

Pwyllgor Apeliadau a Dyfarniadau

Lleoliad: Ystafell 235 - Neuadd y Ddinas, Abertawe

Dyddiad: Dydd Iau, 15 Tachwedd 2018

Amser: 2.00 pm

Cadeirydd: Cyngorydd

Aelodaeth:

Cynghorwyr: J E Burtonshaw, J P Curtice, J A Hale, J W Jones, H M Morris a/ac
D W W Thomas

Agenda

Rhif y Dudalen.

- | | | |
|-----------|---|------------------|
| 1 | Ethol Cadeirydd ar gyfer blwyddyn ddinesig 2018-2019. | |
| 2 | Ethol Is-gadeirydd ar gyfer blwyddyn ddinesig 2018-2019. | |
| 3 | Ymddiheuriadau am absenoldeb. | |
| 4 | Derbyn datgeliadau o fuddiannau personol a rhagfarnol gan aelodau.
www.abertawe.gov.uk/DatgeliadauBuddiannau | |
| 5 | Cofnodion:
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| 6 | Trefn trafodion y gwrandawriad apêl. | 3 |
| 7 | Dinas a Sir Abertawe - Polisi Cludiant o'r Cartref i'r Ysgol. | 4 - 12 |
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Huw Evans

Huw Evans
Pennaeth Gwasanaethau Democrataidd
Dydd Llun, 12 Tachwedd 2018

Cyswllt: Gwasanaethau Democrataidd - 636923

Agenda Item 5

CITY AND COUNTY OF SWANSEA

MINUTES OF THE APPEALS & AWARDS COMMITTEE

**HELD AT COMMITTEE ROOM 6, GUILDHALL, SWANSEA ON
THURSDAY, 31 AUGUST 2017 AT 10.00 AM**

PRESENT: Councillor D W W Thomas (Chair) Presided

Councillor(s)
J E Burtonshaw

Councillor(s)
J A Hale

Councillor(s)
J W Jones

Officer(s)

Barrie Gilbert
Stephen Holland

Allison Lowe
Jeremy Parkhouse

Cath Swain
Kathryn Thomas

Senior Transport Officer

Senior Solicitor

Democratic Services Officer

Democratic Services Officer

Integrated Transport Manager

Head of School Support Unit

Apologies for Absence

Councillor(s): J P Curtice and H M Morris

17 **TO ELECT A CHAIR FOR THE 2017-2018 MUNICIPAL YEAR.**

RESOLVED that Councillor D W W Thomas be elected Chair for the 2017-2018 Municipal Year.

COUNCILLOR D W W THOMAS (CHAIR) PRESIDED

18 **TO ELECT A VICE-CHAIR FOR THE 2017-2018 MUNICIPAL YEAR.**

RESOLVED that Councillor J A Hale be elected Vice Chair for the 2017-2018 Municipal Year.

19 **DISCLOSURES OF PERSONAL AND PREJUDICIAL INTERESTS.**

In accordance with the Code of Conduct adopted by the City & County of Swansea no interests were declared.

20 **MINUTES.**

RESOLVED that the Minutes of the meeting of the Appeals and Awards Committee held on 26 April 2016 be signed and approved as a correct record.

21 **APPEAL HEARING ORDER OF PROCEEDINGS.**

RESOLVED that the Appeal Hearing Order of Proceedings was noted.

22 **CITY AND COUNTY OF SWANSEA - HOME TO SCHOOL TRANSPORT POLICY.**

RESOLVED that the City & County of Swansea – Home to School Transport Policy was noted.

23 **WELSH GOVERNMENT - LEARNER TRAVEL - STATUTORY PROVISION AND OPERATIONAL GUIDANCE.**

RESOLVED that the Welsh Government – Learner Travel – Statutory Provision and Operational Guidance was noted.

24 **EXCLUSION OF THE PUBLIC.**

The Committee was requested to exclude the public from the meeting during consideration of the item(s) of business identified in its recommendation(s) to the report on the grounds that it/they involve(s) the disclosure of exempt information as set out in the exclusion paragraph of Schedule 12A of the Local Government Act 1972, as amended by the Local Government (Access to Information) (Variation) (Wales) Order 2007, relevant to the item(s) of business set out in the report.

The Committee considered the Public Interest Test in deciding whether to exclude the public from the meeting for the items of business where the Public Interest Test was relevant as set out in the report.

RESOLVED that the public be excluded for the following items on the agenda.

(CLOSED SESSION)

25 **SCHOOL TRANSPORT APPEAL.**

RESOLVED that the meeting be adjourned until 10.30 am.

The Committee heard a joint appeal by the parents JE & AF. The appeal was brought against the Department's decision to designate the school walking route between Pontlliw and Pontardulais Comprehensive School as being 'available'.

RESOLVED that the appeal by JE & AF **BE DISMISSED.**

The meeting ended at 11.53 am

CHAIR

Agenda Item 6

APPEALS AND AWARDS COMMITTEE

SCHOOL TRANSPORT APPEAL - PROCEDURE

1. Introductions.
2. Procedure explained by Chair.
3. Case for the LEA outlined by the Transportation Officer.
4. Questioning allowed of the Transportation Officer.
5. Case for the parent outlined by the parent and / or their representative.
6. Questioning allowed of the parent.
7. Summing up / closing comments by the Transportation Officer.
8. Summing up / closing comments by the parent.
9. Both parties leave to allow the Committee to consider and make their decision.
10. Both parties notified of the decision within 7 days or as soon as reasonably practicable.

Note: Committee Members may ask questions at any time if they require clarification of what is being said or if they need information in order to reach a decision.

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

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

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 SWWITCH Home to School Code of Conduct page 12 or SWWITCH 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/carers 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.

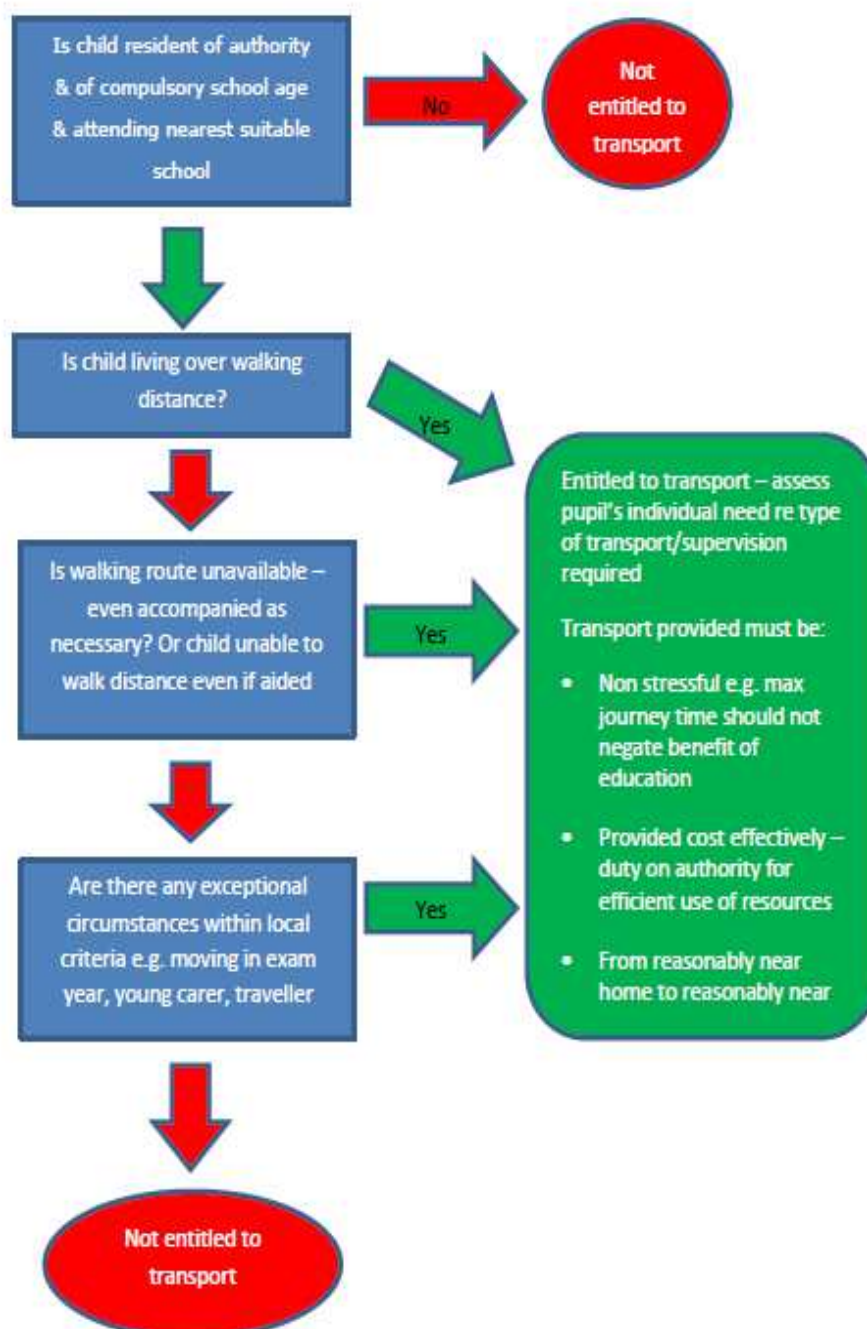
xii. Pupils will usually be expected to walk to the nearest pick up point:

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

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)¹ 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 2011² 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 2008³ (“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.

¹ <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>

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

³ 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 learners⁴ travelling from home to school⁵ 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.

⁴ Definition of 'learner' is provided in the glossary (Section 2).

⁵ 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'⁶)
- Promote access to Welsh Medium education⁷ and training
- Promote sustainable modes of travel⁸
- Welsh Ministers may also issue direction and/or make statutory guidance⁹.

1.9 Legal Duties of the local authority.

Local authorities¹⁰ **must**:

- Assess the travel needs of learners in their authority area¹¹
- 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 school¹²
- 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 school¹³
- Assess and meet the needs of "looked after"¹⁴ children in their authority area¹⁵
- Promote access to Welsh medium education¹⁶
- Promote sustainable modes of travel¹⁷

⁶ Section 12 of the Measure

⁷ Section 10 of the Measure

⁸ Section 11 of the Measure

⁹ Section 15 of the Measure

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

¹¹ Section 2 of the Measure

¹² Section 3 of the Measure

¹³ Section 3 of the Measure

¹⁴ Definition of 'looked after' children is provided in Chapter 1 paragraph 1.49

¹⁵ Sections 2 and 3 of the Measure

¹⁶ Section 10 of the Measure

¹⁷ Section 11 of the Measure

Under section 32 of the Education Act 2002¹⁸ (which was amended by section 21 of the Measure), local authorities have the power to change school session times¹⁹, **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**²⁰. The Welsh Government has made regulations setting out the appropriate procedure.²¹

Where learners are not entitled to free transport, local authorities have the power to provide transport on a discretionary basis²².

1.10 Legal Duties of Head-teachers.

They **must**:

- Ensure compliance with the Travel Code²³

Head Teachers should also:

- Promote knowledge and awareness of the Travel Code²⁴
- Incorporate the Travel Code into the school's overarching school behaviour policy²⁵

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

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

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

²⁰ Change can only be made if it meets these criteria

²¹ 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>

²² Section 6 of the Measure

²³ 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>

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

²⁵ 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 area²⁶.

- 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 learners²⁷ and learners with learning difficulties²⁸
 - Any particular needs of learners who are 'looked after' or formerly looked after by a local authority²⁹

²⁶ 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.

²⁷ 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)

²⁸ Section 24(1) of the Measure

²⁹ 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 must³⁰ 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 travel³¹ 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 year³².

³⁰ Sections 3(5) (transport arrangements) and 4(6) of the Measure (travel arrangements)

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

³² 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 must³³ 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 learner³⁴. 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 times³⁵ :-

- the learner's age

³³ Section 3 of the Measure.

³⁴ Section 3(5) of the Measure.

³⁵ 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 for³⁶
- for the purposes of this document the locality of the learner's home in relation to available schools in the vicinity³⁷

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 risk³⁸, 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 arrangements³⁹ 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.

³⁶ 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.

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

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

³⁹ 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 must⁴⁰ 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 difficulty⁴¹
- 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 have⁴²".

⁴⁰ Section 4(5) of the Measure.

⁴¹ 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

⁴² 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 2009⁴³.

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 charge⁴⁴ 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.

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

⁴⁴ This relates to learners of compulsory school age only.

1.43 The School Admissions Code 2013⁴⁵ (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 applies⁴⁶.

1.44 Parental Preference

Section 86 of the School Standards and Framework Act 1998⁴⁷ 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

⁴⁵ 005/2013.

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

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

⁴⁷ 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”)⁴⁸ 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 444⁴⁹ 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 authority⁵⁰ in the exercise of its social services

⁴⁸ <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>

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

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

functions⁵¹ 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 residency⁵².
- 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 resident⁵³.

1.54 Dual Residency

⁵¹ 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>

⁵² 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

⁵³ 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 parent⁵⁴, 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 qualify⁵⁵.
- 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 1996⁵⁶ 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.

⁵⁴ '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>

⁵⁵ Section 19(6) of the Measure.

⁵⁶ <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 provision⁵⁷

⁵⁷ <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 Wales⁵⁸.
- 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

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

Information (Wales) Regulations 2009⁵⁹, 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 education⁶⁰ 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

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

⁶⁰ 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 Scheme⁶¹ and Welsh in Education Strategic Plan (WESP).⁶²
- 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 Wales⁶³ 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:

⁶¹ 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>

⁶²

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

⁶³

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)⁶⁴ 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

⁶⁴ <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 statement⁶⁵. The definition of "learning difficulty" within the Measure⁶⁶ 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 child⁶⁷ 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.

⁶⁵ Section 3(6) of the Measure

⁶⁶ Section 24(1) of the Measure

⁶⁷ Under section 324 of the Education Act 1996.

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

- 1.87 The Equality Act 2010⁶⁸ 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 2010⁶⁹ 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 2010,⁷⁰ 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

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

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

⁷⁰ <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 area⁷¹. 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’⁷² 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 1998⁷³ in relation to personal data, including sensitive personal data⁷⁴. Tender documents should not identify learners to be transported or information that could be used to identify the learner.

⁷¹ Section 2(2) of the Measure.

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

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

⁷⁴ 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 provisions⁷⁵. 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

⁷⁵ 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 schools⁷⁶. 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 must⁷⁷ 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 publish⁷⁸ the information before 1 October of the year preceding the academic year in which the changes will come into force in

⁷⁶ Section 9 of the Measure

⁷⁷ Regulation 4 of the Learner Travel Information (Wales) Regulations 2009

⁷⁸ 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 2012⁷⁹ ('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)⁸⁰. 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

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

⁸⁰ <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 Activity⁸¹ (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.

⁸¹ 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 three⁸² 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))⁸³, the Health and Safety Executive (HSE)⁸⁴ and the Traffic Commissioner⁸⁵ 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

⁸² 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>

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

⁸⁴ <http://www.hse.gov.uk/>

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

1.119 In 2008 under the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007⁸⁶ 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)⁸⁷. To obtain a CPC, a driver must complete a minimum of 35 hours periodic driver training within a 5 year period⁸⁸. 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.

⁸⁶ 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>

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

⁸⁸ 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 2009⁸⁹ set out the procedures to follow when the local authority intends to change school session times.
- 1.123 Section 32 of the Education Act 2002⁹⁰, 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 above⁹¹. 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 holidays⁹².
- 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 end⁹³).
- 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

⁸⁹ <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>

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

⁹¹ Section 32(2) Education Act 2002

⁹² section 32(1) Education Act 2002

⁹³ 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 must⁹⁴ 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 must⁹⁵ 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

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

⁹⁵ 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 1996⁹⁶ (as amended by Section 22 of the Measure⁹⁷). Further information on this provision is provided in Section 3 (Question 26).
- 1.133 Section 6 of the Transport Act 1985⁹⁸ 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 1981⁹⁹, 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

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

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

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

⁹⁹ <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 1996¹⁰⁰.

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>

¹⁰⁰ <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/ukxi/1998/1607/contents/made>
- The Education (school leaving date) Order 1997 - <http://www.legislation.gov.uk/ukxi/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/ukxi/1986/1078/contents/made>
- Motor Vehicles (Wearing of Seat Belts) Regulations 1993/176 - <http://www.legislation.gov.uk/ukxi/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/ukxi/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 duty¹⁰¹ on the Welsh Ministers to make a Travel Behaviour Code and to publish it. The statutory All Wales Travel Behaviour Code (the “Travel Code”¹⁰²) 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.

¹⁰¹ Section 12 of the Measure

¹⁰² <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)¹⁰³.
- 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 day¹⁰⁴.
- 2.10. The Travel Code statutory guidance¹⁰⁵ 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 time¹⁰⁶. Prior to reviewing the Travel Code, Welsh Ministers must consult such persons as they consider

¹⁰³ 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>

¹⁰⁴ 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).

