 2006.

<sup>159</sup> See section 89(3A) Education and Inspections Act 2006.

<sup>160</sup> <http://www.legislation.gov.uk/ukpga/2006/40/section/89>

## **Local Authorities<sup>161</sup>**

5.58 Local authorities' responsibilities include:

- Identifying whether a walked route is available
- Identifying risks and putting in place mitigation where appropriate
- Working in partnership with partner organisations/agencies to complete risk assessments which address identified problems
- Consulting children and young people (including via other organisations/bodies)

A suggested Risk Assessment Checklist for local authorities is at Annex 2.

## **Health and Safety Responsibilities of Educational Institutions**

The Welsh Government would expect the collection of children at the school gates to be included in the health and safety policy which all education employers must have. The Governors Guide to the Law which includes a chapter on health and safety provides further guidance, which can be found at the link below:

<http://wales.gov.uk/topics/educationandskills/schoolshome/schoolfundingandplanning/schoolgov/schoolgovguide/?lang=en>

5.59 The Health and Safety at Work Act 1974<sup>162</sup> and associated regulations place overall responsibility for health and safety with the employer. The person or body that is considered to be the employer varies depending on the type of school :

- For community schools, community special schools, voluntary controlled schools, maintained schools, maintained nursery schools and pupils referral units the employer is the local authority. The Local Education Authority must provide health and safety guidance to those schools and ensure that staff who are delegated Health and Safety tasks such as risk assessment are trained and competent to carry out those tasks

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<sup>161</sup> Local authority means all relevant departments within the authority and is not limited to learner travel teams

<sup>162</sup> 1974 c.37 <http://www.hse.gov.uk/legislation/hswa.htm>

- For foundation schools, foundation special schools and voluntary aided schools, the employer is usually the governing body

For independent schools the employer is usually the governing body or proprietor

## **Responsibility – Schools, Local Education Authorities (LEAs), Governing Bodies**

- 5.60 The employer must have a health and safety policy and arrangements to implement it. The Health and Safety at Work Act 1974<sup>163</sup> applies.
- 5.61 Employers must assess the risk of all activities, introduce measures to manage those risks, and tell their employees about the measures. The Management of Health and Safety at Work Regulations 1999<sup>164</sup> apply
- 5.62 In practice, employers may delegate specific health and safety tasks to individuals (local authorities may delegate them to schools). But the employer retains the ultimate responsibility no matter who carries out the tasks. The employer should therefore maintain an audit track, making clear who is doing what and confirming that those tasks are being carried out
- 5.63 Education employers have health and safety responsibilities towards teachers, staff, pupils, visitors and volunteers including ensuring, so far as it reasonably practicable the health, safety and welfare of pupils in school and on off site visits.
- 5.64 Employees have responsibilities too. It should also be borne in mind that under the general law of negligence school teachers are required to treat and take care of a pupil under the age of 18 as a careful parent would (*Williams v Eady* [1893] 10 TLR 41, CA).

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<sup>163</sup> See section 2 of the 1974 Act

<sup>164</sup> S.I. 1999/32425. See regulation 3.

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

### **Chapter 6: Parental Responsibilities.**

#### **Overview**

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

#### **Learners' Entitlement to Free Transport Provision**

- 6.2. Learners are only entitled to free transport provision if they live 2 miles or further from their nearest suitable primary school or 3 miles or further from their nearest suitable secondary school and the learner is of compulsory school age (i.e. 5-16 years of age). If a learner does not meet the eligibility criteria outlined in sections 3 and 4 of the Measure the relevant local authority is not required to provide free transport for the learner. Ultimately, the legal duty to ensure attendance of a child at school rests with the parent or legal guardian of that child.<sup>165</sup>

#### **Nearest Suitable School**

- 6.3. The Welsh Government issued the School Admissions Code in July 2013 ("2013 Code") under section 84 of the School Standards and Framework Act 1998<sup>166</sup> ("the 1998 Act"). The 2013 Code is statutory and requires local authorities to publish a list of maintained schools within their authority's area from 2014/15 onwards. This information can be accessed via the local authority's individual website or on request. It is the responsibility of the parent to request this information as it may not necessarily be issued to parents automatically. Links to each local authority website are provided in Annex 3.
- 6.4. Under the 1998 Act and the 2013 Code, parents are entitled to state a preference for the school they would like their child to attend. Where possible parental preference will be accepted by the relevant admissions authority and the child will be admitted to

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<sup>165</sup> Section 7 Education Act 1996.- <http://www.legislation.gov.uk/ukpga/1996/56/section/7>

<sup>166</sup> As amended by section 40 of the Education and Inspections Act 2006 - <http://www.legislation.gov.uk/ukpga/2006/40/section/40>

the preferred school. It is important to note that a parent's preferred school is not necessarily considered to be the nearest suitable school for that child. The entitlement to free transport provision in accordance with the Learner Travel (Wales) Measure 2008 only relates to learners who are attending their nearest suitable school. Learners who by choice (either parental or learner choice) are not attending their nearest suitable school are not entitled to free transport provision<sup>167</sup>.

- 6.5. Parents need to contact the relevant local authority to clarify which school is classified as their child's 'nearest suitable school' to inform their decision about school preference on their child's school admissions form<sup>168</sup>. It is the responsibility of the parent to request this information when determining whether their child is entitled to free transport provision to access education and training. Under the 2013 Code local authorities should provide parents or carers, on request, easy access to admissions information. This needs to be clear and easily understood so parents can make an informed choice for their children.

#### Parental preference

- 6.6. The 2008 Measure only applies to travel arrangements to a learner's nearest suitable school and not to a school chosen because of parental preference where these provisions differ.
- 6.7. If parents enact their parental preference and choose a learning establishment which is not the nearest suitable school or relevant place of learning for their child(ren), local authorities are not legally bound to provide transport although they do have power to make provision on a discretionary basis under section 6 of the Measure<sup>169</sup>.
- 6.8. If a parent chooses a school for their child on grounds of language or denominational preference and that school is not the nearest suitable school as agreed by the relevant local authority, then this constitutes the exercise of parental preference.

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<sup>167</sup> Learners may qualify for entitlement to free or subsidised discretionary transport provision, but this is subject to the relevant local authority making use of their section 6 powers of the 2008 Measure.

<sup>168</sup> Contact details for each local authority website are provided in Annex 3

<sup>169</sup> Further information regarding Discretionary Transport provision is provided in Section 1, Chapter 1 Paragraphs 1.98 – 1.105

6.9. Likewise, if a parent chooses to transfer their child from one learning establishment to another without the agreement of the relevant local authority, this also constitutes the exercise of parental preference. This means entitlement to free transport is forfeited (even if their child received free transport to and from the school they previously attended).