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

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

appropriate, for example, local authorities, schools and learners¹⁰⁷.

Enforcement of the Travel Code - Sanctions¹⁰⁸

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)

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

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

¹⁰⁷ Section 12(6) of the Measure.

¹⁰⁸ 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 to¹⁰⁹:

¹⁰⁹ 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 Wales¹¹⁰ and sections 2 and 3 of the National Assembly for Wales Circular 47/2009 – Inclusion and Pupil Support¹¹¹ 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 2009¹¹². 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

¹¹⁰

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

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

¹¹² 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 them¹¹³

¹¹³ <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 2009¹¹⁴ (“the 2009 Regulations”) replace paragraphs 8, 19 and 20 of Schedule 1 to the Education (School Information)(Wales) Regulations 1997¹¹⁵. 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.

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

¹¹⁵ S.I. 1997/1832.

3.4. The information must be made available by the 1 October preceding the academic year to which the information relates¹¹⁶. The information must be made available¹¹⁷:-

- 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 charge¹¹⁸ 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,

¹¹⁶ Regulation 4(2) of the 2009 Regulations.

¹¹⁷ Regulation 4(3) of the 2009 Regulations.

¹¹⁸ 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 2013¹¹⁹)

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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 2011¹²⁰ (“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 Measure¹²¹.
- 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

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

¹²¹ 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 1986¹²² (as amended). Seat belts must be fitted in all minibuses¹²³. 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 1988¹²⁴). 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 seat¹²⁵.

Legislation Governing Seat Belt Provision after 1 October 2014

- 4.8. The 2011 Measure requires relevant bodies¹²⁶ to ensure that every bus used for dedicated learner transport¹²⁷ 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 buses¹²⁸ if they are used for any dedicated learner

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

¹²³ 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.

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

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

¹²⁶ 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.

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

¹²⁸ 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.¹²⁹ However, the drivers of the following types of vehicles are not bound by this requirement.¹³⁰

- 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

¹²⁹ section 15(3) Road Traffic Act 1988

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

¹³⁰ 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 must¹³¹ 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/EC¹³² 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 Measure¹³³ 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.

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

¹³² Information on the EU Directive is provided in the Glossary (Section 2).

¹³³ 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)¹³⁴.

¹³⁴ 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 school¹³⁵. 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 flow¹³⁶ **or**
- “Step offs”¹³⁷ 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 85th percentile speed rule (or the speed at which no

¹³⁵ Section 2 of the Measure

¹³⁶ Traffic flows are defined in Chapter 5 paragraphs 5.8 – 5.12

¹³⁷ 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 Code¹³⁸ **or**

- Sufficient gaps¹³⁹ 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

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

¹³⁹ 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 safety¹⁴⁰ 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

¹⁴⁰ 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 risk¹⁴¹ is identified, it is recommended that suitable measures are considered – for example the introduction of speed humps or speed cameras¹⁴².

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.

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

¹⁴² 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 85th 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 flooding¹⁴³
 - if this is a regular occurrence and
 - when severe flooding occurs, whether a suitable detour is available

¹⁴³ 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 Wales¹⁴⁴.

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.

¹⁴⁴ <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 2004¹⁴⁵ 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 2007¹⁴⁶ 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

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

¹⁴⁶ 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 guidance¹⁴⁷, namely ‘Stronger Partnerships for Better Outcomes’ 2006 (National Assembly for Wales Circular 35/2006)¹⁴⁸ and ‘Shared Planning for Better Outcomes’ 2007 (Welsh Assembly Government Circular 31/2007)¹⁴⁹ 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)¹⁵⁰

- 5.44 Under sections 325-327 of the Criminal Justice Act 2003¹⁵¹, 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 Authorities¹⁵². 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).

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

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

¹⁴⁹ <http://wales.gov.uk/topics/educationandskills/publications/guidance/sharedplanningforbetteroutcomes?lang=en>

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

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

¹⁵² 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 1998¹⁵³ (particularly as information relating to children is sensitive)¹⁵⁴.

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 2011¹⁵⁵ 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

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

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

¹⁵⁵ <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 1¹⁵⁶.
- 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:

Parents¹⁵⁷

- 5.56 Parents have the following responsibilities:

¹⁵⁶ 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.

¹⁵⁷ 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 Code¹⁵⁸; and
- Determine the standard of behaviour considered acceptable (where it is not determined by the governing body or the Welsh Ministers)¹⁵⁹

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 2006¹⁶⁰, 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).

¹⁵⁸ See section 89(2A) Education and Inspections Act 2006.

¹⁵⁹ See section 89(3A) Education and Inspections Act 2006.

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

Local Authorities¹⁶¹

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 1974¹⁶² 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

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

¹⁶² 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 1974¹⁶³ 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 1999¹⁶⁴ 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).

¹⁶³ See section 2 of the 1974 Act

¹⁶⁴ 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.¹⁶⁵

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 1998¹⁶⁶ ("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

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

¹⁶⁶ 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 provision¹⁶⁷.

- 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 form¹⁶⁸. 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 Measure¹⁶⁹.
- 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.

¹⁶⁷ 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.

¹⁶⁸ Contact details for each local authority website are provided in Annex 3

¹⁶⁹ 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 Guidance¹⁷⁰ 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

¹⁷⁰ 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 Guidance¹⁷¹

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, co-operate with them in handling disciplinary action for breaches of the Code, including involvement in the interviewing of learners as part of any investigation
- Ensure that designated persons maintain records of all reported incidents that they are responsible for investigating

¹⁷¹ 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 staff¹⁷². Disciplinary penalties¹⁷³ 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.

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

¹⁷³ 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 Code¹⁷⁴ 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.

¹⁷⁴

<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 Code¹⁷⁵. 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".¹⁷⁶ 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.

¹⁷⁵ Issued by the Welsh Government July 2013-005/2013

¹⁷⁶ 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 driver¹⁷⁷.

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.¹⁷⁸

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

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

¹⁷⁸ 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.¹⁷⁹

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.

¹⁷⁹ 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 school¹⁸⁰.

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

¹⁸⁰ 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 Places¹⁸¹ – 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

¹⁸¹ 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 2008¹⁸² 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.

¹⁸² 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 travel¹⁸³.

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).

¹⁸³ 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 must¹⁸⁴ 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 seat¹⁸⁵.

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.

¹⁸⁴ EU Directive 2003/59

¹⁸⁵ 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 transport¹⁸⁶. 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.

¹⁸⁶ 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 must¹⁸⁷ 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?

¹⁸⁷ 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 transport¹⁸⁸ 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 promote¹⁸⁹ 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?

¹⁸⁸ Section 6 Learner Travel (Wales) Measure 2008

¹⁸⁹ 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 2006.¹⁹⁰

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?

¹⁹⁰ 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”¹⁹¹ 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 learner¹⁹². The charge to parents may exceed the cost incurred by the local authority to provide the “optional extra”.¹⁹³

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.

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

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

¹⁹³ 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 higher¹⁹⁴).

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.

¹⁹⁴ 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 must¹⁹⁵ 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

¹⁹⁵ 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/Order¹⁹⁶) defines compulsory school age.

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

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

¹⁹⁶ 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 Framework¹⁹⁷

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

¹⁹⁷ <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 2009¹⁹⁸. The Health and Safety Executive have also published guidance on risk assessments generally, and on “Workplace Transport Safety”¹⁹⁹.

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

¹⁹⁸ <http://wales.gov.uk/topics/transport/?lang=en>

¹⁹⁹ <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') years²⁰⁰?

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

²⁰⁰ '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 <ul style="list-style-type: none"> • Name • Age • Name of school 		Companion details <ul style="list-style-type: none"> • Name • Relationship to Learner 		
Route – A to B				
	Risk Severity *	Risk Level* *	Control Measures	Mitigated Risk***
Learner concerns <ul style="list-style-type: none"> • Personal issues • Local issues • Hot spots • Other transport • Issues 				
Traffic levels				
Footpath details				
Footways				
Crossing points				
<ul style="list-style-type: none"> • Rivers • Canals • Ditches • Embankments • Vegetation 				
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

Before a Risk Assessment a local authority should ask:
<ul style="list-style-type: none">• To which category do the risks/dangers belong? Are the risks/dangers physical, topographical, geographic, environmental or social?
<ul style="list-style-type: none">• When was the route last risk-assessed?
<ul style="list-style-type: none">• 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).
<ul style="list-style-type: none">• Were learners consulted during the last risk assessment? If so, what were their views?
<ul style="list-style-type: none">• 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)
<ul style="list-style-type: none">• In the case of social dangers, who are the relevant partner organisations/agencies?
During the Risk Assessment process, a local authority should ask:
<ul style="list-style-type: none">• 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).
<ul style="list-style-type: none">• Should learners be consulted (particularly if they have not been consulted at all or for a long time)?
<ul style="list-style-type: none">• Which mechanism should be used to consult learners – for example School Councils etc.)?
<ul style="list-style-type: none">• 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?
<ul style="list-style-type: none">• When will the evidence (qualitative or quantitative) become available?
<ul style="list-style-type: none">• If working with partner organisations, have information-sharing protocols been put in place? Have local government lawyers been consulted?

Following Risk Assessment, a local authority should ask:
<ul style="list-style-type: none"> • Is the learner/parent/person exercising learner parental responsibility satisfied? If not, why?
<ul style="list-style-type: none"> • Does the route in question need to be assessed again?
<ul style="list-style-type: none"> • Are the correct complaints procedures in place?
<ul style="list-style-type: none"> • 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?

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=qDAHRXN8cSZ9oLQm4cvwPGFdfG1SCelA>

Cardiff Council

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

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

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

[Wrexham County Borough Council](#)

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.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/improving-services/sharing-pip/waspi/?lang=en>

<http://www.wales.nhs.uk/sites3/home.cfm?orgid=702>

Agenda Item 9

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)

Learner Travel (Wales) Measure 2008

2008 nawm 2

A Measure of the National Assembly for Wales to make provision about the travel of persons receiving primary, secondary or further education or training to and from schools or other places where they receive it; and for connected purposes.

This Measure, passed by the National Assembly for Wales on 30 September 2008 and approved by Her Majesty in Council on 10 December 2008, enacts the following provisions:--

[10 December 2008]

Document information

Learner Travel (Wales) Measure 2008

Date made

[10 December 2008]

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/1 Main terms used in this Measure

Main terms

1 Main terms used in this Measure

- (1) This section applies for the purposes of this Measure.
- (2) "Travel arrangements" are travel arrangements of any description and include--
 - (a) the provision of transport;
 - (b) the provision of one or more persons to escort a child when travelling;
 - (c) the payment of the whole or any part of a person's reasonable travelling expenses;
 - (d) the payment of allowances in respect of the use of particular modes of travel.
- (3) "Learners" means persons who receive education or training.
- (4) The following are "relevant places"--
 - (a) maintained schools;
 - (b) institutions in the further education sector;
 - (c) independent schools named in *statements maintained under section 324 of the Education Act 1996 (c 56)* [individual development plans maintained under section 14 or 19 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018];
 - (d) non-maintained special schools;
 - (e) pupil referral units;

- (f) places other than pupil referral units where education is arranged under section 19(1) of the Education Act 1996;
- (g) places where education or training funded by the Welsh Ministers under section 34(1) of the Learning and Skills Act 2000 (c 21) is provided;
- (h) *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;*
- [(h) independent special post-16 institutions within the meaning given by section 56 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 which are named in individual development plans maintained under section 14 or 19 of that Act;]
- (i) places where nursery education is provided--
 - (i) by a local authority, or
 - (ii) 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 (c 31);
- (j) places where work experience is undertaken.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 28(2).

Appointment

Sub-ss (1)-(3), (4)(a)-(i): Appointment: 6 March 2009: see SI 2009/371, art 2(1), Schedule, Pt 1.

Sub-s (4)(j): Appointment (for certain purposes): 30 October 2009: see SI 2009/2819, art 2(1)(a).

Amendment

Sub-s (4): in para (c) words "statements maintained under section 324 of the Education Act 1996 (c 56)" in italics repealed and subsequent words in square brackets substituted by the Additional Learning Needs and Education Tribunal (Wales) Act 2018, s 96, Sch 1, para 14(1), (2)(a).

Date in force: to be appointed: see the Additional Learning Needs and Education Tribunal (Wales) Act 2018, s 100(3).

Sub-s (4): para (h) substituted by the Additional Learning Needs and Education Tribunal (Wales) Act 2018, s 96, Sch 1, para 14(1), (2)(b).

Date in force: to be appointed: see the Additional Learning Needs and Education Tribunal (Wales) Act 2018, s 100(3).

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/2 Duty to assess learner travel needs

Learner travel arrangements

2 Duty to assess learner travel needs

- (1) This section applies in relation to--
 - (a) learners who have not attained the age of 19;
 - (b) learners who have attained the age of 19 who have begun a course of education or training before attaining that age and continue to attend that course;
 - (c) such other learners as may be prescribed.
- (2) In each academic year, a local authority must assess the learner travel needs of their area for the following academic year. But this duty is subject to the provisions of section 5.
- (3) For the purposes of subsection (2), the "learner travel needs" of a local authority's area are 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.
- (4) In making an assessment under subsection (2) a local authority must have regard in particular to--
 - (a) the needs of learners who are disabled persons, (b) the needs of learners with learning difficulties,
 - (c) the needs of learners who are children looked after, or formerly looked after, by a local authority,
 - (d) the age of learners, and
 - (e) the nature of the routes which learners could reasonably be expected to take to the relevant places where they receive education or training.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 28(2).

Appointment

Appointment: 6 March 2009: see SI 2009/371, art 2(1), Schedule, Pt 1.

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/3 Local authority duty to make transport arrangements

3 Local authority duty to make transport arrangements

- (1) This section applies in relation to a child of compulsory school age if--
- (a) the child is ordinarily resident in a local authority's area,
 - (b) the circumstances set out in an entry in column 1 of the following table apply to the child, and
 - (c) the condition, or all of the conditions, set out in the corresponding entry in column 2 of the table are met in relation to the child.
- (2) The local authority must make suitable transport arrangements to facilitate the attendance of the child each day at the relevant places where the child receives education or training. But this duty is subject to the provisions of section 5.

TABLE

Column 1 Circumstances	Column 2 Condition(s)
<p>The child is receiving primary education at--</p> <p>(a) a maintained school, (b) a pupil referral unit, (c) an independent school <i>named in a statement maintained for the child under section 324 of the Education Act 1996</i> [or other institution named in an individual development plan maintained for the child under section 14 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018], or (d) a non-maintained special school, at which the child is a registered pupil.</p>	<p>(a) The child is ordinarily resident at a place 2 miles (3.218688 kilometres) or more from the school or unit. (b) No arrangements have been made by the local authority for enabling the child to become a registered pupil at-- (i) a suitable maintained school, (ii) a suitable pupil referral unit, (iii) an independent school <i>named in a statement maintained for the child under section 324 of the Education Act 1996</i> [or other institution named in an individual development plan maintained for the child under section 14 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018], or (iv) a suitable non-maintained special school, nearer to the place where the child is ordinarily resident. (c) No arrangements have been made by the local authority for suitable boarding accommodation for the child at or near the school or unit.</p>
<p>The child is receiving secondary education at--</p> <p>(a) a maintained school, (b) a pupil referral unit, (c) an independent school <i>named in a statement maintained for the child under section 324 of the Education Act 1996</i> [or other institution named in an individual development plan maintained for the child under section 14 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018], or (d) a non-maintained special school, at which the child is a registered pupil.</p>	<p>(a) The child is ordinarily resident at a place 3 miles (4.828032 kilometres) or more from the school or unit. (b) No arrangements have been made by the local authority for enabling the child to become a registered pupil at-- (i) a suitable maintained school, (ii) a suitable pupil referral unit, (iii) an independent school <i>named in a statement maintained for the child under section 324 of the Education Act 1996</i> [or other institution named in an individual development plan maintained for the child under section 14 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018], or (iv) a suitable maintained school,</p>

	<p>nearer to the place where the child is ordinarily resident.</p> <p>(c) No arrangements have been made by the local authority for suitable boarding accommodation for the child at or near the school or unit.</p>
<p>The child is receiving education or training at an institution in the further education sector at which the child is enrolled as a full-time student.</p> <p>The child--</p> <p>(a) IS a registered pupil at a maintained school, and</p> <p>(b) receives secondary education at a relevant place other than that school.</p> <p>The secondary education referred to in paragraph (b) IS education arranged--</p> <p>(i) by the local authority, or</p> <p>(ii) by, or on behalf of, the governing body of the school at which the child is a registered pupil.</p>	<p>(a) The child is ordinarily resident at a place 3 miles (4.828032 kilometres) or more from the institution.</p> <p>(b) No arrangements have been made by the local authority for enabling the child to become enrolled at a suitable institution nearer to the place where the child is ordinarily resident.</p> <p>The child is ordinarily resident at a place 3 miles (4.828032 kilometres) or more from the relevant place.</p>
<p>The child is looked after by a local authority and is receiving primary education at--</p> <p>(a) a maintained school,</p> <p>(b) a pupil referral unit,</p> <p>(c) an independent school <i>named in a statement maintained for the child under section 324 of the Education Act 1996</i> [or <u>other institution named in an individual development plan maintained for the child under section 19 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018</u>], or</p> <p>(d) a non-maintained special school, at which the child is a registered pupil.</p>	<p>The child is ordinarily resident at a place 2 miles (3.218688 kilometres) or more from the school or unit.</p>
<p>The child is looked after by a local authority and is receiving secondary education at--</p> <p>(a) a maintained school,</p> <p>(b) a pupil referral unit,</p> <p>(c) an independent school <i>named in a statement maintained for the child under section 324 of the Education Act 1996</i> [or <u>other institution named in an individual development plan maintained for the child under section 19 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018</u>], or</p> <p>(d) a non-maintained special school,</p>	<p>The child is ordinarily resident at a place 3 miles (4.828032 kilometres) or more from the school or unit.</p>

at which the child is a registered pupil. _____

- (3) The local authority must not charge a child or a parent who is an individual for any transport arrangements made in accordance with this section.
- (4) Transport arrangements made in accordance with this section may include--
- (a) the provision of transport;
 - (b) the payment of the whole, but not part, of a child's transport expenses.
- (5) For the purposes of subsection (2), transport arrangements are not suitable if--
- (a) they cause unreasonable levels of stress for the child,
 - (b) they take an unreasonable amount of time, or
 - (c) they are unsafe.
- (6) For the purposes of each paragraph (b) in the second column of the table in this section, the school, unit or institution is suitable for the child if the education or training provided there is suitable, having regard to the age, ability and aptitudes of the child and any learning difficulties he or she may have.
- (7) The distances mentioned in column 2 of the table in this section are to be measured by the shortest available route.
- (8) A route is "available" for the purposes of subsection (7) if--
- (a) it is safe for a child without a disability or learning difficulty to walk the route alone, or
 - (b) it is safe for such a child to walk the route with an escort, if the age of the child would call for the provision of an escort.
- (9) Regulations may prescribe circumstances and conditions for the purposes of paragraphs (b) and (c) of subsection (1); such regulations may amend the table or subsections (6), (7) and (8) (including repealing an entry in the table or those subsections).

NOTES

Initial Commencement

To be appointed

To be appointed: see s 28(2).

Appointment

Appointment: 1 September 2009: see SI 2009/371, art 2(2), Schedule, Pt 2.

Amendment

Sub-s (2): Table: in column 1 entry beginning "The child is receiving primary education" in para (c) words from "named in a" to "Education Act 1996" in italics repealed and subsequent words in square brackets substituted by the Additional Learning Needs and Education Tribunal (Wales) Act 2018, s 96, Sch 1, para 14(1), (3)(a)(i).

Date in force: to be appointed: see the Additional Learning Needs and Education Tribunal (Wales) Act 2018, s 100(3).

Sub-s (2): Table: in column 1 entry beginning "The child is receiving secondary education" in para (c) words from "named in a" to "Education Act 1996" in italics repealed and subsequent words in square brackets substituted by the Additional Learning Needs and Education Tribunal (Wales) Act 2018, s 96, Sch 1, para 14(1), (3)(a)(i).

Date in force: to be appointed: see the Additional Learning Needs and Education Tribunal (Wales) Act 2018, s 100(3).

Sub-s (2): Table: in column 1 entry beginning "The child is looked after by a local authority and is receiving primary education" in para (c) words from "named in a" to "Education Act 1996" in italics repealed and subsequent words in square brackets substituted by the Additional Learning Needs and Education Tribunal (Wales) Act 2018, s 96, Sch 1, para 14(1), (3)(a)(ii).

Date in force: to be appointed: see the Additional Learning Needs and Education Tribunal (Wales) Act 2018, s 100(3).

Sub-s (2): Table: in column 1 entry beginning "The child is looked after by a local authority and is receiving secondary education" in para (c) words from "named in a" to "Education Act 1996" in italics repealed and subsequent words in square brackets substituted by the Additional Learning Needs and Education Tribunal (Wales) Act 2018, s 96, Sch 1, para 14(1), (3)(a)(ii).

Date in force: to be appointed: see the Additional Learning Needs and Education Tribunal (Wales) Act 2018, s 100(3).

Sub-s (2): Table: in column 2 entry beginning "The child is receiving primary education" in para (b)(iii) words from "named in a" to "Education Act 1996" in italics repealed and subsequent words in square brackets substituted by the Additional Learning Needs and Education Tribunal (Wales) Act 2018, s 96, Sch 1, para 14(1), (3)(b).

Date in force: to be appointed: see the Additional Learning Needs and Education Tribunal (Wales) Act 2018, s 100(3).

Sub-s (2): Table: in column 2 entry beginning "The child is receiving secondary education" in para (b)(iii) words from "named in a" to "Education Act 1996" in italics repealed and subsequent words in square brackets substituted by the Additional Learning Needs and Education Tribunal (Wales) Act 2018, s 96, Sch 1, para 14(1), (3)(b).

Date in force: to be appointed: see the Additional Learning Needs and Education Tribunal (Wales) Act 2018, s 100(3).

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/4 Local authority duty to make other travel arrangements

4 Local authority duty to make other travel arrangements

- (1) This section applies in relation to a child of compulsory school age if--
 - (a) the child is receiving education or training at a relevant place,
 - (b) the child is ordinarily resident in a local authority's area, and
 - (c) the local authority consider that travel arrangements are necessary to facilitate the attendance of the child each day at the relevant place where the child receives education or training.
- (2) The local authority must make suitable travel arrangements to facilitate the attendance of the child each day at the relevant places where the child receives education or training. But this duty is subject to the provisions of section 5.
- (3) A local authority must not charge a child or a parent who is an individual for any travel arrangements made in accordance with subsection (2).
- (4) Travel arrangements made in accordance with subsection (2) may include the payment of the whole, but not part, of a child's travel expenses.
- (5) In considering whether travel arrangements are suitable for the purposes of this section, a local authority must have regard in particular to--
 - (a) the assessment they carry out in accordance with section 2(2);
 - (b) the transport arrangements they are under a duty to make for the child under section 3;
 - (c) the age of the child;
 - (d) any disability or learning difficulty of the child;
 - (e) the nature of the routes which the child could reasonably be expected to take.
- (6) For the purposes of this section, travel arrangements are not suitable if--
 - (a) they cause unreasonable levels of stress for the child,
 - (b) they take an unreasonable amount of time, or
 - (c) they are unsafe.
- (7) In considering whether travel arrangements are necessary for the purposes of this section a local authority--
 - (a) must have regard in particular to the matters specified in subsection (5);
 - (b) may have regard in particular to whether or not the child is attending the nearest suitable relevant place to the child's place of ordinary residence.
- (8) Subsection (7)(b) applies if--
 - (a) the child is not looked after by a local authority, and
 - (b) arrangements have been made by the local authority for enabling the child to attend a suitable relevant place nearer to the child's place of ordinary residence.
- (9) For the purposes of this section, a relevant place is suitable for a child if the education or training provided there is suitable, having regard to the age, ability and aptitudes of the child and any learning difficulties he or she may have.

NOTES

Initial Commencement*To be appointed*

To be appointed: see s 28(2).

Appointment

Appointment: 1 September 2009: see SI 2009/371, art 2(2), Schedule, Pt 2.

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/5 Limits of learner travel duties

5 Limits of learner travel duties

Section 2 does not require the assessment of learner travel needs and sections 3 and 4 do not require the making of travel arrangements--

- (a) for learners to travel during the day between relevant places or between different sites of the same institution, or
- (b) for any purpose other than attendance at a relevant place to receive education or training.

NOTES**Initial Commencement***To be appointed*

To be appointed: see s 28(2).

Appointment

Appointment (for certain purposes): 6 March 2009: see SI 2009/371, art 2(1), Schedule, Pt 1.

Appointment (for remaining purposes): 1 September 2009: see SI 2009/371, art 2(2), Schedule, Pt 2.

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/6 Power of local authorities to make learner travel arrangements

6 Power of local authorities to make learner travel arrangements

- (1) This section applies in relation to a learner if--
 - (a) the learner is ordinarily resident in the local authority's area, or
 - (b) the learner receives education or training in the local authority's area.
- (2) The local authority may make travel arrangements to facilitate the attendance of the learner at a place where that person receives education or training.
- (3) A local authority may charge for travel arrangements made under this section for registered pupils of compulsory school age in accordance with the provisions of sections 455 and 456 of the Education Act 1996.
- (4) A local authority may charge for travel arrangements made under this section for other learners.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 28(2).

Appointment

Appointment: 6 March 2009: see SI 2009/371, art 2(1), Schedule, Pt 1.

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/7 Travel arrangements for learners in post-16 education or training

7 Travel arrangements for learners in post-16 education or training

- (1) This section applies in relation to learners ordinarily resident in Wales--
 - (a) who--
 - (i) are over compulsory school age but have not attained the age of 19, or
 - (ii) have attained the age of 19 and have begun a particular course of education or training before attaining that age and continue to attend that course; and
 - (b) who receive education or training--
 - (i) at a place in Wales, or
 - (ii) which is funded by the Welsh Ministers at a place outside Wales.
- (2) Regulations may make provision about travel arrangements for learners to and from the places where they receive education or training.
- (3) The regulations may in particular--

- (a) confer powers or impose duties on the following--
 - (i) the Welsh Ministers;
 - (ii) local authorities;
 - (iii) institutions in the further education sector;
- (b) specify the kinds of place to and from which travel arrangements may or must be made;
- (c) specify the travel arrangements that may or must be made;
- (d) specify the matters that must be taken into account in making decisions about travel arrangements;
- (e) make provision about charges;
- (f) require any person to give any information or other assistance that is reasonably required by any other person in connection with the performance of the other person's functions under the regulations;
- (g) make provision about the standards of behaviour required of learners while travelling to and from the places where they receive education or training.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 28(2).

Appointment

Appointment: 1 September 2009: see SI 2009/371, art 2(2), Schedule, Pt 2.

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/8 Travel arrangements to and from nursery education

8 Travel arrangements to and from nursery education

- (1) Regulations may make provision about travel arrangements for children under compulsory school age to and from the places where they receive nursery education.
- (2) The regulations may in particular--
 - (a) require a local authority to make travel arrangements; (b) permit a local authority to make travel arrangements;
 - (c) specify the kinds of place to and from which travel arrangements may or must be made;
 - (d) specify the travel arrangements that may or must be made;

- (e) specify the matters that must be taken into account in making decisions about travel arrangements;
- (f) make provision about charges;
- (g) require any person to give any information or other assistance that is reasonably required by the local authority in connection with the performance of the authority's functions under the regulations.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 28(2).

Appointment

Appointment: 1 September 2009: see SI 2009/371, art 2(2), Schedule, Pt 2.

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/9 Learner travel arrangements not to favour certain types of education or training

9 Learner travel arrangements not to favour certain types of education or training

- (1) This section applies if arrangements under section 3, 4, or 6 are made in respect of learners of a description set out in an entry in column 1 of the following table.
- (2) Arrangements must also be made in accordance with those sections in respect of the learners of the description set out in the corresponding entry in column 2 of the table.
- (3) The arrangements referred to in subsection (2) must be no less favourable than the arrangements referred to in subsection (1).

TABLE

Column 1	Column 2
Children of compulsory school age receiving education or training at maintained schools.	Children of the same age receiving education or training at other relevant places.
Learners over compulsory school age receiving full-time education or training at maintained schools.	Learners of the same age receiving full-time education or training at other relevant places.
Learners with learning difficulties receiving education or training at maintained schools.	Learners of the same age with learning difficulties receiving education or training at other relevant places.
Learners who have a disability receiving education or training at maintained schools.	Learners of the same age who have a disability receiving education or training at other relevant places.
Children looked after by a local authority receiving education or training at maintained	Children of the same age who are looked after by a local authority receiving education or

schools.	training at other relevant places.
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NOTES**Initial Commencement***To be appointed*

To be appointed: see s 28(2).

Appointment

Appointment: 1 September 2009: see SI 2009/371, art 2(2), Schedule, Pt 2.

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/10 Promoting access to education and training through the medium of the Welsh language

Promoting access to Welsh medium education**10 Promoting access to education and training through the medium of the Welsh language**

Each local authority and the Welsh Ministers must promote access to education and training through the medium of the Welsh language when exercising functions under this Measure.

NOTES**Initial Commencement***To be appointed*

To be appointed: see s 28(2).

Appointment

Appointment: 6 March 2009: see SI 2009/371, art 2(1), Schedule, Pt 1.

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/11 Sustainable modes of travel

Sustainable modes of travel

11 Sustainable modes of travel

- (1) Each local authority and the Welsh Ministers must promote the use of sustainable modes of travel when exercising functions under this Measure.
- (2) "Sustainable modes of travel" are modes of travel which the authority or the Welsh Ministers (as the case may be) consider may improve either or both of the following--
- (a) the physical well-being of those who use them;
 - (b) the environmental well-being of--
 - (i) the whole or part of the local authority's area, in the case of an authority, or
 - (ii) the whole or part of Wales, in the case of the Welsh Ministers.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 28(2).

Appointment

Appointment: 6 March 2009: see SI 2009/371, art 2(1), Schedule, Pt 1.

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/12 Travel behaviour code

Travel behaviour code

12 Travel behaviour code

- (1) The Welsh Ministers must make a travel behaviour code.
- (2) A travel behaviour code is a code setting out the standards of behaviour required of learners to whom subsection (3) applies while they are travelling to and from the relevant places where they receive education or training (whether or not they take advantage of travel arrangements made by a local authority).
- (3) This subsection applies to--
- (a) learners who have not attained the age of 19;
 - (b) learners who have attained the age of 19 who have begun a course of education or training before attaining that age and continue to attend that course;
 - (c) such other learners as may be prescribed.

- (4) The Welsh Ministers must review the travel behaviour code from time to time.
- (5) The Welsh Ministers must publish the code.
- (6) Before making or revising a code the Welsh Ministers must consult such persons as they consider appropriate.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 28(2).

Appointment

Appointment: 30 October 2009: see SI 2009/2819, art 2(1)(b).

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/13 Enforcement of travel behaviour code: pupils at relevant schools

13 Enforcement of travel behaviour code: pupils at relevant schools

- (1) Section 89 of the Education and Inspections Act 2006 is amended as follows.
- (2) In subsection (2), after "The head teacher" insert "of a relevant school in England".
- (3) After subsection (2) insert--

"(2A) The head teacher of a relevant school in Wales must in determining such measures--

- (a) act in accordance with the current statement made by the governing body under section 88(2)(a),
- (b) have regard to any notification or guidance given to him under section 88(2)(b), and
- (c) require pupils at the school to comply with the travel behaviour code made by the Welsh Ministers under section 12 of the Learner Travel (Wales) Measure 2008."

- (4) In subsection (3) for "The" substitute "In relation to a relevant school in England, the".
- (5) After subsection (3) insert--

"(3) In relation to a relevant school in Wales, the standard of behaviour which is to be regarded as acceptable must be determined by the head teacher, so far as it is not determined by--

- (a) the governing body, or

(b) the Welsh Ministers,".

(6) In subsection (5), after "head teacher" insert "of a relevant school in England".

(7) After subsection (5) insert--

"(5A) The measures which the head teacher of a relevant school in Wales determines under subsection (1) may, to such extent as is reasonable and not required by subsection (2A)(c), include measures to be taken with a view to regulating the conduct of pupils at a time when they are not on the premises of the school and are not under the lawful control or charge of a member of the staff of the school."

NOTES

Initial Commencement

To be appointed

To be appointed: see s 28(2).

Appointment

Appointment: 4 January 2010: see SI 2009/2819, art 2(2)(a).

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/14 Enforcement of travel behaviour code: withdrawal of travel arrangements

14 Enforcement of travel behaviour code: withdrawal of travel arrangements

(1) This section applies to learners for whom travel arrangements are made under section 3 or 4.

(2) The local authority may withdraw travel arrangements made for a learner if--

(a) the authority is satisfied that the learner has failed to comply with the travel behaviour code made under section 12, and

(b) the following conditions applicable to the learner are satisfied.

(3) All six of the following conditions apply to any learner who is a registered pupil at a relevant school.

(4) The first, third and fourth of the following conditions apply to any learner who is not a registered pupil at a relevant school.

(5) The first condition is that before any decision is taken to withdraw travel arrangements--

(a) the learner and the parent of the learner are given the opportunity to make representations, and

(b) those representations are considered by the local authority.