### **The Travel Behaviour Code**

6.10. The Travel Behaviour Code requires learners to comply with the terms and conditions as detailed in Chapter 2 paragraph 2.12 of this document. Under the Travel Behaviour Code Statutory Guidance<sup>170</sup> 2009, parents have the following responsibilities relating to their child(ren)'s behaviour:

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

### **Dual Residency**

6.11. Where a child has dual residency local authorities may need to undertake a review to determine whether the learner continues to qualify for transport provision under sections 3 or 4 of the Measure. It is recommended that the review takes into account the parents' views and adheres to the authority's consultation procedures. If it is determined that the learner no longer attends their nearest suitable school, the learner may no longer qualify for free statutory transport provision from that authority. It is then open to the local authority to consider whether the learner could benefit from discretionary transport provision under section 6 of

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<sup>170</sup> Issued by the Welsh Government 2009 - <http://wales.gov.uk/topics/transport/integrated/learnertravel/travelcode/tbcstatutoryguidance/?lang=en>

the Measure. Further information on dual residency provisions is provided in Chapter 1 paragraphs 1.54 – 1.59 of this document.

### **Accompanied Children**

- 6.12. Section 3 (8b) of the 2008 Measure states that a walked route to school or relevant place of learning is 'available' if – “it is safe for a child to walk the route with an escort, if the age of the child would call for the provision of an escort”. Parents have a duty to ensure their child receives suitable full time education when the child reaches 5 years of age. There is no statutory requirement on local authorities to provide an escort, unless specifically stated in a learner’s SEN statement. Further information on the assessment of walked routes is provided in Chapter 4 of this document.

## Section 1: Statutory Provisions.

### Chapter 7: Schools' Responsibilities.

#### Overview

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

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

##### Responsibilities under the Travel Behaviour Code, as outlined in the Travel Behaviour Code Statutory Guidance<sup>171</sup>

7.2. The Travel Code requires education institutions to:

- Publicise and raise awareness of the importance of good behaviour and the consequences of failing to comply with the Code
- Enforce the Code where appropriate
- Incorporate the Code into the school's existing behaviour policy
- Train relevant staff in the content and application of the Code
- Engage with the relevant local authority, providing information and assistance accordingly to ensure the Code is complied with
- Make learners aware of an appropriate person to talk to within the institution about incidents of bad behaviour whilst travelling to and from home to school
- If the local authority is responsible for providing transport, cooperate with them in handling disciplinary action for breaches of the Code, including involvement in the interviewing of learners as part of any investigation
- Ensure that designated persons maintain records of all reported incidents that they are responsible for investigating

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<sup>171</sup> Statutory Guidance issued by the Welsh Government in 2009 under section 15 of the 2008 Measure.

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

There is also a duty under Section 89 of the Education and Inspections Act 2006 for head teachers to incorporate the travel code into the school behaviour policy.

<http://www.legislation.gov.uk/ukpga/2006/40/section/89>



- If the local authority is responsible for investigating an incident they must pass them this information immediately
- If contractual arrangements organised by the school have been entered into with transport operators, the school should ensure that they are aware of the Code and their responsibilities
- Ensure that contact details of designated staff responsible for handling all matters relating to the Code are made available to transport operators, learners and the local authority
- Report suspected criminal offences or child protection matters to the relevant parties

### Incidents Investigated by Educational Institutions

7.3. Section 89(2A) of the Education and Inspections Act 2006 (as amended by the Measure) places a duty on head teachers of relevant schools to ensure that pupils comply with the Travel Code as part of their school's overall behaviour policy.

7.4. Section 89(5A) of the 2006 Act provides head teachers with a statutory power to regulate learners' behaviour and conduct outside of school 'to such an extent as is reasonable' and which is not already covered by the Travel Code.

7.5. Schools are able to introduce measures to regulate conduct of learners when they are off school premises and not under the supervision of a member of staff<sup>172</sup>. Disciplinary penalties<sup>173</sup> may be imposed as a result of such conduct, including breaches of the Travel Code, but a penalty will only be imposed when the learner is under the lawful control or charge of a staff member. Therefore a sanction could be imposed immediately for unacceptable conduct on a school trip, where the learner is under the direct supervision of a member of staff, but not where, for example, a learner engages in unacceptable conduct on their journey between home and school where no such supervision exists. Any penalty for such conduct will be imposed retrospectively when the learner next attends school or when they are next under the control of a member of staff.

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<sup>172</sup> Section 89(5A) Education and Inspections Act 2006.  
<http://www.legislation.gov.uk/ukpga/2006/40/section/89>

<sup>173</sup> Section 90 Education and Inspections Act 2006.  
<http://www.legislation.gov.uk/ukpga/2006/40/section/90>

## **School Admissions**

- 7.6. Paragraph 2.2 of the 2013 School Admissions Code<sup>174</sup> requires admissions authorities to 'provide parents or carers with easy access to helpful admissions information'. Schools who administer their own admissions arrangements for post-16 learners entering sixth form at that school should notify the local authority as soon as possible of the learners who will be attending the school's sixth form. Local authorities are best placed to provide advice to parents on school transport matters.

## **Seat Belts on Dedicated Learner Transport**

- 7.7. Governing Bodies of maintained schools have a duty under the Measure (as amended) to ensure that any bus the school procures and uses for dedicated learner travel between home and school must have seat belts fitted to every seat from 1 October 2014. Further information on this provision is provided in Chapter 4 - paragraphs 4.1- 4.22.

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

## Section 2: Glossary

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

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

**Admission forum** - A statutory local body charged with co-ordinating the effectiveness and equity of local admission arrangements and monitoring compliance with the School Admissions Code<sup>175</sup>. The Forum comprises representatives of admission authorities and schools, dioceses, the local community and parent governors. Their role is set out in the Education (Admissions Forum) (Wales) Regulations 2003.

**Admission number** - The number of pupils that can be admitted in a year group. Admission authorities are required to have regard to the 'indicated admission number' for each year group. The indicated admission number is calculated in accordance with the capacity assessment method set out in the guidance document "Measuring the capacity of schools in Wales".<sup>176</sup> Admission numbers are part of a school's admission arrangements and must be consulted upon with the rest of a school's admission arrangements and be published with those arrangements in the school's prospectus and the local authority composite prospectus.

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

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<sup>175</sup> Issued by the Welsh Government July 2013-005/2013

<sup>176</sup> School Admissions Code,

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

**Bus** - A motor vehicle which is constructed or adapted to carry more than 8 seated passengers in addition to the driver<sup>177</sup>.

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

**Coach** - A large bus with a maximum gross weight of more than 7.5 tonnes and a maximum speed exceeding 60mph.<sup>178</sup>

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

**Disability and disabled person** – has the same meaning as in section 6 of the Equality Act 2010  
<http://www.legislation.gov.uk/ukpga/2010/15/contents> (which repealed the Disability Discrimination Act 1995 but has maintained the same definition of disability): “A person has a disability if (s)he has a physical or mental impairment and the impairment has a substantial and long-term adverse effect on his/ her ability to carry out normal day-to-day activities”.

**Driver Vehicle Standards Agency (DVSA)** – replaced VOSA as an executive agency of the Department for Transport. The agency provides a range of licensing, testing and enforcement services with the aim of improving the roadworthiness standards of vehicles.

**EU Directive/2003/20/EC** - Under the Directive, the obligation to use a seat belt when a vehicle is in motion is extended to all categories of vehicles and to all seats fitted with a seatbelt (apart

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<sup>177</sup> As defined in Regulation 3 of the Road Vehicles (Construction and Use) Regulations 1986

<sup>178</sup> As defined in Regulation 3 of the Road Vehicles (Construction and Use) Regulations 1986

from certain exceptions). The use of restraint systems specially adapted to the size and weight of children also becomes compulsory. There is a remaining part of the Directive which will need to be transposed into UK Legislation concerning a requirement for children aged 3 to 13 to wear seat belts on buses and coaches where seat belts are provided.

**Education and Inspections Act 2006** - The Act is designed to give greater freedoms to schools, including the possibility of owning their own assets; employing their own staff; and setting their own admissions arrangements, but effectively this now only applies to schools in England. The School Standards and Organisation (Wales) Act 2013 prohibited the establishment of further foundation schools in Wales. Other important provisions include the creation of a local authority duty to promote fair access to educational opportunities; giving school staff a clear statutory right to discipline students; provisions relating to nutritional standards of school food; and the reform of the school inspectorates.

**Flooding** – is an overflow of a large amount of water, beyond its normal limits especially over what is normally dry land.

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

**Hazard** – is any source of potential damage, harm or adverse health effects

**Learner** – A person receiving education or training.<sup>179</sup>

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

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<sup>179</sup> Section 1(3) Learner Travel (Wales) Measure 2008

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

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

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

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

**Maintained school** – means a community, a voluntary school, a community school or a maintained nursery school<sup>180</sup>.

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

**Non-Maintained Special School** – Approved under section 342 of the Education Act 1996 as any school which is specially organized

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<sup>180</sup> Under the School Standards and Organisation (Wales) Act 2013 (Schedule 5, Part 2 paragraph 25) the Learner Travel (Wales) Measure 2008 has been amended in relation to the definition of maintained school by omitting "or foundation" schools.

to make special educational provision for pupils with special educational needs and is not a community or foundation special school.

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

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

**Oversubscription criterion** – the principle that stipulates conditions that affect the priority given to an application, for example taking account of other preferences or giving priority to families who include in their other preferences a particular type of school (e.g. where other schools are of the same religious denomination).

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

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

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

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

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

- (a) being a vehicle adapted to carry more than eight passengers, is used for carrying passengers for hire or reward;
- or
- (b) being a vehicle not so adapted, is used for carrying passengers for hire or reward at separate fares in the course of a business of carrying passengers

**Pupil Referral Units** - A school established and maintained by the local authority for children who are not able to attend a mainstream or special school (for example due to emotional or behavioural difficulties) approved under Section 19(2) Education Act 1996.

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

**Relevant Places**<sup>181</sup> – maintained schools; institutions in the further education sector; independent schools named in statements of special educational needs; non-maintained special schools; pupil referral units; places other than pupil referral units where education is arranged under section 19(1) of the Education Act 1996; places

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<sup>181</sup> Section 1 (4) Learner Travel (Wales) Measure 2008



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; or places where work experience is undertaken.

**Risk** – is the chance or probability that a person will be harmed, or experience an adverse effect, if exposed to a hazard.

**Safety** – is the condition of being protected from or unlikely to cause danger, risk or injury

**Safety on Learner Transport (Wales) Measure 2011** - A Welsh law passed by the National Assembly for Wales which made amendments to the Learner Travel (Wales) Measure 2008<sup>182</sup> for the purpose of improving safety on dedicated learner transport. Measures of the National Assembly for Wales have been superseded by Acts of the Assembly as a result of the “yes” vote in the referendum of 2011 on primary powers for the Assembly (in relation to devolved policy areas). The above Measure sets out that all contracted school buses used for dedicated learner transport must have seat belts fitted to each passenger seat by 1 October 2014.

**School day** - School day is defined in section 579 of the Education Act 1996 as follows: “school day’, in relation to a school, means any day on which at that school there is a school session”. A school session can be a morning session or an afternoon session, so a school day is any day when the school meets for all or part of the day. School year In relation to a school, means the period beginning with the first school term to begin after July and ending with the beginning of the first such term to begin after the following July.

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

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<sup>182</sup> The Learner Travel Wales Measure 2008 (as amended)

**Special Educational Needs Code of Practice for Wales** - The Code provides practical advice to local authorities, maintained schools, early years settings and others. The Code of Practice helps them to carry out their statutory duties; and identify, assess and make provision for children's special educational needs.

**Step-offs** – is a term which refers to the facility for pedestrians to easily be able to step off the roadway on to reasonably even and firm surfaces.

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

**Travel arrangements** – travel arrangements of any description include: the provision of transport; the provision of one or more persons to escort a child when travelling; the payment of the whole or any part of a person's reasonable travelling expenses; the payment of allowances in respect of the use of particular modes of travel<sup>183</sup>.

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

**Vehicle Operating Services Agency (VOSA)** – the now defunct executive agency of the Department for Transport, which has been replaced by the Driving Vehicle Standards Agency (DVSA) (see glossary for further information on DVSA).

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<sup>183</sup> Section 1(2) Learner Travel (Wales) Measure 2008

## Section 3: Advisory Guidance.

### Frequently Asked Questions:

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

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

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

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

Since September 2013, bus and coach drivers are required by law to complete 37 hours of driver training after which they are awarded a Certificate of Professional Competence - Driver Qualification Card (CPC-DQC). Drivers must<sup>184</sup> by law carry their CPC-DQC cards with them at all times while they are operating a bus or coach and must be able to present the cards to the Police or VOSA upon request.

From 1 October 2014, all buses used for dedicated learner transport must have seatbelts fitted to every passenger seat<sup>185</sup>.

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

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

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

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<sup>184</sup> EU Directive 2003/59

<sup>185</sup> The Vehicle Drivers (Certificate of Professional Competence) Regulations 2007 – derived from EU Directive 2003/59/EC on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods and passengers.