- (6) The second condition is that the head teacher of the relevant school at which the learner is a registered pupil--
- (a) is consulted about the decision to withdraw travel arrangements; and
 - (b) is given notice of the decision at least 24 hours before the withdrawal takes effect.
- (7) The third condition is that the decision to withdraw travel arrangements is reasonable in the circumstances.
- (8) The fourth condition is that the local authority gives notice of the withdrawal of travel arrangements to the learner's parent at least 24 hours before the withdrawal takes effect.
- (9) The fifth condition is that the period of withdrawal does not exceed 10 consecutive school days.
- (10) The sixth condition is 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.
- (11) In determining whether a decision to withdraw travel arrangements is reasonable for the purposes of subsection (7), the following matters in particular must be taken into account--
- (a) whether the period of withdrawal is proportionate in the circumstances of the case,
 - (b) 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) including in particular--
 - (i) the learner's age,
 - (ii) any *special educational needs* [learning difficulty] the learner may have,
 - (iii) any disability the learner may have,
 - (iv) whether the learner would lose an opportunity to take a public examination, and
 - (v) whether suitable alternative travel arrangements can reasonably be made by the learner's parent.
- (12) A notice under subsection (6) or (8) must be in writing and specify--
- (a) the period for which travel arrangements are to be withdrawn, and
 - (b) the authority's reasons for withdrawal of the travel arrangements.
- (13) For the purposes of this section and section 17, a "relevant school" means--
- (a) a maintained school,
 - (b) a pupil referral unit, or
 - (c) a non-maintained special school.
- (14) Regulations may--
- (a) amend or repeal either or both of subsections (9) and (10);
 - (b) make provision for reviews of decisions under subsection (2);
 - (c) make provision for appeals from decisions under subsection (2).
- (15) Regulations under subsection (14)(c) may in particular--

- (a) specify the categories of person who may appeal;
- (b) specify the circumstances in which appeals may be made;
- (c) provide for the constitution of appeals panels;
- (d) provide for appeal procedures;
- (e) make provision about the effect of appeal decisions;
- (f) provide for the payment of allowances to members of appeals panels; (g) require the provision of information about appeals.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 28(2).

Appointment

Appointment: 4 January 2010: see SI 2009/2819, art 2(2)(b).

Amendment

Sub-s (11): in para (b)(ii) words "special educational needs" in italics repealed and subsequent words in square brackets substituted by the Additional Learning Needs and Education Tribunal (Wales) Act 2018, s 96, Sch 1, para 14(1), (4).

Date in force: to be appointed: see the Additional Learning Needs and Education Tribunal (Wales) Act 2018, s 100(3).

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/[14A Requirement for seat belts on buses used for learner transport]

[Safety on learner transport]

NOTES

Amendment

Inserted by the Safety on Learner Transport (Wales) Measure 2011, s 1.

Date in force: 1 October 2014: see the Safety on Learner Transport (Wales) Measure 2011, s 16(1).

[14A Requirement for seat belts on buses used for learner transport]

[(1) A relevant body must ensure that every bus used for the learner transport it provides or otherwise secures is one that has a seat belt fitted to every passenger seat.

(2) A person who provides learner transport secured by a relevant body must ensure that every bus used for such transport is one that has a seat belt fitted to every passenger seat.

(3) A person who fails to comply with subsection (1) or (2) commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(4) It is a defence to show that the failure to comply with subsection (1) or (2) was justified by exceptional circumstances.

(5) Nothing in this section is to be interpreted as setting technical standards for a vehicle's construction or equipment which differ from the standards that would or might otherwise apply to that vehicle by virtue of any enactment or directly applicable requirement of European Union law.

(6) In this section--

"bus" means a motor vehicle constructed or adapted to carry more than eight seated passengers in addition to the driver;

"enactment" means any of the following, whenever passed or made--

- (a) an Act of Parliament;
- (b) subordinate legislation made under an Act of Parliament;
- (c) a provision of any such Act or subordinate legislation;

"seat belt" means a belt intended to be worn by a person in a vehicle and designed to prevent or lessen injury to its wearer in the event of an accident to the vehicle.]

NOTES

Amendment

Inserted by the Safety on Learner Transport (Wales) Measure 2011, s 1.

Date in force: 1 October 2014: see the Safety on Learner Transport (Wales) Measure 2011, s 16(1).

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/[14B Further provision as to descriptions of vehicle that may be used for learner transport]

[Safety on learner transport]

NOTES

Amendment

Inserted by the Safety on Learner Transport (Wales) Measure 2011, s 2.

Date in force: 10 July 2011: see the Safety on Learner Transport (Wales) Measure 2011, s 16(2).

[14B Further provision as to descriptions of vehicle that may be used for learner transport]

[(1) Regulations may make further provision to--

- (a) require a relevant body to ensure that only prescribed descriptions of vehicle are used for the learner transport it provides or otherwise secures;
- (b) require a person who provides learner transport secured by a relevant body to use only prescribed descriptions of vehicle;
- (c) provide for criminal offences and penalties for breaches of requirements imposed under this section.

(2) Regulations under paragraphs (a) and (b) of subsection (1) may describe vehicles by reference to a vehicle's construction, equipment or other characteristics.]

NOTES

Amendment

Inserted by the Safety on Learner Transport (Wales) Measure 2011, s 2.

Date in force: 10 July 2011: see the Safety on Learner Transport (Wales) Measure 2011, s 16(2).

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/[14C Recording visual images or sound on learner transport]

[14C Recording visual images or sound on learner transport]

[(1) Regulations may--

- (a) require prescribed arrangements to be made for recording visual images or sound of events occurring on the learner transport provided or otherwise secured by a relevant body;
- (b) make provision about the use, storage and retention of visual images or sound recorded on learner transport provided or secured by a relevant body;
- (c) provide for criminal offences and penalties for breaches of requirements imposed under this section.

(2) Regulations under subsection (1) may (among other things) confer powers or duties on any of the following--

- (a) a relevant body;
- (b) a person who provides learner transport secured by a relevant body.

(3) Regulations under subsection (1) may not authorise or require recording to be carried out in a manner that is calculated to ensure that persons who are subject to it are unaware that it is or may be taking place.]

NOTES

Amendment

Inserted by the Safety on Learner Transport (Wales) Measure 2011, s 3.

Date in force: 10 July 2011: see the Safety on Learner Transport (Wales) Measure 2011, s 16(2).

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/[14D Safety risk assessment of learner transport]

[14D Safety risk assessment of learner transport]

[(1) Regulations may require a relevant body to carry out safety risk assessments of the learner transport it provides or otherwise secures.

(2) Regulations under subsection (1) may--

- (a) impose requirements as to the nature of the assessment to be carried out;
- (b) require the production and publication of reports;
- (c) prescribe the form and manner of publication;
- (d) prescribe the frequency of assessments.]

NOTES

Amendment

Inserted by the Safety on Learner Transport (Wales) Measure 2011, s 4.

Date in force: 10 July 2011: see the Safety on Learner Transport (Wales) Measure 2011, s 16(2).

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/[14E Driver training]

[14E Driver training]

- [(1) Regulations may require a relevant body that provides or otherwise secures the provision of learner transport to ensure that drivers of vehicles used for such transport have completed prescribed training to a prescribed standard.
- (2) Training and standards may be prescribed by reference to a document published, as specified in the regulations, by the Welsh Ministers.
- (3) In this section "training" means training about safety on learner transport and working with children.]

NOTES**Amendment**

Inserted by the Safety on Learner Transport (Wales) Measure 2011, s 5.

Date in force: 10 July 2011: see the Safety on Learner Transport (Wales) Measure 2011, s 16(2).

Document information

Learner Travel (Wales) Measure 2008

Date made
10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/[14F Supervisors on learner transport]

[14F Supervisors on learner transport]

- [(1) Regulations may make provision for the supervision of learners using learner transport provided or otherwise secured by a relevant body.
- (2) Regulations under subsection (1) may (among other things)--
- (a) confer powers or impose duties on a relevant body;
 - (b) make provision about training for persons supervising learners.]

NOTES**Amendment**

Inserted by the Safety on Learner Transport (Wales) Measure 2011, s 6.

Date in force: 10 July 2011: see the Safety on Learner Transport (Wales) Measure 2011, s 16(2).

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/[14G Civil sanctions]

[14G Civil sanctions]

[Schedule A1 has effect.]

NOTES

Amendment

Inserted by the Safety on Learner Transport (Wales) Measure 2011, s 7(1).

Date in force: 10 July 2011: see the Safety on Learner Transport (Wales) Measure 2011, s 16(2).

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/[14H Enforcement authority]

[14H Enforcement authority]

[(1) Regulations may appoint a person or body (including the Welsh Ministers) to be an enforcement authority.

(2) More than one person or body may be appointed as an enforcement authority.

(3) Regulations may confer powers or impose duties on an enforcement authority to enforce provision made by section 14A and by regulations under sections 14B and 14C and Schedule A1 and may (among other things)--

- (a) confer power on an enforcement authority to authorise a person (referred to in this Measure as an "inspector") to exercise the powers in sections 14I and 14J,
- (b) make modifications to any enactment applying to the enforcement authority, or
- (c) provide for any such enactment to apply, with or without modifications, for the purposes of section 14A and regulations under sections 14B and 14C, this section and Schedule A1.

(4) References in this Measure to an enforcement authority are references to a person or body appointed under this section and include a person appointed by an enforcement authority.

(5) In this section "enactment" includes--

- (a) an enactment whenever passed or made,
- (b) an enactment comprised in a Measure or Act of the National Assembly for Wales, and
- (c) provision contained in subordinate legislation within the meaning of the Interpretation Act 1978 (including subordinate legislation made under a Measure or Act of the National Assembly for Wales).]

NOTES**Amendment**

Inserted by the Safety on Learner Transport (Wales) Measure 2011, s 8.

Date in force: 10 July 2011: see the Safety on Learner Transport (Wales) Measure 2011, s 16(2).

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/[14I Power of entry]

[14I Power of entry]

[(1) This section applies to--

- (a) a vehicle or any premises owned or controlled by a relevant body;
- (b) a vehicle or premises falling within subsection (2).

(2) A vehicle or premises falling within this subsection are those--

- (a) which are used, or proposed to be used, by any person in connection with the provision of learner transport provided or otherwise secured by a relevant body, or
- (b) which an inspector reasonably believes to be so used, or proposed to be so used.

(3) An inspector may at any reasonable time--

- (a) detain a vehicle;
- (b) enter a vehicle or premises.

(4) But the power in subsection (3) does not include the power to enter premises used wholly or mainly as a private dwelling.

(5) An inspector exercising any power conferred under subsection (3) or section 14J must, if so required, produce some duly authenticated document showing the inspector's authority to do so.]

NOTES**Amendment**

Inserted by the Safety on Learner Transport (Wales) Measure 2011, s 9.

Date in force: 10 July 2011: see the Safety on Learner Transport (Wales) Measure 2011, s 16(2).

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/[14J Power of inspection]

[14J Power of inspection]

- [(1) An inspector who detains a vehicle or enters a vehicle or premises under section 14I may--
 - (a) inspect the vehicle or premises;
 - (b) inspect, take copies of and remove from the vehicle or premises any documents or records relating to the provision of learner transport;
 - (c) inspect any other item and remove it from the vehicle or premises.
- (2) The power in subsection (1)(b) includes--
 - (a) power to require any person holding or accountable for documents or records kept on the vehicle or premises to produce them, and
 - (b) in relation to records which are kept by means of a computer, power to require the records to be produced in a legible form which can be taken away.
- (3) The power in subsection (1)(b) does not include power--
 - (a) to require a person to produce any document or record in respect of which a claim to legal professional privilege could be maintained in legal proceedings, or
 - (b) to take copies of such a document or record or to remove it.
- (4) In connection with inspecting any such documents, an inspector--
 - (a) may obtain access to, and inspect and check the operation of, any computer and associated apparatus or material which he or she considers is or has been in use in connection with the documents, and
 - (b) may require a person within subsection (5) to afford him or her such reasonable assistance as may be required for that purpose.
- (5) A person is within this subsection if he or she is--
 - (a) the person by whom or on whose behalf the computer is or has been used, or
 - (b) a person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material.
- (6) An inspector detaining a vehicle or entering a vehicle or premises may require any person to afford him or her such facilities and assistance with respect to matters within the person's control as are necessary to enable him or her to exercise powers under section 14I or this section.
- (7) Any person who without reasonable excuse--
 - (a) obstructs an inspector exercising any power under section 14I or this section, or

- (b) fails to comply with any requirement imposed under this section,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.]

NOTES

Amendment

Inserted by the Safety on Learner Transport (Wales) Measure 2011, s 10.

Date in force: 10 July 2011: see the Safety on Learner Transport (Wales) Measure 2011, s 16(2).

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/[14K Power to require provision of information]

[14K Power to require provision of information]

[(1) An enforcement authority may at any time require any person specified in subsection (2) to provide it with any information, documents, records or other items--

- (a) which relate to the provision of learner transport, and
- (b) which the enforcement authority consider necessary or expedient to have for the purpose of its functions as the enforcement authority.

(2) The persons referred to in subsection (1) are--

- (a) a relevant body;
- (b) any person who provides learner transport secured by a relevant body.

(3) The power in subsection (1) includes, in relation to information, documents or records kept by means of a computer, power to require provision of them in a legible form which can be taken away.

(4) The power in subsection (1) does not include power to require the provision of information, documents or records in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

(5) Any person who without reasonable excuse fails to comply with any requirement imposed by virtue of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.]

NOTES

Amendment

Inserted by the Safety on Learner Transport (Wales) Measure 2011, s 11.

Date in force: 10 July 2011: see the Safety on Learner Transport (Wales) Measure 2011, s 16(2).

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/[14L Offences: liability of officers and partners]

[14L Offences: liability of officers and partners]

[(1) Where an offence under section 14A, 14B or 14C committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the body corporate, regulations may provide for the officer to be liable as well as the body corporate itself.

(2) Where an offence under section 14A, 14B or 14C committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner of the partnership, regulations may provide for the partner to be liable as well as the partnership itself.]

NOTES

Amendment

Inserted by the Safety on Learner Transport (Wales) Measure 2011, s 12.

Date in force: 10 July 2011: see the Safety on Learner Transport (Wales) Measure 2011, s 16(2).

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/[14M Regulations: consultation]

[14M Regulations: consultation]

[The Welsh Ministers must consult each local authority and such other persons as they consider appropriate before making any regulations under sections 14B to 14F, section 14H or 14L or Schedule A1.]

NOTES

Amendment

Inserted by the Safety on Learner Transport (Wales) Measure 2011, s 13.

Date in force: 10 July 2011: see the Safety on Learner Transport (Wales) Measure 2011, s 16(2).

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/[14N Interpretation of sections 14A to 14K]

[14N Interpretation of sections 14A to 14K]

[(1) This section applies for the purposes of sections 14A to 14K.

(2) Each of the following is a "relevant body"--

- (a) a local authority;
- (b) a governing body of a maintained school.

(3) "Learner transport" means transport to facilitate the attendance of a child at any relevant place where he or she receives education or training; but it does not include transport provided for the purpose of travel during the day between relevant places or between different sites of the same institution.

(4) The act of making any of the following arrangements is not to be considered, by itself, as providing or otherwise securing the provision of learner transport.

(5) The arrangements mentioned in subsection (4) are--

- (a) arrangements to pay the whole or any part of a person's reasonable travelling expenses;
- (b) arrangements to pay allowances in respect of the use of transport.

(6) The Welsh Ministers may by order amend subsection (3) so as to omit the words from "but it does not include" to the end of the subsection.]

NOTES

Amendment

Inserted by the Safety on Learner Transport (Wales) Measure 2011, s 14.

Date in force: 10 July 2011: see the Safety on Learner Transport (Wales) Measure 2011, s 16(2).

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/15 Guidance and directions

Supplementary

15 Guidance and directions

- (1) In exercising their functions under this Measure, the following bodies must have regard to guidance given from time to time by the Welsh Ministers--
- (a) local authorities;
 - (b) governing bodies of maintained schools;
 - (c) governing bodies of institutions in the further education sector.
- (2) A local authority must make such learner travel arrangements under section 3, 4 or 6 as the Welsh Ministers direct.
- (3) In making arrangements under section 3, 4 or 6 a local authority must comply with any directions given by the Welsh Ministers.
- (4) Directions under this section may be given to one or more local authorities or local authorities generally.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 28(2).

Appointment

Appointment: 6 March 2009: see SI 2009/371, art 2(1), Schedule, Pt 1.

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/16 Information about travel arrangements

16 Information about travel arrangements

Regulations may require a local authority to publish, at such times and in such manner as may be prescribed, information--

- (a) received while carrying out assessments under section 2(2);
- (b) about assessments made under that section;

(c) about the travel arrangements made under this Measure; (d) about the travel behaviour code made under section 12.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 28(2).

Appointment

Appointment: 6 March 2009: see SI 2009/371, art 2(1), Schedule, Pt 1.

Subordinate Legislation

Learner Travel Information (Wales) Regulations 2009, SI 2009/569.

Learner Travel Information (Wales) (Amendment) Regulations 2010, SI 2010/192.