### **3. Do bus drivers, who transport learners, have to undertake any mandatory training (such as a dedicated learner transport CPC module) to carry out their duties?**

The Safety on Learner Transport (Wales) Measure 2011 allows Welsh Ministers to make regulations introducing the requirement for drivers of dedicated learner transport buses to undertake specific learner transport training, however, to date these powers have not been commenced. The Welsh Government does however recommend that local authorities and transport operators work collaboratively to ensure drivers of learner transport and transport services carrying children and young people (whether: dedicated learner buses, service buses or taxi) undertake customer service training in relation to children and young people.

This could be achieved by local authorities and bus operators requiring (in accordance with their service contracts) that drivers undertake a certain amount of training to cater for the customer service needs of children / young people/ learners (such as within their CPC modules) or through in house training. This could include:

- Customer care – engaging with children and young people
- Equality training
- Dealing with SEN

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

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

- the learner's age
- whether the learner has any disability or learning difficulties that need to be taken into account

- the location of the learner’s home in relation to available schools in the vicinity( i.e. whether the nearest suitable school is located in the local authority’s area or a neighbouring authority area, in accordance with the authority’s transport and education policies)

## **5. What is meant by the term “looked after children”?**

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

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

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

## **7. If a learner becomes a ‘dual resident’, living with 2 parents (people with parental responsibility) at separate addresses, why is it that the school they currently attend may not be deemed their nearest suitable school anymore?**

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

Parents should be advised that if one or both move to a new address, a different school may then become their child's nearest suitable school. Consequently, the entitlement to free transport (if previously applicable) could be removed. Transport may still be provided on a discretionary basis under section 6 of the Measure in accordance with the relevant local authority's transport and education policy governing learner travel.

Local authorities are required to publish their general arrangements and policies in relation to learner travel, to include the provision of free transport<sup>186</sup>. It is recommended that this information include the provision that any changes to a learner's residence (including dual residence) may affect a learner's eligibility for free transport.

## **8. What constitutes 'Permanent Living arrangements' in relation to Dual Resident learners?**

Only permanent established living arrangements should be considered. These would include, for example, a child who stays 2 nights of every school week with one 'parent' (person with parental responsibility) 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.

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.

The Welsh 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.

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<sup>186</sup> Regulation 4 of the 2009 Regulations.

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

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

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

**10. What is the difference between ‘travel’ and ‘transport’?**

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

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

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

The Learner Travel (Wales) Measure 2008 specifies that a route must<sup>187</sup> be ‘available’ because the target users are learners (namely children and young people). The available (or safe) route is used by learners travelling between home and school.

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

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<sup>187</sup> Section 3(8) Learner Travel (Wales) Measure 2008.

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

In cases where learners do not attend the nearest suitable school, local authorities use their discretion to provide free transport<sup>188</sup> to Welsh Medium schools regardless of the distance criteria in order to promote access to education and training through the medium of Welsh. Local authorities also operate bilingual policies in schools in order to promote<sup>189</sup> access to education and training through the medium of Welsh. Local authorities have a general duty to promote access to education and training through the medium of the Welsh language when exercising functions under the 2008 Measure, which should be outlined in their Welsh In Education Strategic Plans (WESPs).

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

The Travel Behaviour Code does apply to learners with SEN.

However, if a learner has special educational needs it is especially important to give consideration to the nature of the learner's individual circumstances and to discuss the application of any potential sanctions with the learner's place of learning. When considering any special educational needs a learner may have, regard should be given to the Special Educational Needs Code of Practice and the National Assembly for Wales Circular 47/2006 – Inclusion and Pupil Support Guidance to determine what sanctions should be used to deal with issues of misbehaviour.

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

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<sup>188</sup> Section 6 Learner Travel (Wales) Measure 2008

<sup>189</sup> section 10 Learner Travel (Wales) Measure 2008



Not necessarily. Local authorities have options available to them to promote the interests of learners and save money (but still provide appropriate transport provision for learners with SEN). These include assessing the needs of the learner to determine whether specialist transport is required.

If it is required, it is advisable for the local authority to ask questions, such as:

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

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

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

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

Working one to one with a travel trainer, learners are accompanied to and from school over an extended period of time until they are ready to make the journey independently. Once a learner has completed the training, they

are given an annual bus pass which they can use for school routes and journeys outside of school.

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

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

**17. What is the Social Services and Wellbeing (Wales) Act 2014 and what does it mean in practical terms?**

The Social Services and Well-being (Wales) Act 2014 provides for the first time a coherent Welsh legal framework for social services.

The Act will:

- Strengthen powers for the safeguarding of children and adults, so that vulnerable people at risk can be protected more effectively
- Ensure people are assessed on what they need, rather than just on what services are available locally
- Introduce portable assessments, which means if people move from one part of Wales to another they will continue to be entitled to have their needs met in the new area on the basis of their original assessment until a new assessment is carried out
- Facilitate an increased take up of direct payments to meet people's care and support needs, meaning people will have more control over how these needs are met
- Introduce a National Outcomes Framework to set out very clearly what children and adults can expect from social services, to measure achievements and see where improvements are needed

- Introduce equivalent rights of assessments for carers so that people who care for someone such as an elderly or disabled relative or friend will have the same rights as the people they care for and
- Establish a National Adoption Service to improve the outcomes for children in need of a permanent family

**18. How does ‘Stronger Partnerships for Better Outcomes’ and ‘Shared Planning for Better Outcomes’ statutory guidance impact on Learner Travel?**

Sections 25 and 26 of the Children Act 2004 place a duty of local co-operation on local authorities in Wales and a range of partners to improve the wellbeing of children and young people in each local authority area. They also require local authorities to prepare and publish a plan setting out the authorities’ strategies for discharging their functions in relation to children and young people. Section 27 of the 2004 Act requires local authorities to appoint lead directors and lead members to be responsible for function under sections 25 and 26.

In 2006 and 2007 the Welsh Government issued statutory guidance under sections 25(8), 26(5) and 27(4) of the 2004 Act, namely ‘Stronger Partnerships for Better Outcomes’ and ‘Shared Planning for Better Outcomes’. These guidance documents should be read in conjunction. The guidance sets out local authorities’ duties to co-operate through partnerships to improve the well being of children and young people in each local authority area.

Local partners, led by the local authority (in the context of its community leadership role), are expected to work together to implement the necessary changes in organisational culture and practice. The responsibility of partnerships involves joint strategic planning driven by shared profiling of service provision and identification of need, to support the integrated provision of service.

Partnerships have responsibility for developing and agreeing the Children and Young People’s Plan (CYPP). The plan should be a strategic document of manageable length. It should set out how the well-being of children and young people in the area will be improved. This is intended to:

- Provide strategic vision and state the agreed priorities that will direct the work of all partners
- Describe how requirements of national and local strategic policies and priorities will be tackled locally
- Set out agreed objectives for services that can act as milestones to enable progress in improving outcomes to be measured over the planning timescale
- Identify the contribution made by individual partners towards meeting joint objectives, ensuring that they are consistent and mutually supportive
- Provide a basis for the joint commissioning of services and sharing of available funding, including the core budgets of statutory partners and the resources or financial contributions from the voluntary sector

Plans should be reviewed annually and could enable risk assessment of walked routes to be undertaken and the mitigation of risks made as appropriate.

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

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

- Disclosure which searches police records and, in relevant cases, information held by the DBS barring function and issues a DBS certificate to the applicant.
- Barring to help safeguard vulnerable groups including children from those people who work or volunteer with them but who pose a risk of harm. The DBS may use any information on a certificate or otherwise held by the DBS to inform any of its barring decisions made under its powers within the Safeguarding Vulnerable Groups Act 2006.<sup>190</sup>

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

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<sup>190</sup> DBS Privacy Policy

The DBS is legally bound by the Data Protection Act 1998 and they outline their data standards in a personal information charter.

When the DBS processes personal data, according to their privacy policy the following principles apply:

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

Personal data is only held by the DBS if a person has applied for a disclosure check, applied to be a counter signatory for a disclosure check, or has been referred to the barring service. The DBS has access to the Police National Computer ("PNC"), which provides the disclosure function with basic identifying details such as name and date of birth of persons included on the PNC. For the barring function, access is granted to personal details and conviction information. Further information on data sharing procedures is included in the Wales Accord on the sharing of Personal Information (WASPI) at the following link: <http://www.waspi.org/>

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

Please refer to, paragraphs 1.106 – 1.116 of this document for information on the Disclosure and Barring Arrangements.

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

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

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

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

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

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

The individual who is the subject of the personal data must be made aware of the use of that personal data. This is usually done by providing fair processing information to the individual which confirms the identity of the data controller, outlines the personal data being processed, what it is being used for, explains any sharing and outlines an individual's rights in respect of that personal data.

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

**23. What is the Vehicle Operating Services Agency (VOSA) and the Driver Vehicle Standards Agency (DVSA) and what do they do?**

VOSA was an executive agency of the UK Government's Department for Transport. The agency closed on 31 March 2014 and has subsequently been replaced by the Driver and Vehicle Standards Agency, which now carries out the functions previously undertaken by VOSA. This includes providing a range of licensing, testing and enforcement services with the aim of improving the roadworthiness standards of vehicles. Further information about the Agency can be found at: <https://www.gov.uk/government/organisations/driver-and-vehicle-standards-agency>

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

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

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

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

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

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

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

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

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

For learners who are not of compulsory school age, there is no restriction on the amount that can be charged. With regard to learners of compulsory school age, charging must be in accordance with Section 455 and 456 of the Education Act 1996 (as amended by Section 22 of the 2008 Measure).

This means that when transport is provided as an “optional extra”<sup>191</sup> to a learner of compulsory school age, a charge may not be made unless arrangements are provided with the agreement of the pupil’s parent. The local authority can charge the parent of the learner<sup>192</sup>. The charge to parents may exceed the cost incurred by the local authority to provide the “optional extra”.<sup>193</sup>

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

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<sup>191</sup> Section 455(3) Education Act 1996 - <http://www.legislation.gov.uk/ukpga/1996/56/section/455>

<sup>192</sup> Section 456(2) Education Act 1996 - <http://www.legislation.gov.uk/ukpga/1996/56/section/456>

<sup>193</sup> See section 456(3) Education Act 1996.



This means that if the cost of providing transport for a disabled learner is higher than it would if the authority were providing transport for a non-disabled learner - for example, if the transport provided for a disabled learner includes the need for an escort or the use of a specialised vehicle - the authority can not charge a higher amount for the use of the specialised vehicle and/ or escort (or any other reasonable adjustment) even though the cost to the local authority may be higher<sup>194</sup>).

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

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

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

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

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

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

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

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<sup>194</sup> See section 20(7) Equality Act 2010.  
<http://www.legislation.gov.uk/ukpga/2010/15/section/20>

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

Travel and transport provision required during the school day as a result of the 14-19 Learning Pathways is not covered by the Learner Travel (Wales) Measure 2008 or the statutory provisions outlined in this document.

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

The relevant procedures which are currently in place are set out in the Travel Code statutory guidance. The guidance can be accessed by clicking on the following link

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

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

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

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

Teaching resources, which can be used to educate learners on the 'Travel Code, can be found at <http://www.travelcode.org/>

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

Yes. Where CCTV is used, parents and learners must<sup>195</sup> be made aware that recording services are in operation. This could be done through a written statement outlining this provision within the local authority's learner transport application form (terms and conditions) pack, by a letter home to parents or by signs placed on learner transport to ensure that parents and learners are aware of the surveillance.

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

**31. Who should learners report issues of anti-social behaviour to?**

It is recommended that head teachers make learners aware of an appropriate member(s) of staff who learners should contact to report incidents of bad behaviour to on the home to school journey.

**32. What is accessible information?**

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

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

Dedicated learner transport includes buses, coaches, minibuses, taxis. It is transport provided or secured by a relevant body (a local authority or the governing body of a maintained school), specifically for the purpose of transporting

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<sup>195</sup> Under provisions of the Data Protection Act 1998

learners of compulsory school age (that is, those aged between 5-16) between home and school. Dedicated learner transport is for the use of learners only. Members of the general public are not allowed to use the service.

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

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

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

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

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

Part 1 of Schedule 7 to the Government of Wales Act 2006 sets out the subject areas in which the National Assembly for Wales may legislate, as well as the exceptions to those general subject areas. The legislative competence conferred in relation to transport allows the Assembly to legislate in relation to dedicated school transport which can include buses, coaches, taxis and private hire vehicles such as minibuses. The Assembly may not legislate in relation to public service vehicles. It is the responsibility of the UK Government to propose policies in relation to public service vehicles and the responsibility of the UK Parliament to pass the relevant legislation.

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

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

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

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

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

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

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

- Rolling out a training and education programme in schools on a pan-Wales basis - the programme could be delivered by teachers or the relevant local authority officials and might include activities like quizzes, games, DVDs and role play exercises
- Schools can play a role in encouraging parents to impress upon their children the importance and necessity of wearing seat belts - this could be achieved by schools raising the issue at parents' evenings, engaging with parents through Parent Teacher Association (PTA) meetings, sending information leaflets to parents or including an article on seat belts and responsibility in school newsletters

- Responsible older pupils/prefects can monitor the wearing of seat belts on dedicated school transport and can help enforce the regime by verbally instructing other learners to wear seatbelts and taking the names of those who refuse to
- Local authorities have a role to play in achieving this outcome and could work in partnership with schools, providing officials to monitor and enforce the wearing of seat belts on school transport

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

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

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

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

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

of restraint systems specially adapted to the size and weight of children has also become compulsory under the Directive.