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/17 Co-operation: information or other assistance

17 Co-operation: information or other assistance

- (1) The governing body of a maintained school or an institution in the further education sector in Wales must give a local authority any information or other assistance that is reasonably required by them for the performance of their functions under this Measure.
- (2) A local authority must give another local authority any information or other assistance that is reasonably required by the other authority for the performance of their functions under sections 2, 3, 4 and 6.
- (3) A local authority must give the head teacher of a relevant school any information or other assistance that is reasonably required by the head teacher about the behaviour of a registered pupil of his or her school while the pupil was taking advantage of travel arrangements made by the local authority under this Measure.
- (4) A head teacher of a relevant school must give a local authority any information or other assistance that is reasonably required by the local authority for the performance of their functions under section 14.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 28(2).

Appointment

Sub-ss (1), (2): Appointment: 6 March 2009: see SI 2009/371, art 2(1), Schedule, Pt 1.

Sub-s (3): Appointment: 1 September 2009: see SI 2009/371, art 2(2), Schedule, Pt 2.

Sub-s (4): Appointment: 4 January 2010: see SI 2009/2819, art 2(2)(c).

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/18 Payment of travel costs by a local authority which looks after a child

18 Payment of travel costs by a local authority which looks after a child

(1) This section applies where a local authority ("authority A") makes travel arrangements under sections 3 or 4 for a child who is looked after by a local authority responsible for a different area ("authority B").

(2) Authority A may demand reimbursement from authority B for the full cost or part of the cost of making the travel arrangements.

(3) Authority B must comply with the demand.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 28(2).

Appointment

Appointment: 1 September 2009: see SI 2009/371, art 2(2), Schedule, Pt 2.

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/19 Determination of ordinary residence in particular circumstances

19 Determination of ordinary residence in particular circumstances

(1) If a person has no ordinary residence, that person is to be treated for the purposes of this Measure as being ordinarily resident at the place at which he or she is for the time being resident.

(2) Subsections (3) to (6) apply to a child or young person who is either--

- (a) a registered pupil at a school, or
 - (b) enrolled as a full-time student at an institution in the further education sector.
- (3) This subsection applies to a child or young person--
- (a) whose parents are not living together, and
 - (b) who usually lives with more than one parent in the periods during which the child or young person receives education or training.
- (4) This subsection applies to a child or young person who usually lives with a parent and also at a children's home in the periods during which the child or young person receives education or training.
- (5) For the purposes of this Measure--
- (a) a child or young person to whom subsection (3) applies is ordinarily resident at the places where each of his or her parents is ordinarily resident;
 - (b) a child or young person to whom subsection (4) applies is ordinarily resident at the children's home and the place where his or her parent is ordinarily resident.
- (6) But if there are more than two such places, the child or young person is ordinarily resident at the two places nearest--
- (a) the school at which the child or young person is a registered pupil, or
 - (b) the institution in the further education sector at which the child or young person is enrolled as a full-time student.
- (7) In this section--
- [(a) "children's home" means premises at which--
 - (i) a care home service is provided wholly or mainly to children or young persons; or
 - (ii) a secure accommodation service is provided;
- and in this paragraph "care home service" and "secure accommodation service" have the meaning given in Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2);]
- (b) "parent" means a parent within the meaning of section 576(1) of the Education Act 1996 who is an individual.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 28(2).

Appointment

Appointment: 6 March 2009: see SI 2009/371, art 2(1), Schedule, Pt 1.

Amendment

Sub-s (7): para (a) substituted by SI 2018/195, reg 42.

Date in force: 2 April 2018: see SI 2018/195, reg 2(1).

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/20 Amendments to section 444 of the Education Act 1996

20 Amendments to section 444 of the Education Act 1996

- (1) Section 444 of the Education Act 1996 (school attendance) is amended as follows.
- (2) For subsection (4) substitute--
- "(4) The child is not to be taken to have failed to attend regularly at the school if the parent proves that the local authority have failed to discharge--
 - (a) a duty to make transport arrangements in relation to the child under section 3 of the Learner Travel (Wales) Measure 2008, or
 - (b) a duty to make travel arrangements in relation to the child under section 4 of that Measure."
- (3) In subsection (5) for "subsections (3D) and (4)" substitute "subsection (3D)".

NOTES

Initial Commencement

To be appointed

To be appointed: see s 28(2).

Appointment

Appointment: 1 September 2009: see SI 2009/371, art 2(2), Schedule, Pt 2.

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/21 Amendments to the Education Act 2002

21 Amendments to the Education Act 2002

- (1) The Education Act 2002 is amended as follows.

(2) Section 32 (fixing dates of terms and holidays and times of school sessions) is amended as follows--

- (a) in subsection (1)(b) before "the governing body" insert "subject to subsections (5) to (9),";
- (b) in subsection (2)(b) before "the times" insert "subject to subsections (5) to (9)";
- (c) after subsection (4) insert--

"(5) Subsections (1)(b) and (2)(b) do not apply in relation to a school in Wales in the circumstances specified in subsection (6).

(6) The circumstances are--

- (a) that the local education authority in whose area the school is situated have given notice in writing to the governing body of the school that the times of the school sessions are to be determined in accordance with subsection (8), and
- (b) that the notice has not been withdrawn by the local education authority.

(7) A local education authority must not issue a notice of the kind mentioned in subsection (6)(a) unless they consider a change in the times of the sessions of that school to be necessary or expedient in order to--

- (a) promote the use of sustainable modes of travel within the meaning of section 11 of the Learner Travel (Wales) Measure 2008, or
- (b) improve the effectiveness or efficiency of travel arrangements made, or to be made, by the authority under that Measure.

(8) In relation to a school subject to a notice of the kind mentioned in subsection (6)(a)--

- (a) where there are two school sessions on the relevant school day--
 - (i) the local education authority must determine the time each day at which the first school session starts and the second school session ends, and
 - (ii) the governing body must determine the time each day at which the first school session ends and the second school session starts;
- (b) where there is one school session on the relevant school day the local education authority must determine the time each day at which the school session starts and ends.

(9) The Welsh Ministers may make provision by regulations--

- (a) as to the procedure to be followed where the local education authority propose to issue a notice of the kind mentioned in subsection (6)(a);
- (b) as to the matters to be included in such a notice;
- (c) as to the implementation of any determination under subsection (8);
- (d) for enabling the local education authority to determine, for any purposes of the regulations, whether any person is to be treated as a parent of a registered pupil at the school.

(10) In giving notice as described in subsection (6) and in discharging any function conferred by subsections (7) or (8) or by regulations under subsection (9), a local education authority must have regard to guidance given by the Welsh Ministers."

(3) In section 210 (orders and regulations)--

- (a) in subsection (1) for "the National Assembly for Wales" substitute "the Welsh Ministers";
- (b) after subsection (6) insert--

"(6A) Any statutory instrument containing regulations made under section 32(9) by the Welsh Ministers is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

(6B) Paragraphs 33 to 35 of Schedule 11 to the Government of Wales Act 2006 make provision about the National Assembly for Wales procedures that apply to any statutory instrument containing regulations or an order made in exercise of functions conferred upon the National Assembly for Wales by this Act that have been transferred to the Welsh Ministers by virtue of paragraph 30 of that Schedule.";

(c) in subsection (7)--

- (i) for "the National Assembly for Wales" substitute "the Welsh Ministers",
- (ii) for "the Assembly thinks" in paragraph (c) substitute "the Welsh Ministers think".

NOTES

Initial Commencement

To be appointed

To be appointed: see s 28(2).

Appointment

Appointment: 6 March 2009: see SI 2009/371, art 2(1), Schedule, Pt 1.

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/22 Amendments to sections 455 and 456 of the Education Act 1996

22 Amendments to sections 455 and 456 of the Education Act 1996

(1) The Education Act 1996 is amended as follows.

(2) In section 455 (permitted charges)--

- (a) after subsection (1)(b) insert--

"(ba) travel arrangements provided under section 6 of the Learner Travel (Wales) Measure 2008 ("the Measure") for a registered pupil at a maintained school in Wales, other than arrangements in respect of which, by virtue of section 454(3) of this Act or sections 3 or 4 of the Measure, no charge may be made,";

- (b) in subsection (1)(c) after "maintained school" insert "in England" and omit "or 509(2)";

(c) at the end of subsection (2)(b) omit "or";

(d) after subsection (2)(b) insert--

"(ba) by virtue of subsection (1)(ba) in respect of the provision for a pupil of travel arrangements, or";

(e) in subsection (3) after "entry" insert "travel arrangements,".

(3) In section 456 (regulation of permitted charges), in subsection (3) after "A regulated charge" insert ", except any charge permitted by virtue of section 455(1)(ba),".

NOTES

Initial Commencement

To be appointed

To be appointed: see s 28(2).

Appointment

Appointment: 1 September 2009: see SI 2009/371, art 2(2), Schedule, Pt 2.

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/23 Amendments to the Education and Inspections Act 2006

23 Amendments to the Education and Inspections Act 2006

(1) The Education and Inspections Act 2006 is amended as follows.

(2) In section 162 (power to repeal references to "local education authority"), after subsection (5) insert--

"(5A) The Welsh Ministers may by order make such provision as appears to them to be appropriate for the purpose of--

(a) repealing any reference in a Measure of the National Assembly for Wales to a local education authority (however expressed), and

(b) replacing it, where it appears to them to be appropriate, with a reference (however expressed) to a Welsh local authority."

(3) In section 181--

(a) for subsection (1) substitute--

"(1) Any power of the Secretary of State or the Welsh Ministers to make an order or regulations under this Act is exercisable by statutory instrument.";

(b) in subsection (2)--

- (i) for "the Assembly", the first time that expression appears, substitute "the Welsh Ministers",
- (ii) for "the Assembly thinks" in paragraph (c) substitute "the Welsh Ministers think".

(4) After section 182 insert--

"182A Assembly control of orders and regulations

(1) Any statutory instrument containing an order made under section 162(5A) by the Welsh Ministers may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Assembly.

(2) Paragraphs 33 to 35 of Schedule 11 to the Government of Wales Act 2006 make provision about the Assembly procedures that apply to any statutory instrument containing regulations or an order made in exercise of functions conferred upon the Assembly by this Act that have been transferred to the Welsh Ministers by virtue of paragraph 30 of that Schedule."

NOTES

Initial Commencement

To be appointed

To be appointed: see s 28(2).

Appointment

Appointment: 6 March 2009: see SI 2009/371, art 2(1), Schedule, Pt 1.

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/24 General interpretation

General

24 General interpretation

(1) In this Measure--

"academic year" ("*blwyddyn acndemaidd*") means any period from 1 August to 31 July;

"disability" ("*anabledd*") and "disabled person" ("*person anabl*") have the same meaning as in section 1 of the Disability Discrimination Act 1995 (c 50);

"education" ("*addysg*") does not include higher education;

"learning difficulty" ("*anhnwster dysgu*") in respect of a person means--

- (a) a significantly greater difficulty in learning than the majority of persons of the same age, or
- (b) 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 the language) in which the person is taught or will be taught is different from a language (or form of a language) which has at any time been spoken in the person's home;

"local authority" ("*awdurdod lleol*") means a [local authority] in Wales; but in any reference to a child looked after by a local authority it means a council of a county or county borough in Wales exercising social services functions within the meaning of [the Social Services and Well-being (Wales) Act 2014];

"maintained school" ("*ysgol a gynhelir*") means a community, foundation or voluntary school, a community . . . special school or a maintained nursery school;

"non-maintained special school" ("*ysgol arbennig nas cynhelir*") means a school approved under section 342 of the Education Act 1996;

"nursery education" ("*addysg jeithrin*") means education suitable for children who have not attained compulsory school age;

"prescribed" ("*r11agnodi*") means prescribed in regulations;

"regulations" ("*rheoliadau*") means regulations made by the Welsh Ministers;

"work experience" ("*profiad gwaith*") means work experience arranged for--

- (a) a registered pupil of a maintained school or a pupil referral unit, or
- (b) a student emolled at an institution within the further education sector, by, or on behalf of, the governing body of the relevant educational institution.

(2) References in this Measure to a child who is looked after by a local authority have the same meaning as they have in [section 74 of the Social Services and Well-being (Wales) Act 2014].

(3) Subject to subsection (4), the Education Act 1996 and the provisions of this Measure are to be read as if those provisions were contained in the Education Act 1996.

(4) Where an expression is given for the purposes of any provision of this Measure a meaning different from that given to it for the purposes of the Education Act 1996, the meaning given for the purposes of that provision is to apply instead of the one given for the purposes of that Act.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 28(2).

Appointment

Appointment: 6 March 2009: see SI 2009/371, art 2(1), Schedule, Pt 1.

Amendment

Sub-s (1): in definition "local authority" words "local authority" in square brackets substituted by SI 2010/1148, art 2.

Date in force: 5 May 2010: see SI 2010/1148, art 1.

Sub-s (1): in definition "local authority" words "the Social Services and Well-being (Wales) Act 2014" in square brackets substituted by SI 2016/413, reg 268(1), (2).

Date in force: 6 April 2016: see SI 2016/413, reg 2(1); for transitional provisions and savings see reg 325, Schedule.

Sub-s (1): in definition "maintained school" words omitted repealed by the School Standards and Organisation (Wales) Act 2013, s 99, Sch 5, Pt 2, para 25.

Date in force: 1 October 2013: see SI 2013/1800, art 3(i), (j); for savings see art 4 thereof.

Sub-s (2): words "section 74 of the Social Services and Well-being (Wales) Act 2014" in square brackets substituted by SI 2016/413, reg 268(1), (3).

Date in force: 6 April 2016: see SI 2016/413, reg 2(1); for transitional provisions and savings see reg 325, Schedule.

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/25 Minor and consequential amendments

25 Minor and consequential amendments

Schedule 1 contains minor and consequential amendments relating to the provisions made by this Measure.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 28(2).

Appointment

Appointment (for certain purposes): 6 March 2009: see SI 2009/371, art 2(1), Schedule, Pt 1.

Appointment (for remaining purposes): 1 September 2009: see SI 2009/371, art 2(2), Schedule, Pt 2.

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/26 Repeals

26 Repeals

The enactments specified in Schedule 2 are repealed to the extent specified.

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 28(2).

Appointment

Appointment (for certain purposes): 6 March 2009: see SI 2009/371, art 2(1), Schedule, Pt 1.

Appointment (for certain purposes): 1 September 2009: see SI 2009/371, art 2(2), Schedule, Pt 2.

Appointment (for certain purposes): 30 October 2009: see SI 2009/2819, art 2(1)(c).

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/27 Orders and regulations

27 Orders and regulations

(1) Any power of the Welsh Ministers to make an order or regulations under this Measure is exercisable by statutory instrument.

(2) Any power of the Welsh Ministers to make an order or regulations under this Measure includes power--

(a) to make different provision for different cases or [classes of case or different purposes or] areas;

[(aa) make provision subject to specified exemptions or exceptions;]

(b) to make provision generally or in relation to specific cases [or classes of case];

(c) to make such incidental, supplementary, transitional or saving provision as the Welsh Ministers think fit.

(3) The power of the Welsh Ministers to make regulations under section 3(9), 7[, 8, 14B, 14C, 14D, 14E, 14F, 14H or 14L or Schedule A1] also includes power to make such consequential provision as the Welsh Ministers think fit.

(4) The incidental, supplementary, transitional, saving or consequential provision to be made in regulations may include such provision that amends or repeals any provision of--

(a) this Measure or any other Measure of the National Assembly for Wales passed before or in the same Assembly year as this Measure;

- (b) an Act passed before the passing of this Measure;
- (c) subordinate legislation made before the passing of this Measure.

[(4A) In the application of subsection (4) to regulations made under sections 14B to 14F, section 14H or 14L or Schedule A1 the reference to "this Measure" in subsection (4) is to be interpreted as a reference to the Safety on Learner Transport (Wales) Measure 2011.]

(5) Any statutory instrument containing regulations made under this Measure is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

(6) Subsection (5) does not apply to regulations to which subsection (7) applies.

(7) A statutory instrument which contains (alone or with other provisions)--

- (a) regulations under section 3(9),
- (b) regulations under section 7,
- (c) regulations under section 8,
- (d) regulations under section 14(14)(a), . . .

[(da) regulations under section 14B, 14C, 14D, 14E, 14F, 14H or 14L or Schedule A1, or

(db) an order under section 14N(6).]

(e) regulations under subsection (4) which amend or repeal any provision of an Act or Assembly Measure,

may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.

NOTES

Initial Commencement

Specified date

Specified date: 10 February 2009: see s 28(1).

Amendment

Sub-s (2): in para (a) words "classes of case or different purposes or" in square brackets inserted by the Safety on Learner Transport (Wales) Measure 2011, s 15(1), (2)(a).

Date in force: 10 July 2011: see the Safety on Learner Transport (Wales) Measure 2011, s 16(2).