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

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

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

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

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

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

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

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

The Welsh Government also provides support for those students facing hardship through the Financial Contingency

Fund (FCF) which is distributed to further and higher education institutions in Wales.

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

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

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

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

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

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

Section 8 of the Education Act 1996 (and accompanying regulations/Order<sup>196</sup>) defines compulsory school age.

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

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

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

- (a) if he attains the age of 16 after that day but before the beginning of the following school year

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<sup>196</sup> Education (Start of Compulsory School Age) Order 1998 (SI 1998/1607) and The Education (School Leaving date) Order 1997 (SI 1997/1970).



- (b) if he attains 16 on that day, or
- (c) (unless paragraph (a) applies) if that day is the school leaving date next following his attaining 16

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

Parents can express a preference for any school they would like their child to attend. If a school has applications that exceed the admission number for the school, the admission authority will apply oversubscription criteria to all the applications in priority order. This means that all the applications will then be ranked and offered places up to the admission number. Should there be several applications that sit against the same oversubscription criterion, a 'tie breaker' may be used. The tie breaker is usually based on the distance from the pupil's home to the school. Normally the pupils who live the nearest to the school would be offered the remaining places. However, some admission authorities consider other factors, such as; the distance learners would have to travel to the next available school and use this factor as the priority factor for determining places.

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

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

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

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

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

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

authorities will want to consider which mode of transport will best meet the need to ensure a reasonable journey time. Best practice suggests that a child of secondary school age may reasonably be expected to travel 60 minutes each way to access learning. It is recommended that local authorities apply similar expectations to post 16 learners

#### **47. Who is Responsible for the Care of Pupils Travelling to School?**

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).

The 2008 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. It is recommended that local authorities, bus operators and schools consider jointly the risks pertaining to embarkation/disembarkation points on or immediately outside school premises.

Guidance on risk assessing dedicated school service contracts is provided in the Welsh Government issue All Wales Home to School Transport Risk Assessment Framework<sup>197</sup>

#### **48. What processes should be put in place for embarkation and disembarkation at school premises?**

Embarkation and disembarkation areas are potentially dangerous because they can be crowded, busy, confined, and

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<sup>197</sup> <http://wales.gov.uk/topics/transport/?lang=en>

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.

It is recommended that local authorities, schools and operators 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

Advice on how to undertake home to school transport risk assessment, including embarkation and disembarkation, is provided in the Welsh Government issue All Wales Home to School Transport Risk Assessment Framework, which was published in 2009<sup>198</sup>. The Health and Safety Executive have also published guidance on risk assessments generally, and on “Workplace Transport Safety”<sup>199</sup>.

It is recommended that local authorities, schools and operators work collaboratively 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.

The Welsh 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

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<sup>198</sup> <http://wales.gov.uk/topics/transport/?lang=en>

<sup>199</sup> <http://www.hse.gov.uk/pubns/books/hsg136.htm>

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.

#### **49. How can overcrowding on buses be tackled?**

The design of bus will determine the number of seated and standing passengers and the number of wheelchair spaces on board. A sign informing passengers of this capacity must be displayed on the bus. Service registrations do not specify these numbers for either public services or dedicated school transport. DVSA is responsible for providing vehicle type approval. In terms of buses used for dedicated learner transport, the local authority's contract with the operator will specify the seating capacity. From 1 October 2014 these contracts will also need to include that dedicated learner buses must also have a seat belt fitted to every passenger seat too.

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 pupils who are entitled to travel. If pupils not entitled to travel on a bus embark, 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 passes) to avoid stranding children who have simply forgotten or lost their pass.

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.

#### **50. What happens if a learner is sick / absent from school and does not require learner transport for that day(s) the learner is absent– should parents/ guardians inform both**

## **the school and the local authority transport team of their child's absence or just the school?**

As soon as a parent or guardian is aware that their child will be absent from school, for any period of time, they are required by law to inform the school of the absence. There is no legal requirement for a parent to notify the local authority of a planned absence. However, if a learner receives transport provision provided for by the local authority and the absence means the learner does not require this transport for a certain period of time, Welsh Government recommends that parents inform the local authority transport team as soon as they know the transport will not be required (usually at the same time they notify the school).

In doing so, local authorities can ensure transport provision, such as taxis, minibuses etc, are not sent out unnecessarily (particularly if it entails collecting the learner from a location where other learners are not also being collected). This not only reduces unnecessary public expenditure on transport services which are not required but may also help to reduce the local authorities' carbon footprint thus being beneficial to the environment.

### **51. What transport arrangements should be put in place for learners moving authority area during their GCSE ('critical') years<sup>200</sup>?**

The Welsh Government recognises that there is currently no consistent policy approach adopted by local authorities in Wales for when a learner moves house/ local authority area during their critical years in education (GCSE).

At present, some local authorities' policies states that if a learner (who has started their GCSEs) moves house and their new home resides in a neighbouring local authority, although their current school is no longer technically their nearest suitable school, the local authority will still provide free transport provision for the learner to the school they currently attend for the duration of their GCSE studies (subject to the learner meeting the distance criteria and the school resides in a neighbouring local authority area). In doing so the learner's

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<sup>200</sup> 'Critical years' are learners in years 10 and 11 of secondary school.

'critical years' of study are not disrupted. However, other local authorities do not currently adopt this policy approach.

To ensure that a consistent policy approach is applied across Wales, Welsh Government recommends that all local authorities in Wales adopt the same policy approach whereby if a learner has started their GCSE studies and subsequently moves house/ authority area, then provided that the move takes place after the October half term break of their first year of GCSE studies (Year 10), the local authority, where the learner's new home resides, picks up the travel costs enabling the learner to continue their studies at the same school/ education institute the learner currently attends.

## Annex 1

### RISK ASSESSMENT MATRIX

Learner details		Companion details		
<ul style="list-style-type: none"> <li>Name</li> <li>Age</li> <li>Name of school</li> </ul>		<ul style="list-style-type: none"> <li>Name</li> <li>Relationship to Learner</li> </ul>		
<b>Route – A to B</b>				
	<b>Risk Severity*</b>	<b>Risk Level*</b>	<b>Control Measures</b>	<b>Mitigated Risk***</b>
Learner concerns <ul style="list-style-type: none"> <li>Personal issues</li> <li>Local issues</li> <li>Hot spots</li> <li>Other transport</li> <li>Issues</li> </ul>				
Traffic levels				
Footpath details				
Footways				
Crossing points				
<ul style="list-style-type: none"> <li>Rivers</li> <li>Canals</li> <li>Ditches</li> <li>Embankments</li> <li>Vegetation</li> </ul>				
Lighting				



Planning impacts				
Social hazards				

\*Scale of 1 very low → 5 very high

\*\* Likelihood (scale of 1 → 5) multiplied by severity

\*\*\* Likelihood (scale of 1 → 5) after putting in place control measure multiplied by severity

## Annex 2

### Local Authorities' Risk Assessment Checklist

<b>Before a Risk Assessment a local authority should ask:</b>
<ul style="list-style-type: none"><li>• To which category do the risks/dangers belong? Are the risks/dangers physical, topographical, geographic, environmental or social?</li></ul>
<ul style="list-style-type: none"><li>• When was the route last risk-assessed?</li></ul>
<ul style="list-style-type: none"><li>• What changes have been made to the route since the last risk assessment? (Note: Records should specify any changes, such as construction work; infrastructure changes; the introduction of traffic calming measures; new build developments; new road works).</li></ul>
<ul style="list-style-type: none"><li>• Were learners consulted during the last risk assessment? If so, what were their views?</li></ul>
<ul style="list-style-type: none"><li>• When would be the ideal time to conduct a risk assessment of the route in question? (Note: Usually, the best time would be when learners are using the route - that is, in the morning on the way to school and/or in the afternoon when learners are making their way home)</li></ul>
<ul style="list-style-type: none"><li>• In the case of social dangers, who are the relevant partner organisations/agencies?</li></ul>
<b>During the Risk Assessment process, a local authority should ask:</b>
<ul style="list-style-type: none"><li>• Whether the learners/parents/persons exercising parental responsibility would like to accompany the local authority Risk Assessor during the risk assessment? (Note: This often enables learners/parents/other persons to demonstrate exactly why they consider a route to be unsafe).</li></ul>
<ul style="list-style-type: none"><li>• Should learners be consulted (particularly if they have not been consulted at all or for a long time)?</li></ul>
<ul style="list-style-type: none"><li>• Which mechanism should be used to consult learners – for example School Councils etc.)?</li></ul>
<ul style="list-style-type: none"><li>• In relation to social dangers, what kind of evidence will be supplied by the relevant partner organisations (the Police or LSCBs)? Is the evidence qualitative or quantitative?</li></ul>
<ul style="list-style-type: none"><li>• When will the evidence (qualitative or quantitative) become available?</li></ul>
<ul style="list-style-type: none"><li>• If working with partner organisations, have information-sharing protocols been put in place? Have local government lawyers been consulted?</li></ul>

<b>Following Risk Assessment, a local authority should ask:</b>
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|--|
| <ul style="list-style-type: none"><li>• Is the learner/parent/person exercising learner parental responsibility satisfied? If not, why?</li></ul>  |
| <ul style="list-style-type: none"><li>• Does the route in question need to be assessed again?</li></ul>  |
| <ul style="list-style-type: none"><li>• Are the correct complaints procedures in place?</li></ul>  |
| <ul style="list-style-type: none"><li>• Has the evidence demonstrating the safety of the route been compiled so that it can be made available to the learner/parent/person exercising parental responsibility?</li></ul> |

## **Annex 3:**

### **Related Web links**

#### **Local authority:**

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

#### Isle of Anglesey

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

#### Bridgend County Borough Council

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

#### Blaenau Gwent County Borough Council

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

#### Caerphilly County Borough Council

<http://www.caerphilly.gov.uk/site.aspx?s=qDAHRXN8cSZ9oLQm4cvwPGFdfG1SCeIA>

#### Cardiff Council

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

#### Carmarthenshire County Council

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

#### Ceredigion County Council

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

#### Conwy County Borough Council

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

Denbighshire County Council

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

[Flintshire County Council](#)

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

Gwynedd Council

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

Merthyr Tydfil County Borough Council

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

Monmouthshire County Council

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

Neath Port Talbot County Borough Council

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

[Newport City Council](#)

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

Pembrokeshire County Council

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

Powys County Council

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

Rhondda Cynon Taf

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

City and County of Swansea

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

Torfaen County Borough Council

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

Vale of Glamorgan County Council

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

Wrexham County Borough Council

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

### **Other useful websites:**

#### **Engagement with Children and Young People**

Children's Commissioner

<http://www.childcom.org.uk/>

Children in Wales

<http://www.childreninwales.org.uk/inyourarea/singleplans/index.html>

Funky Dragon (Children and Young People's Assembly for Wales)

<http://www.funkydragon.org/en/>

[Learning Disability Wales](#)

<https://www.ldw.org.uk/>

[School Councils/ Pupils Voice Wales](#)

<http://www.pupilvoicewales.org.uk/>

[Snap Cymru](#)

<http://www.snapcymru.org/>

[Super Ambassadors \(Children's Commissioner\)](#)

<http://www.childcom.org.uk/en/super-ambassadors/>

[The All Wales Schools Core Liaison Programme \(AWSCLP\)](#)

<http://www.schoolbeat.org/en/parents/know-the-programme/national-events/what-is-the-all-wales-school-liaison-core-programme/>

<http://wales.gov.uk/statistics-and-research/all-wales-school-liaison-core-programme-evaluation-report/?lang=en>

[Travel Code \(teaching resources\)](#)

<http://www.travelcode.org/>

### **Best practice and Case studies:**

Faith in Education (Wales)

<http://wales.gov.uk/topics/educationandskills/schoolshome/curriculumwales/arevisedcurriculumforwales/religiouseducation/?lang=en>

Learning Wales (Improving Behaviour and attendance)

<http://learning.wales.gov.uk/improvementareas/behaviourandattendance/?lang=en#/improvementareas/behaviourandattendance/?lang=en>

Learning Wales (SEN)

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

Living Streets

<http://www.livingstreets.org.uk/>

Powys Association of Voluntary Organisations (PAVO)

<http://www.pavo.org.uk/home.html>

Sustrans

<http://www.sustrans.org.uk/wales>

Tendering road passenger transport contracts – best practice guidance

<https://www.gov.uk/government/publications/tendering-road-passenger-transport-contracts-best-practice-guidance>

Travel Training

[http://www.traveline-cymru.info/uploads/TravelPlans/SMART\\_TRAINING\\_-\\_ENGLISH.pdf](http://www.traveline-cymru.info/uploads/TravelPlans/SMART_TRAINING_-_ENGLISH.pdf)

[http://www.welshcontactcentreforum.co.uk/admin/content/files/SW\\_WITCH/Smart%20Travel%20Training%20presentationWWACC.pdf](http://www.welshcontactcentreforum.co.uk/admin/content/files/SW_WITCH/Smart%20Travel%20Training%20presentationWWACC.pdf)

<http://www.wlga.gov.uk/stp08-cardiff-council>

**Safe Travel:**



Arriva Wales (Educating Children)

<http://www.arrivatrainswales.co.uk/EducatingChildren/>

Network Rail (rail crossing safety)