Sub-s (2): para (aa) inserted by the Safety on Learner Transport (Wales) Measure 2011, s 15(1), (2)(b).

Date in force: 10 July 2011: see the Safety on Learner Transport (Wales) Measure 2011, s 16(2).

Sub-s (2): in para (b) words "or classes of case" in square brackets inserted by the Safety on Learner Transport (Wales) Measure 2011, s 15(1), (2)(c).

Date in force: 10 July 2011: see the Safety on Learner Transport (Wales) Measure 2011, s 16(2).

Sub-s (3): words ", 8, 14B, 14C, 14D, 14E, 14F, 14H or 14L or Schedule A1" in square brackets substituted by the Safety on Learner Transport (Wales) Measure 2011, s 15(1), (3).

Date in force: 10 July 2011: see the Safety on Learner Transport (Wales) Measure 2011, s 16(2).

Sub-s (4A): inserted by the Safety on Learner Transport (Wales) Measure 2011, s 15(1), (4).

Date in force: 10 July 2011: see the Safety on Learner Transport (Wales) Measure 2011, s 16(2).

Sub-s (7): in para (d) word omitted repealed by the Safety on Learner Transport (Wales) Measure 2011, s 15(1), (5)(a).

Date in force: 10 July 2011: see the Safety on Learner Transport (Wales) Measure 2011, s 16(2).

Sub-s (7): sub-paras (da), (db) inserted by the Safety on Learner Transport (Wales) Measure 2011, s 15(1), (5)(b).

Date in force: 10 July 2011: see the Safety on Learner Transport (Wales) Measure 2011, s 16(2).

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/28 Commencement

28 Commencement

(1) The following provisions come into force at the end of a period of two months beginning on the day on which this Measure is approved by Her Majesty in Council--

this section;

section 27;

section 29.

(2) The remaining provisions of this Measure come into force in accordance with provision made by the Welsh Ministers by order.

NOTES

Initial Commencement

Specified date

Specified date: 10 February 2009: see sub-s (1) above.

Subordinate Legislation

Learner Travel (Wales) Measure 2008 (Commencement No 1) Order 2009, SI 2009/371 (made under sub-s (2)).

Learner Travel (Wales) Measure 2008 (Commencement No 2) Order 2009, SI 2009/2819 (made under sub-s (2)).

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/29 Short title and inclusion of Measure within the Education Acts

29 Short title and inclusion of Measure within the Education Acts

(1) This Measure may be cited as the Learner Travel (Wales) Measure 2008.

(2) This Measure is to be included in the list of Education Acts set out in section 578 of the Education Act 1996.

NOTES

Initial Commencement

Specified date

Specified date: 10 February 2009: see s 28(1).

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/[SCHEDULE A1 Civil Sanctions]

[SCHEDULE A1

CIVIL SANCTIONS]

NOTES

Amendment

Inserted by the Safety on Learner Transport (Wales) Measure 2011, s 7(2), Schedule.

Date in force: 10 July 2011: see the Safety on Learner Transport (Wales) Measure 2011, s 16(2).

[(introduced by section 14G)]

NOTES**Amendment**

Inserted by the Safety on Learner Transport (Wales) Measure 2011, s 7(2), Schedule.

Date in force: 10 July 2011: see the Safety on Learner Transport (Wales) Measure 2011, s 16(2).

[Civil sanctions]**1**

- (1) Regulations may make provision about civil sanctions for breaches of safety regulations.
- (2) For the purposes of this Schedule a person breaches safety regulations if, in such circumstances as may be prescribed, the person--
 - (a) fails to comply with a requirement made by or under the safety regulations, or
 - (b) obstructs or fails to assist an enforcement authority.
- (3) In this Schedule--

"civil sanction" means--

 - (a) a fixed monetary penalty (see paragraph 2),
 - (b) a discretionary requirement (see paragraph 4),
 - (c) a stop notice (see paragraph 7), or
 - (d) an enforcement undertaking (see paragraph 11);

"safety regulations" means regulations made under section 14B or 14C.

Fixed monetary penalties**2**

- (1) The regulations may make provision conferring on an enforcement authority the power by notice to impose a fixed monetary penalty on a person who breaches safety regulations.
- (2) The regulations may only confer such a power in relation to a case where the enforcement authority is satisfied on the balance of probabilities that the breach has occurred.
- (3) For the purposes of this Schedule a "fixed monetary penalty" is a requirement to pay to an enforcement authority a penalty of an amount specified in or determined in accordance with the regulations.
- (4) The regulations may not provide for the imposition of a fixed monetary penalty in excess of £5,000.

Fixed monetary penalties: procedure**3**

- (1) Provision under paragraph 2 must secure that--

- (a) where an enforcement authority proposes to impose a fixed monetary penalty on a person, the enforcement authority must serve on that person a notice of what is proposed (a "notice of intent") that complies with sub-paragraph (2),
 - (b) the notice of intent also offers the person the opportunity to discharge the person's liability for the fixed monetary penalty by payment of a specified sum (which must be less than or equal to the amount of the penalty),
 - (c) if the person does not so discharge liability--
 - (i) the person may make written representations and objections to the enforcement authority in relation to the proposed imposition of the fixed monetary penalty, and
 - (ii) the enforcement authority must at the end of the period for making representations and objections decide whether to impose the fixed monetary penalty,
 - (d) where the enforcement authority decides to impose the fixed monetary penalty, the notice imposing it ("the final notice") complies with sub-paragraph (4), and
 - (e) the person on whom a fixed monetary penalty is imposed may appeal against the decision to impose it.
- (2) To comply with this sub-paragraph the notice of intent must include information as to--
- (a) the grounds for the proposal to impose the fixed monetary penalty,
 - (b) the effect of payment of the sum referred to in sub-paragraph (1)(b),
 - (c) the right to make representations and objections,
 - (d) the circumstances in which the enforcement authority may not impose the fixed monetary penalty,
 - (e) the period within which liability to the fixed monetary penalty may be discharged, which may not exceed the period of 28 days beginning with the day on which the notice of intent was received, and
 - (f) the period within which representations and objections may be made, which may not exceed the period of 28 days beginning with the day on which the notice of intent was received.
- (3) Provision pursuant to sub-paragraph (1)(c)(ii) must include provision for circumstances in which the enforcement authority may not decide to impose a fixed monetary penalty.
- (4) To comply with this sub-paragraph the final notice referred to in sub-paragraph (1)(d) must include information as to--
- (a) the grounds for imposing the penalty,
 - (b) how payment may be made,
 - (c) the period within which payment must be made,
 - (d) any early payment discounts or late payment penalties,
 - (e) rights of appeal, and
 - (f) the consequences of non-payment.
- (5) Provision pursuant to sub-paragraph (1)(e) must secure that the grounds on which a person may appeal against a decision of the enforcement authority include the following--
- (a) that the decision was based on an error of fact;
 - (b) that the decision was wrong in law;

- (c) that the decision was unreasonable.

Discretionary requirements

4

- (1) The regulations may make provision conferring on an enforcement authority the power by notice to impose one or more discretionary requirements on a person who breaches safety regulations.
- (2) The regulations may only confer such a power in relation to a case where the enforcement authority is satisfied on the balance of probabilities that the breach has occurred.
- (3) For the purposes of this Schedule a "discretionary requirement" means--
 - (a) a requirement to pay a monetary penalty to an enforcement authority of such amount as the enforcement authority may determine, or
 - (b) a requirement to take such steps as an enforcement authority may specify, within such period as the enforcement authority may specify, to secure that the breach does not continue or recur.
- (4) In this Schedule--

"variable monetary penalty" means a requirement referred to in sub-paragraph (3)(a);

"non-monetary discretionary requirement" means a requirement referred to in sub-paragraph (3)(b).
- (5) The regulations must, in relation to each kind of breach of safety regulations for which a variable monetary penalty may be imposed--
 - (a) specify the maximum penalty that may be imposed for a breach of that kind, or
 - (b) provide for that maximum to be determined in accordance with the regulations.
- (6) The regulations may not permit discretionary requirements to be imposed on a person on more than one occasion in relation to the same act or omission.

Discretionary requirements: procedure

5

- (1) Provision under paragraph 4 must secure that--
 - (a) where an enforcement authority proposes to impose a discretionary requirement on a person, the enforcement authority must serve on that person a notice of what is proposed (a "notice of intent") that complies with sub-paragraph (2),
 - (b) that person may make written representations and objections to the enforcement authority in relation to the proposed imposition of the discretionary requirement,
 - (c) after the end of the period for making such representations and objections, the enforcement authority must decide whether to--
 - (i) impose the discretionary requirement, with or without modifications, or
 - (ii) impose any other discretionary requirement that the enforcement authority has power to impose under paragraph 4,
 - (d) where the enforcement authority decides to impose a discretionary requirement, the notice imposing it (the "final notice") complies with sub-paragraph (4), and

- (e) the person on whom a discretionary requirement is imposed may appeal against the decision to impose it.
- (2) To comply with this sub-paragraph the notice of intent must include information as to--
 - (a) the grounds for the proposal to impose the discretionary requirement;
 - (b) the right to make representations and objections;
 - (c) the circumstances in which the enforcement authority may not impose the discretionary requirement;
 - (d) the period within which representations and objections may be made, which may not be less than the period of 28 days beginning with the day on which the notice of intent is received.
 - (3) Provision pursuant to sub-paragraph (1)(c) must include provision for circumstances in which the enforcement authority may not decide to impose a discretionary requirement.
 - (4) To comply with this sub-paragraph the final notice referred to in sub-paragraph (1)(d) must include information as to--
 - (a) the grounds for imposing the discretionary requirement,
 - (b) where the discretionary requirement is a variable monetary penalty--
 - (i) how payment may be made,
 - (ii) the period within which payment must be made, and
 - (iii) any early payment discounts or late payment penalties,
 - (c) rights of appeal, and
 - (d) the consequences of non-compliance.
 - (5) Provision pursuant to sub-paragraph (1)(e) must secure that the grounds on which a person may appeal against a decision of the enforcement authority include the following--
 - (a) that the decision was based on an error of fact;
 - (b) that the decision was wrong in law;
 - (c) in the case of a variable monetary penalty, that the amount of the penalty is unreasonable;
 - (d) in the case of a non-monetary discretionary requirement, that the nature of the requirement is unreasonable;
 - (e) that the decision was unreasonable for any other reason.

Discretionary requirements: enforcement

6

- (1) Provision under paragraph 4 may include provision for a person to pay a monetary penalty (a "non-compliance penalty") to an enforcement authority if the person fails to comply with a non-monetary discretionary requirement imposed on the person.
- (2) Provision under sub-paragraph (1) may--
 - (a) specify the amount of the non-compliance penalty or provide for that amount to be determined in accordance with the regulations, or

- (b) provide for the amount to be determined by the enforcement authority or in some other way.
- (3) If the regulations make provision within sub-paragraph (2)(b), they must, in relation to each kind of failure for which a non-compliance penalty may be imposed--
 - (a) specify the maximum penalty that may be imposed for a failure of that kind, or
 - (b) provide for that maximum to be determined in accordance with the regulations.
- (4) Provision under sub-paragraph (1) must secure that--
 - (a) the non-compliance penalty is imposed by notice served by the enforcement authority, and
 - (b) the person on whom it is imposed may appeal against that notice.
- (5) Provision pursuant to paragraph (b) of sub-paragraph (4) must secure that the grounds on which a person may appeal against a notice referred to in that sub-paragraph include the following--
 - (a) that the decision to serve the notice was based on an error of fact;
 - (b) that the decision was wrong in law;
 - (c) that the decision was unfair or unreasonable for any reason (including, in a case where the amount of the non-compliance penalty was determined by the enforcement authority, that the amount is unreasonable).

Stop notices

7

- (1) The regulations may confer on an enforcement authority the power to serve a stop notice on a person.
- (2) For the purposes of this Schedule a "stop notice" is a notice prohibiting a person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice.
- (3) Provision under this paragraph may only confer such a power in relation to a case falling within sub-paragraph (4) or (5).
- (4) A case falling within this sub-paragraph is a case where--
 - (a) the person is carrying on the activity,
 - (b) the enforcement authority reasonably believes that the activity as carried on by that person is causing, or presents a significant risk of causing, serious harm to human health, and
 - (c) the enforcement authority believes that the activity as carried on by that person involves or is likely to involve a breach of regulations made under section 14B by that person.
- (5) A case falling within this sub-paragraph is a case where the enforcement authority reasonably believes that--
 - (a) the person is likely to carry on the activity,
 - (b) the activity as likely to be carried on by that person will cause, or will present a significant risk of causing, serious harm to human health, and
 - (c) the activity as likely to be carried on by that person will involve or will be likely to involve a breach of regulations under section 14B by that person.

(6) The steps referred to in sub-paragraph (2) must be steps to remove or reduce the harm or risk of harm referred to in sub-paragraph (4)(b) or (5)(b).

Stop notices: procedure

8

(1) Provision under paragraph 7 must secure the results in sub-paragraph (2) in a case where a stop notice is served.

(2) Those results are that--

- (a) the stop notice must comply with sub-paragraph (3),
- (b) the person on whom it is served may appeal against the decision to serve it,
- (c) where, after service of the notice, the enforcement authority is satisfied that the person has taken the steps specified in the notice, the enforcement authority must issue a certificate to that effect (a "completion certificate"),
- (d) the notice ceases to have effect on the issue of a completion certificate,
- (e) the person on whom the notice is served may at any time apply for a completion certificate,
- (f) the enforcement authority must make a decision as to whether to issue a completion certificate within 14 days of such an application, and
- (g) the person on whom the notice is served may appeal against a decision not to issue a completion certificate.

(3) To comply with this sub-paragraph a stop notice must include information as to--

- (a) the grounds for serving the notice,
- (b) rights of appeal, and
- (c) the consequences of non-compliance.

(4) Provision pursuant to sub-paragraph (2)(b) must secure that the grounds on which a person may appeal against a decision of the enforcement authority to serve a stop notice include the following--

- (a) that the decision was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the decision was unreasonable;
- (d) that any step specified in the notice is unreasonable;
- (e) that the person has not breached the regulations and would not have breached them had the stop notice not been served;
- (f) such other grounds as may be prescribed.

(5) Provision pursuant to sub-paragraph (2)(g) must secure that the grounds on which a person may appeal against a decision of the enforcement authority not to issue a completion certificate include the following--

- (a) that the decision was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the decision was unfair or unreasonable.

Stop notices: compensation

9

- (1) Provision under paragraph 7 conferring power on an enforcement authority to serve a stop notice on a person must include provision for the enforcement authority to compensate the person for loss suffered as the result of the service of the notice.
- (2) Provision under sub-paragraph (1) may provide for compensation--
 - (a) only in prescribed cases;
 - (b) only in relation to prescribed descriptions of loss.
- (3) Provision under sub-paragraph (1) must secure that the person on whom the stop notice is served is able to appeal against--
 - (a) a decision by the regulator not to award compensation, or
 - (b) a decision of the regulator as to the amount of the compensation.

Stop notices: enforcement

10

- (1) Provision under paragraph 7 conferring power on an enforcement authority to serve a stop notice must provide that, where a person on whom a notice is served does not comply with it, the person is guilty of an offence and liable--
 - (a) on summary conviction, to a fine not exceeding level 5 on the standard scale, or imprisonment for a term not exceeding twelve months, or both, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.
- (2) In the application of this section in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, the reference in sub-paragraph (1)(a) to twelve months is to be read as a reference to six months.

Enforcement undertakings

11

- (1) The regulations may make provision--
 - (a) to enable an enforcement authority to accept an enforcement undertaking from a person in a case where the enforcement authority has reasonable grounds to suspect that the person has contravened a restriction or requirement imposed in safety regulations, and
 - (b) for the acceptance of the undertaking to have the consequences in sub-paragraph (4).
- (2) For the purposes of this Part, an "enforcement undertaking" is an undertaking to take such action as may be specified in the undertaking within such period as may be so specified.
- (3) The action specified in an enforcement undertaking must be--
 - (a) action to secure that contravention of the restriction or requirement does not continue or recur, or

- (b) action of a prescribed description.
- (4) The consequences in this sub-paragraph are that, unless the person from whom the undertaking is accepted has failed to comply with the undertaking or any part of it--
- (a) that person may not at any time be convicted of an offence under safety regulations in respect of the act or omission to which the undertaking relates,
 - (b) the enforcement authority may not impose on that person any fixed monetary penalty which it would otherwise have power to impose by virtue of paragraph 2 in respect of that act or omission, and
 - (c) the enforcement authority may not impose on that person any discretionary requirement which it would otherwise have power to impose by virtue of paragraph 4 in respect of that act or omission.
- (5) The regulations may (among other things) include provision--
- (a) as to the procedure for entering into an undertaking;
 - (b) as to the terms of an undertaking;
 - (c) as to publication of an undertaking by an enforcement authority;
 - (d) as to variation of an undertaking;
 - (e) as to circumstances in which a person may be regarded as having complied with an undertaking;
 - (f) as to monitoring by an enforcement authority of compliance with an undertaking;
 - (g) as to certification by an enforcement authority that an undertaking has been complied with;
 - (h) for appeals against refusal to give such certification;
 - (i) in a case where a person has given inaccurate, misleading or incomplete information in relation to the undertaking, for that person to be regarded as not having complied with it;
 - (j) in a case where a person has complied partly but not fully with an undertaking, for that part-compliance to be taken into account in the imposition of any criminal or other sanction on the person;
 - (k) for the purpose of enabling criminal proceedings to be instituted against a person in respect of the contravention of the requirement or restriction in the event of breach of an undertaking or any part of it;
 - (l) to extend any period within which those proceedings may be instituted.