<http://www.networkrail.co.uk/level-crossings/using-level-crossings/>

### **School Travel Plans**

<http://www.gettravelwise.com/business-education/schools/benefits-of-school-travel-plans>

Wales Accord on the Sharing of Personal Information

<http://wales.gov.uk/topics/improvingservices/sharingpip/waspi/?lang=en>

<http://www.wales.nhs.uk/sites3/home.cfm?orgid=702>

# Agenda Item 5



## Report of the Chief Legal Officer

Appeals & Awards Committee – 10 November 2021

### Exclusion of the Public

<b>Purpose:</b>	To consider whether the Public should be excluded from the following items of business.	
<b>Policy Framework:</b>	None.	
<b>Consultation:</b>	Legal.	
<b>Recommendation(s):</b>	It is recommended that:	
<b>1)</b>	The public be excluded from the meeting during consideration of the following item(s) of business on the grounds that it / they involve(s) the likely disclosure of exempt information as set out in the Paragraphs listed below of Schedule 12A of the Local Government Act 1972 as amended by the Local Government (Access to Information) (Variation) (Wales) Order 2007 subject to the Public Interest Test (where appropriate) being applied.	
	<b>Item No.</b>	<b>Relevant Paragraphs in Schedule 12A</b>
	6	12 & 13
<b>Report Author:</b>	Democratic Services	
<b>Finance Officer:</b>	Not Applicable	
<b>Legal Officer:</b>	Tracey Meredith – Chief Legal Officer(Monitoring Officer)	

#### 1. Introduction

- 1.1 Section 100A (4) of the Local Government Act 1972 as amended by the Local Government (Access to Information) (Variation) (Wales) Order 2007, allows a Principal Council to pass a resolution excluding the public from a meeting during an item of business.
- 1.2 Such a resolution is dependant on whether it is likely, in view of the nature of the business to be transacted or the nature of the proceedings that if members of the public were present during that item there would be disclosure to them of exempt information, as defined in section 100I of the Local Government Act 1972.

#### 2. Exclusion of the Public / Public Interest Test

- 2.1 In order to comply with the above mentioned legislation, Cabinet will be requested to exclude the public from the meeting during consideration of the item(s) of business identified in the recommendation(s) to the report on the

grounds that it / they involve(s) the likely disclosure of exempt information as set out in the Exclusion Paragraphs of Schedule 12A of the Local Government Act 1972 as amended by the Local Government (Access to Information) (Variation) (Wales) Order 2007.

- 2.2 Information which falls within paragraphs 12 to 15, 17 and 18 of Schedule 12A of the Local Government Act 1972 as amended is exempt information if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- 2.3 The specific Exclusion Paragraphs and the Public Interest Tests to be applied are listed in **Appendix A**.
- 2.4 Where paragraph 16 of the Schedule 12A applies there is no public interest test. Councillors are able to consider whether they wish to waive their legal privilege in the information, however, given that this may place the Council in a position of risk, it is not something that should be done as a matter of routine.

### **3. Financial Implications**

- 3.1 There are no financial implications associated with this report.

### **4. Legal Implications**

- 4.1 The legislative provisions are set out in the report.
- 4.2 Councillors must consider with regard to each item of business set out in paragraph 2 of this report the following matters:
  - 4.2.1 Whether in relation to that item of business the information is capable of being exempt information, because it falls into one of the paragraphs set out in Schedule 12A of the Local Government Act 1972 as amended and reproduced in Appendix A to this report.
  - 4.2.2 If the information does fall within one or more of paragraphs 12 to 15, 17 and 18 of Schedule 12A of the Local Government Act 1972 as amended, the public interest test as set out in paragraph 2.2 of this report.
  - 4.2.3 If the information falls within paragraph 16 of Schedule 12A of the Local Government Act 1972 in considering whether to exclude the public members are not required to apply the public interest test but must consider whether they wish to waive their privilege in relation to that item for any reason.

**Background Papers:** None.

**Appendices:** Appendix A – Public Interest Test.

## Public Interest Test

No.	Relevant Paragraphs in Schedule 12A
<b>12</b>	<b>Information relating to a particular individual.</b>
	<p>The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 12 should apply. Their view on the public interest test was that to make this information public would disclose personal data relating to an individual in contravention of the principles of the Data Protection Act. Because of this and since there did not appear to be an overwhelming public interest in requiring the disclosure of personal data they felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.</p>
<b>13</b>	<b>Information which is likely to reveal the identity of an individual.</b>
	<p>The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 13 should apply. Their view on the public interest test was that the individual involved was entitled to privacy and that there was no overriding public interest which required the disclosure of the individual's identity. On that basis they felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.</p>
<b>14</b>	<b>Information relating to the financial or business affairs of any particular person (including the authority holding that information).</b>
	<p>The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 14 should apply. Their view on the public interest test was that:</p> <p><b>a)</b> Whilst they were mindful of the need to ensure the transparency and accountability of public authority for decisions taken by them in relation to the spending of public money, the right of a third party to the privacy of their financial / business affairs outweighed the need for that information to be made public; or</p> <p><b>b)</b> Disclosure of the information would give an unfair advantage to tenderers for commercial contracts.</p> <p>This information is not affected by any other statutory provision which requires the information to be publicly registered.</p> <p>On that basis they felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.</p>

No.	Relevant Paragraphs in Schedule 12A
15	<p><b>Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.</b></p>
	<p>The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 15 should apply. Their view on the public interest test was that whilst they are mindful of the need to ensure that transparency and accountability of public authority for decisions taken by them they were satisfied that in this case disclosure of the information would prejudice the discussion in relation to labour relations to the disadvantage of the authority and inhabitants of its area. On that basis they felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.</p>
16	<p><b>Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.</b></p>
	<p>No public interest test.</p>
17	<p><b>Information which reveals that the authority proposes:</b></p> <p><b>(a) To give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</b></p> <p><b>(b) To make an order or direction under any enactment.</b></p>
	<p>The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 17 should apply. Their view on the public interest test was that the authority's statutory powers could be rendered ineffective or less effective were there to be advanced knowledge of its intention/the proper exercise of the Council's statutory power could be prejudiced by the public discussion or speculation on the matter to the detriment of the authority and the inhabitants of its area. On that basis they felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.</p>
18	<p><b>Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime</b></p>
	<p>The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 18 should apply. Their view on the public interest test was that the authority's statutory powers could be rendered ineffective or less effective were there to be advanced knowledge of its intention/the proper exercise of the Council's statutory power could be prejudiced by public discussion or speculation on the matter to the detriment of the authority and the inhabitants of its area. On that basis they felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.</p>

# Agenda Item 6

By virtue of paragraph(s) 13, 14 of Schedule 12A  
of the Local Government Act 1972  
as amended by the Local Government (Access to  
Information) (Variation) (Wales) Order 2007.

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