Combination of sanctions

12

Provision may not be made under the paragraphs specified in an entry in column 1 of the following table in relation to the same kind of breach of safety regulations unless the first and second conditions set out in the corresponding entries in columns 2 and 3 are met.

TABLE

Column 1 Paragraphs of this Schedule	Column 2 First Condition	Column 3 Second Condition
Paragraphs 2 and 4	The provision must secure that the enforcement authority may not serve a notice of intent referred to in paragraph 3(1)(a) on a person in relation to a	The provision must secure that the enforcement authority may not serve a notice of intent referred to in paragraph 5(1)(a) on a person in relation to a

	breach where a discretionary requirement has been imposed on that person in relation to the same breach.	breach where-- (a) a fixed monetary penalty has been imposed on that person in relation to the same breach, or (b) the person has discharged liability to a fixed monetary penalty in relation to that breach pursuant to paragraph 3(1)(b).
Paragraphs 2 and 7	The provision must secure that the enforcement authority may not serve a notice of intent referred to in paragraph 3(1)(a) on a person in relation to a breach where a stop notice has been served in relation to the same breach.	The provision must secure that the enforcement authority may not serve a stop notice on a person in relation to a breach where-- (a) a fixed monetary penalty has been imposed on that person in relation to the same breach, or (b) the person has discharged liability to a fixed monetary penalty in relation to that breach pursuant to paragraph 3(1)(b).
Paragraphs 4 and 7	The provision must secure that the enforcement authority may not serve a notice of intent referred to in paragraph 5(1)(a) on a person in relation to a breach where a stop notice has been served in relation to the same breach.	The provision must secure that the enforcement authority may not serve a stop notice on a person in relation to a breach where a discretionary requirement has been imposed on that person in relation to the same breach.

Monetary penalties

13

(1) If the regulations confer power on an enforcement authority to require a person to pay a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty under paragraph 6(1), they may include provision--

- (a) for early payment discounts;
- (b) for the payment of interest or other financial penalties for late payment of the penalty, such interest or other financial penalties not in total to exceed the amount of that penalty;
- (c) for enforcement of the penalty.

- (2) Provision under sub-paragraph (1)(c) may include--
 - (a) provision for the enforcement authority to recover the penalty, and any interest or other financial penalty for late payment, as a civil debt;
 - (b) provision for the penalty, and any interest or other financial penalty for late payment to be recoverable, on the order of a court, as if payable under a court order.

Costs recovery

14

- (1) Provision under paragraph 4 may include provision for an enforcement authority, by notice, to require a person on whom a discretionary requirement is imposed to pay the costs incurred by the enforcement authority in relation to the imposition of the discretionary requirement up to the time of its imposition.
- (2) In sub-paragraph (1), the reference to costs includes (among other things)--
 - (a) investigation costs;
 - (b) administration costs;
 - (c) costs of obtaining expert advice (including legal advice).
- (3) Provision under this paragraph must secure that, in any case where a notice requiring payment of costs is served--
 - (a) the notice specifies the amount required to be paid;
 - (b) the enforcement authority may be required to provide a detailed breakdown of that amount;
 - (c) the person required to pay costs is not liable to pay any costs shown by the person to have been unnecessarily incurred;
 - (d) the person required to pay costs may appeal against--
 - (i) the decision of the enforcement authority to impose the requirement to pay costs;
 - (ii) the decision of the enforcement authority as to the amount of those costs.
- (4) Provision under this paragraph may include the provision referred to in paragraph 13(1)(b) and (c) and (2).
- (5) Provision under this paragraph must secure that the enforcement authority is required to publish guidance about how the enforcement authority will exercise the power conferred by the provision.

Appeals

15

- (1) The regulations may not provide for the making of an appeal other than to--
 - (a) the First-tier Tribunal, or
 - (b) another tribunal created under an enactment (within the meaning of section 14H(5)).
- (2) In sub-paragraph (1)(b) "tribunal" does not include an ordinary court of law.
- (3) If the regulations make provision for an appeal in relation to the imposition of any requirement or service of any notice, they may include--

- (a) provision suspending the requirement or notice pending determination of the appeal;
 - (b) provision as to the powers of the tribunal to which the appeal is made;
 - (c) provision as to how any sum payable in pursuance of a decision of that tribunal is to be recoverable.
- (4) The provision referred to in sub-paragraph (3)(b) includes provision conferring on the tribunal to which the appeal is made power--
- (a) to withdraw the requirement or notice;
 - (b) to confirm the requirement or notice;
 - (c) to take such steps as the enforcement authority could take in relation to the act or omission giving rise to the requirement or notice;
 - (d) to remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the enforcement authority;
 - (e) to award costs.

Publicity for imposition of civil sanctions

16

- (1) The regulations may make provision enabling an enforcement authority to give a publicity notice to a person on whom a civil sanction has been imposed in accordance with regulations under this Schedule.
- (2) A "publicity notice" is a notice requiring the person to publicise--
- (a) the fact that the civil sanction has been imposed, and
 - (b) such other information as may be specified in the regulations,

in such manner as may be specified in the notice.

- (3) The regulations may provide for a publicity notice to--
- (a) specify the time for compliance with the notice, and
 - (b) require the person to whom it is given to supply an enforcement authority with evidence of compliance within such time as may be specified in the notice.
- (4) The regulations may provide that, if a person fails to comply with a publicity notice, an enforcement authority may--
- (a) publicise the information required to be publicised by the notice, and
 - (b) recover the costs of doing so from that person.

Persons liable to civil sanctions

17

The regulations may make provision about the persons liable to civil sanctions under regulations under this Schedule and may (among other things) provide for--

- (a) the officers of a body corporate to be so liable as well the body corporate itself, and
- (b) for the partners of a partnership to be liable as well as the partnership itself,

in such circumstances as may be specified.

Guidance as to use of civil sanctions

18

(1) Where power is conferred on an enforcement authority by the regulations to impose a civil sanction in relation to a breach of regulations under this Schedule, the provision conferring the power must secure that--

- (a) the enforcement authority must publish guidance about the enforcement authority's use of the civil sanction,
- (b) the guidance must contain the relevant information,
- (c) the enforcement authority must revise the guidance where appropriate,
- (d) the enforcement authority must consult such persons as the provision may specify before publishing any guidance or revised guidance, and
- (e) the enforcement authority must have regard to the guidance or revised guidance in exercising the enforcement authority's functions.

(2) In the case of guidance relating to a fixed monetary penalty, the relevant information referred to in sub-paragraph (1)(b) is information as to--

- (a) the circumstances in which the penalty is likely to be imposed,
- (b) the circumstances in which it may not be imposed,
- (c) the amount of the penalty,
- (d) how liability for the penalty may be discharged and the effect of discharge, and
- (e) rights to make representations and objections and rights of appeal.

(3) In the case of guidance relating to a discretionary requirement, the relevant information referred to in sub-paragraph (1)(b) is information as to--

- (a) the circumstances in which the requirement is likely to be imposed,
- (b) the circumstances in which it may not be imposed,
- (c) in the case of a variable monetary penalty, the matters likely to be taken into account by the enforcement authority in determining the amount of the penalty (including, where relevant, any discounts for voluntary reporting of non-compliance), and
- (d) rights to make representations and objections and rights of appeal.

Publication of enforcement action

19

(1) Where power is conferred on an enforcement authority by the regulations to impose a civil sanction in relation to a breach of safety regulations, the provision conferring the power must, subject to this paragraph, secure that the enforcement authority must from time to time publish reports specifying--

- (a) the cases in which the civil sanction has been imposed, and

(b) where the civil sanction is a fixed monetary penalty, the cases in which liability to the penalty has been discharged pursuant to paragraph 3(1)(b).

(2) In sub-paragraph (1)(a), the reference to cases in which the civil sanction has been imposed do not include cases where the sanction has been imposed but overturned on appeal.

(3) The provision conferring the power need not secure the result in sub-paragraph (1) in cases where the relevant authority considers that it would be inappropriate to do so.

Compliance with regulatory principles

20

An enforcement authority must act in accordance with the principles that--

- (a) regulatory activities should be carried out in a way that is transparent, accountable, proportionate and consistent;
- (b) regulatory activities should be targeted only at cases in which action is needed.

Review

21

(1) The Welsh Ministers must in accordance with this paragraph review the operation of any provision made by them conferring power on an enforcement authority (including themselves) to impose a civil sanction in relation to a breach of safety regulations.

(2) The review must take place as soon as practicable after the end of the period of three years beginning with the day on which the provision comes into force.

(3) The review must in particular consider whether the provision has implemented its objectives efficiently and effectively.

(4) In conducting a review under this paragraph the Welsh Ministers must consult such persons as they consider appropriate.

(5) The Welsh Ministers must publish the results of a review under this section.

(6) The Welsh Ministers must lay a copy of a review under this paragraph before the National Assembly for Wales.

Suspension

22

(1) Where provision has been made by the Welsh Ministers conferring power on an enforcement authority other than themselves to impose a civil sanction in relation to a breach of safety regulations, the Welsh Ministers may direct the enforcement authority--

- (a) where the power is power to impose a fixed monetary penalty, not to serve any further notice of intent referred to in paragraph 3(1)(a) in relation to a breach of that kind;
- (b) where the power is power to impose a discretionary requirement, not to serve any further notice of intent referred to in paragraph 5(1)(a) in relation to a breach of that kind;
- (c) where the power is power to impose a stop notice, not to serve any further stop notices in relation to a breach of that kind;

(d) where the power is power to accept an enforcement undertaking, not to accept any further undertaking in relation to a breach of that kind.

(2) The Welsh Ministers may only give a direction under sub-paragraph (1) in relation to a breach of safety regulations if they are satisfied that the enforcement authority has failed on more than one occasion--

- (a) to comply with any duty imposed on it under or by virtue of this Schedule in relation to a breach of that kind,
- (b) to act in accordance with the guidance it has published under paragraph 18 in relation to a breach of that kind, or
- (c) to act in accordance with the principles referred to in paragraph 20 or with other principles of best practice in relation to the enforcement of a breach of that kind.

(3) The Welsh Ministers may by direction revoke a direction given by them under sub-paragraph (1) if they are satisfied that the enforcement authority has taken the appropriate steps to remedy the failure to which that direction related.

(4) Before giving a direction under sub-paragraph (1) or (3) the Welsh Ministers must consult--

- (a) the enforcement authority, and
- (b) such other persons as they consider appropriate.

(5) Where the Welsh Ministers give a direction under this section, they must lay a copy before the National Assembly for Wales.

(6) Where the Welsh Ministers give a direction under this section, the enforcement authority must--

- (a) publish the direction in such manner as the Welsh Ministers think fit, and
- (b) take such other steps as the enforcement authority thinks fit or the Welsh Ministers may require to bring the direction to the attention of other persons likely to be affected by it.

Payment of penalties into Welsh Consolidated Fund

23

Where pursuant to any provision made under this Schedule an enforcement authority other than the Welsh Ministers receives--

- (a) a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty,
- (b) any interest or other financial penalty for late payment of such a penalty, or
- (c) a sum paid in discharge of liability to a fixed monetary penalty,

the enforcement authority must pay it into the Welsh Consolidated Fund.]

NOTES

Amendment

Inserted by the Safety on Learner Transport (Wales) Measure 2011, s 7(2), Schedule.

Date in force: 10 July 2011: see the Safety on Learner Transport (Wales) Measure 2011, s 16(2).

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/SCHEDULE 1 Minor and Consequential Amendments

SCHEDULE 1

MINOR AND CONSEQUENTIAL AMENDMENTS

(introduced by section 25)

Public Passenger Vehicles Act 1981 (c 14)

1

In section 46 of the Public Passenger Vehicles Act 1981 (fare-paying passengers on school buses), in subsection (3), in the definition of "free school transport"--

- (a) in paragraph (a) omit "section 509(1) or (1A)";
- (b) omit "or" at the end of paragraph (aa);
- (c) after paragraph (aa) insert--

"(ab) in pursuance of arrangements under sections 3 or 4 of the Learner Travel (Wales) Measure 2008, or".

Transport Act 1985 (c 67)

2

(1) Section 6 of the Transport Act 1985 (registration of local services) is amended as follows.

(2) In subsection (1B)--

- (a) omit "section 509(1) or (1A)," in paragraph (a);
- (b) omit "or" at the end of paragraph (b);
- (c) after paragraph (c) insert--

"(d) the obligation placed on a local authority by sections 3 or 4 of the Learner Travel (Wales) Measure 2008; or

(e) the exercise of the power of a local authority under section 6 of that Measure."

(3) In subsection (1C)(a), for "or (c)" substitute ", (c), (d) or (e)".

Further and Higher Education Act 1992 (c 13)

3

- (1) Section 57 of the Further and Higher Education Act 1992 is amended as follows.
- (2) In subsection (2)(b) after "any Act" insert "or any Measure of the National Assembly for Wales".
- (3) In subsection (2)(c) after "any Act" insert "or any Measure of the National Assembly for Wales".

Education Act 1996 (c 56)

4

- (1) The Education Act 1996 is amended as follows.
- (2) In section 509AA (provision of transport for persons of sixth form age)--
 - (a) in subsection (1) after "authority" insert "in England";
 - (b) in subsection (2)(d) omit "or the National Assembly for Wales";
 - (c) in subsection (9) for "appropriate authority may, if it" substitute "Secretary of State may, if he";
 - (d) omit subsection (9A);
 - (e) in subsection (10) omit the words "(in relation to local education authorities in England) or the National Assembly for Wales (in relation to local education authorities in Wales)".
- (3) In section 509AB (further provision about transport policy statements)--
 - (a) omit subsection (4);
 - (b) in subsection (5), for the words from "under this section" to the end substitute "under this section by the Learning and Skills Council for England.";
 - (c) in subsection (6)--
 - (i) in paragraph (c) omit "(in the case of a local education authority in England)";
 - (ii) in paragraph (d) omit the words after "England" the first time that word appears to the end of that paragraph.
- (4) In section 509AC (interpretation of sections 509AA and 509AB)--
 - (a) omit subsection (3);
 - (b) in subsection (6) omit the words after "subsection (5)" to the end of that subsection;
 - (c) omit subsection (7).
- (5) In section 509A (travel arrangements for children receiving early years education otherwise than at school)--
 - (a) in subsection (1), after "authority" insert "in England";
 - (b) in subsection (4A), after "Regulations" insert "made by the Secretary of State";
 - (c) in subsection (5) (as substituted by paragraph 23 of Schedule 2 to the Childcare Act 2006 (c 21)), omit "in relation to England," and paragraph (b).

Childcare Act 2006 (c 21)

5

In section 110(5)(a) of the Childcare Act 2006, for "20 to 24" substitute "20 to 22, 24".

NOTES**Initial Commencement***To be appointed*

To be appointed: see s 28(2).

Appointment

Para 1: Appointment: 1 September 2009: see SI 2009/371, art 2(2), Schedule, Pt 2.

Para 2(1), (2)(a), (b): Appointment: 1 September 2009: see SI 2009/371, art 2(2), Schedule, Pt 2.

Para 2(2)(c): Appointment (for certain purposes): 6 March 2009: see SI 2009/371, art 2(1), Schedule, Pt 1.

Para 2(2)(c): Appointment (for remaining purposes): 1 September 2009: see SI 2009/371, art 2(2), Schedule, Pt 2.

Para 2(3): Appointment (for certain purposes): 6 March 2009: see SI 2009/371, art 2(1), Schedule, Pt 1.

Para 2(3): Appointment (for remaining purposes): 1 September 2009: see SI 2009/371, art 2(2), Schedule, Pt 2.

Para 3: Appointment: 1 September 2009: see SI 2009/371, art 2(2), Schedule, Pt 2.

Para 4(1)-(4): Appointment: 6 March 2009: see SI 2009/371, art 2(1), Schedule, Pt 1.

Paras 4(5), 5: Appointment: 1 September 2009: see SI 2009/371, art 2(2), Schedule, Pt 2.

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008

Welsh Assembly Measures/L/Learner Travel (Wales) Measure 2008 (2008 nawm 2)/SCHEDULE 2 Repeals

SCHEDULE 2**REPEALS**

(introduced by section 26)

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Public Passenger Vehicles Act 1981 (c 14)	In section 46(3)(a) the words "section 509(1) or (1A)".
Transport Act 1985 (c 67)	In section 6(1B) the words "section 509(1) or (1A)" in paragraph (a) and the word "or" in paragraph (b).
Education Act 1996 (c 56)	In section 444(5) the words "and (4)".
	In section 455, in subsection (1)(c) the words "or 509(2)" and in subsection (2)(b) "or" at the end of the subsection. Section 509. In section 509AA, in subsection (2)(d) the words "or the National Assembly for Wales", subsection (9A), and in subsection (10) the words "(in relation to local education authorities in England) or the National Assembly for Wales (in relation to local education authorities in

	Wales)". In section 509AB, subsection (4), in subsection (6)(c) the words "(in the case of a local education authority in England)", in subsection (6)(d) the words after "England" the first time that word appears to the end of that subsection. In section 509AC, subsection (3), in subsection (6) the words after "subsection (5)" to the end of the subsection, subsection (7). In section 509A, in subsection (5), the words "in relation to England," and paragraph (b).
School Standards and Framework Act 1998 (c 31)	Schedule 30, paragraph 133.
Learning and Skills Act 2000 (c 21)	Schedule 9, paragraph 59.
Education Act 2002 (c 32)	Schedule 19, paragraph 2. Schedule 21, paragraph 51.
Education and Inspections Act 2006 (c 40)	Section 83, subsection (1), in subsection (2) the words after "England" the first time that word appears to the end of that subsection, and subsection (3). Schedule 10, paragraphs 4 and 5(b).

NOTES

Initial Commencement

To be appointed

To be appointed: see s 28(2).

Appointment

Appointment (in part): 6 March 2009: see SI 2009/371, art 2(1), Schedule, Pt 1.

Appointment (in part): 1 September 2009: see SI 2009/371, art 2(2), Schedule, Pt 2.

Appointment (in part): 30 October 2009: see SI 2009/2819, art 2(1)(d).

Document information

Learner Travel (Wales) Measure 2008

Date made

10/12/2008



School admissions code



Statutory Code

Statutory Code document no: 005/2013

Date of issue: July 2013

School admissions code

Audience	Local authorities; governing bodies of foundation and voluntary aided schools; church diocesan authorities; community and voluntary controlled schools in Wales; Estyn; secretaries of professional organisations in Wales.
Overview	This Code imposes requirements and offers guidance in respect of the discharge by local authorities, the governing bodies of maintained schools, admission forums and admission appeal panels of their school admissions functions. These bodies must “act in accordance with” the Code.
Action required	Full compliance with the Code by the school year 2014/15.
Further information	Enquiries about this document should be directed to: Schools Management and Effectiveness Division Department for Education and Skills Welsh Government Cathays Park Cardiff CF10 3NQ Tel: 029 2082 6562 Fax: 029 2082 6109 e-mail: SchoolsManagementDivision3@wales.gsi.gov.uk
Additional copies	This document can be accessed from the Welsh Government’s website at www.wales.gov.uk/educationandskills
Related documents	Please see Annex H.

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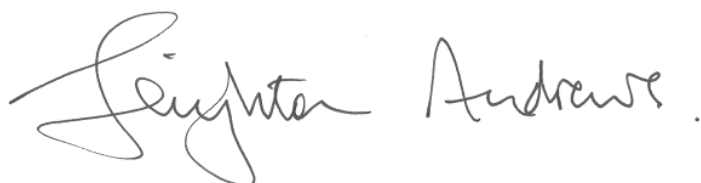
Ministerial foreword

The process of starting school or transferring between schools can be a time of uncertainty and anxiety therefore it is essential that the principles of fairness and openness are applied to all aspects of school admissions. A properly functioning admissions system, that reflects this, can play a vital part in helping to minimise concerns. It is also crucial in delivering equality of opportunity. This Code is intended to be the basis for further improvement to admissions systems.

The most recent Code was published in 2009 and at that time provided updated guidance for all those involved in school admissions. At the same time the Code also sought to safeguard the interests of parents, children and young people by ensuring that school admissions were administered in the fairest and most equitable way possible. This Code is building on the good work that has taken place and seeks to enhance the process and provide greater clarity to all.

This Code should further clarify the process for everyone with an interest in school admissions and school admission appeals, help admission authorities to fulfil their duties correctly and improve working practices.

I am sure that this Code will be welcomed by all those with an interest in school admissions. I anticipate that it will have a positive impact on the school admissions process in Wales.

A handwritten signature in black ink, reading 'Leighton Andrews'.

Leighton Andrews AM
Minister for Education and Skills

Summary

This School Admissions Code (“the Code”) contains practical guidance and imposes requirements, on local authorities and admission authorities, regarding the discharge of their duties in respect of admissions. Local authorities (“LAs”), governing bodies of maintained schools, admission appeals panels and admission forums have school admissions functions under the School Standards and Framework Act 1998. The Code includes guidelines setting out the aims, objectives and other matters relating to the discharge of admissions functions and each of the bodies or persons covered **must** “act in accordance with” the Code. The Code replaces the Welsh Assembly Government School Admissions Code which was published in July 2009.

The Code will assist everyone with an interest in school admissions and school admission appeals and help ensure that the admission system works for the benefit of both schools and pupils. The main changes introduced by the Code are:

- a requirement that admission authorities’ oversubscription criteria includes alongside ‘looked after children’, ‘previously looked after children’ as the first criterion in all instances.
- the setting of common offer dates on which decision letters **must** be issued within each local authority on a phased basis.
- a requirement that waiting lists are maintained until 30 September where schools are oversubscribed.
- additional exceptions to the class size legislation
- more opportunities to vary existing admission arrangements without reference to Welsh Ministers.

1. Introduction

1.1 The Code is made under section 84 of the [School Standards and Framework Act 1998](#) (referred to in this Code as the [1998 Act](#)) as amended by section 40 of the [Education and Inspections Act 2006](#) (referred to in this Code as the [2006 Act](#)), which requires the Welsh Ministers to issue a Code in respect of the discharge of admissions functions by:

- **Admission authorities** – LAs are the admission authorities for community and voluntary controlled schools, unless, under section 88(1)(a)(ii) of the [1998 Act](#), the function has been delegated in full to the governing body. Governing bodies are the admission authorities for foundation schools and voluntary aided schools.
- **Governing bodies** (when not admission authorities).
- **LAs** (when not acting as admission authorities).
- **Admission forums.**
- **Admission appeal panels.**

Each of these bodies has a statutory duty to “act in accordance” with this Code and the School Admission Appeals Code.

1.2 This Code replaces the previous [School Admissions Code](#) (2009) and applies to all admissions to primary, secondary (including sixth forms (Year 12) and middle schools. It comes into force on 8 July 2013 and applies to arrangements for intakes from September 2014/15 onwards. (See Annex G for details of when particular provisions come into force.) In broad terms, for the day to day administration of admissions, the Code **must** be applied immediately. Where changes introduced by the Code would depend on consultation, determination and publication of admission arrangements these would be expected to be included in published arrangements for the year 2015/16 onwards. The Code is to be read alongside the School Admission Appeals Code and other guidance and legislation that affect admissions and admissions appeals in Wales.

1.3 The Code both refers to existing statutory requirements (i.e. imposed by primary or secondary legislation) and itself imposes mandatory requirements with which those bodies listed at paragraph 1.1 above **must** comply. A reference to the relevant statutory provision is provided in the text or footnote as appropriate. Where mandatory requirements are imposed by this Code (or by statutory provisions) it is stated that the relevant bodies **must** comply with the particular requirement or provision. Where this Code prohibits practices, it is stated that the relevant body or bodies **must not** use this practice.

1.4 This Code also includes guidelines which the relevant bodies should follow unless they can demonstrate that they are justified in not doing so. Where guidelines refer to good practice, the Code will state that the relevant bodies **should** follow the particular guidelines. On the other hand where the guidelines refer to actions normally regarded as poor practice, the Code will state that the practice **should not** be used although there may be exceptional circumstances when it is justified.

1.5 Failure by an authority or body to comply with the mandatory provisions in this Code may result in a statutory objection (see paragraph 2.14) or complaint being made to the Welsh Ministers. Failure to follow guidelines in this Code may also lead to an objection or complaint being upheld if admission authorities are unable to justify departing from those guidelines.

1.6 This Code does not aim to give exhaustive guidance. Local circumstances vary widely and admission authorities are best placed to take the lead in considering, with partners in their area, how the needs of parents and children are to be met. The Code aims to build on the good practice that already exists.

1.7 The Code is primarily for those responsible for determining and implementing admission arrangements and for appeal panel members and clerks to those panels but parents and others may also find it useful.

Nursery admissions

1.8 The legislation that applies in relation to admissions to primary, secondary and middle schools is different to that for nursery schools or to children admitted to the nursery class of a maintained school (see paragraph 2.57 to 2.59). Section 98 of the [1998 Act](#) (as amended¹) clarifies that the governing body is responsible for taking decisions about admissions to the nursery class in the case of foundation and voluntary aided schools, and in those community and voluntary controlled schools with delegated responsibility for admissions. The LA is responsible for deciding admissions to nursery classes in other community and voluntary controlled schools.

1.9 The admission authority **should** clearly identify separate admission arrangements for the nursery class. [NB: oversubscription criteria **should** be established using the same principles as those for statutory provision]. A place in a nursery class **does not** guarantee admission to the reception class.

1.10 The infant class size limit applies only to classes at maintained schools containing pupils of whom the majority will attain the ages of five, six and seven during the course of the school year. Therefore, the infant class size limit will not apply to nursery classes where the majority of pupils attending that class are below the ages set out above.

Admission forums – monitoring compliance with the Code

1.11 Admission forums **must** monitor compliance with this Code. Details on their role in this can be found at Annex D, together with the information to be included in the mandatory annual return to the Welsh Government, for monitoring purposes.

¹ [Education Act 2002](#), Schedule 4, paragraph 12 amended section 98 of the [1998 Act](#).

2. Setting admission arrangements

Duty to take account of parental and young peoples' preference

2.1 Admission authorities **must** make arrangements enabling the parents² of children in their area and, in the case of sixth form admissions, young people, to express a preference for a school and to give reasons for that preference. Where a parent or young person expresses a preference according to those arrangements, LAs and governing bodies **must** comply with that preference, subject to the exceptions set out in the [1998 Act](#)³. These can be summarised as:

- Where compliance with the preference would prejudice the provision of efficient education or the efficient use of resources (including prejudice which might arise by reason of relevant measures required to be taken to ensure compliance with the infant class size limit).
- Where arrangements for entry to a school's sixth form are based wholly on selection by reference to ability or aptitude and compliance with the preference would be incompatible with selection under those arrangements.
- Where a child has been permanently excluded from two or more schools and the latest exclusion took place within the last two years.

Principles to be applied

2.2 In drawing up their admission arrangements, admission authorities must ensure that the practices and the criteria used to decide on the allocation of school places:

- Are clear in the sense of being free from doubt and easily understood. Arrangements that are vague lead to uncertainty and this may reduce the ability of parents to make an informed choice for their children.
- Are objective and based on demonstrable fact. Admission authorities and governing bodies **must not** make subjective decisions, or use criteria which are subjective or arbitrary in nature.
- Are procedurally fair and are also equitable for all groups of children (including those with special educational needs (SEN), disabilities, those in public care, or who may be a young carer).
- Provide parents or carers with easy access to helpful admissions information (Regulations require the LA to produce a composite prospectus that covers admission arrangements for all schools in their area. See paragraph 2.12).
- Comply with all relevant legislation and have been determined in accordance with the statutory requirements and the provisions of this Code. Failure to comply with a statutory requirement or any proposal to use unlawful arrangements can be referred to the Welsh Ministers who may use their intervention powers⁴ to make a direction to enforce the statutory requirement or prevent an unlawful act.

² Section 576 of the Education Act 1996

³ Sections 86, 86A, 86B, 86(3) and 87 of the [1998 Act](#).

⁴ Under Chapter 2 of the School Standards and Organisation (Wales) Act 2013.

Process to be followed

Determination year

2.3 Admission arrangements **must** be consulted on for each maintained school⁵ between 1 September and 1 March, and set by 15 April, of the school year (the 'determination year'⁶) beginning two years before the school year in which the arrangements will apply. The first step in the process is for the admission authority to draw up proposed arrangements in accordance with the principles outlined above. These proposed arrangements **must** then be consulted upon (except where indicated below).

Consultation

2.4 LAs **must** consult each year on the admission arrangements for those schools for which they are the admission authority. Governing bodies when they are also the admission authority for a school **must** also consult annually unless they have consulted on their proposed arrangements within the previous two determination years, those arrangements are unchanged, and no objection has been made to the Welsh Ministers about their admission arrangements in the preceding five years. In addition, the LA maintaining the school **must** have notified the Welsh Ministers that all the admission authorities in the relevant area⁷ undertook the required consultation in the relevant determination year. This information is provided to the Welsh Ministers in the admission forum annual report.

2.5 The bodies with which admission authorities **must** consult are set out in the following table:

Admission Authority	Consultees
LAs.	<ul style="list-style-type: none">• The governing body of the relevant schools.• All neighbouring LAs.• Admission authorities for all other maintained schools in the relevant area.• Governing bodies of all other schools in the relevant area (i.e. community and voluntary controlled schools which do not have delegated admissions powers).• In the case of schools with a religious character, such body or person representing the religion or religious denomination in question.
The governing bodies of foundation and voluntary aided primary schools and of community and voluntary controlled primary schools where responsibility for admissions has been delegated to them.	<ul style="list-style-type: none">• The maintaining LA.• Admission authorities for all other maintained primary schools in the relevant area.• Any LA whose area adjoins the relevant

⁵ Section 20 of the [1998 Act](#).

⁶ [The Education \(Determination of Admission Arrangements\) \(Wales\) Regulations 2006](#).

⁷ The [Education \(Relevant Areas for Consultation on Admission Arrangements\) Regulations 1999](#)

	<p>area.</p> <ul style="list-style-type: none"> • The governing bodies for all other primary schools in the relevant area (i.e. community and voluntary controlled schools which do not have delegated admissions powers). • In the case of schools with a religious character, such body or person representing the religion or religious denomination in question.
Admission Authority	Consultees
The governing bodies of foundation and voluntary aided secondary schools and of community and voluntary controlled secondary schools where responsibility for admissions has been delegated to them.	<ul style="list-style-type: none"> • The maintaining LA. • Admission authorities for all other maintained schools in the relevant area. • Any LA whose area adjoins the relevant area. • Governing body for all other schools in the relevant area (i.e. community and voluntary controlled schools which do not have delegated admissions powers). • In the case of schools with a religious character, such body or person representing the religion or religious denomination in question.

2.6 The bodies with which admission authorities **should** also consult are set out in the following table:

Admission Authority	Consultees
LAs.	<ul style="list-style-type: none"> • The admission forum serving the relevant area. • Where a significant change is proposed, parents of children likely to be affected.
The governing bodies of foundation and voluntary aided schools and of community and voluntary controlled schools where responsibility for admissions has been delegated to them.	<ul style="list-style-type: none"> • The admission forum serving the relevant area. • In the case of schools with a designated religious character, the relevant diocesan authority. • Where a significant change is proposed, parents of children likely to be affected.

2.7 Consultation **must** be in writing and **must** cover the full details of proposed admission arrangements for each school, including:

- a. Admission numbers for any age group to which children are normally admitted (the relevant age groups).
- b. Application procedures and the timetable for the admissions process.
- c. The oversubscription criteria to be used.
- d. Any separate entry requirements and oversubscription criteria for the sixth form.
- e. Arrangements and oversubscription criteria for nursery places, if applicable.
- f. Information about how waiting lists operate and how long they will be maintained (i.e. admission authorities **must** maintain them until the 30 September in the year of entry and beyond that at the admission authorities' discretion).
- g. Information about handling of late applications (i.e. those which miss the deadline) and the making and processing of applications outside the normal admissions round (see paragraph 3.15 to 3.21).
- h. Details of how parents will be notified of admissions decisions and can take up their right of appeal.
- i. In the case of a school with pre-existing partially selective arrangements⁸ the manner in which partially selective arrangements operate.
- j. Information about any provision made for pupil banding.
- k. Catchment area maps (where appropriate).

2.8 Consultation **must not** start before the beginning of the determination year (1 September) and **must** be completed by 1 March of that determination year.

Admission number

2.9 The admission number for a school is the number of pupils that can be admitted to a year group. Admission authorities **must** 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](#)'. This guidance is available on the Welsh Government's website at www.wales.gov.uk.

Determination of admission arrangements

2.10 Once consultation has been completed, admission authorities **must** determine their admission arrangements either in their original form or with such modifications as the authority think fit by 15 April in the determination year. They **must** then notify in writing within 14 days all those with whom they consulted (or would have consulted had the exception outlined in paragraph 2.4 not applied) on their determined arrangements.

Publication of admission arrangements

2.11 Where the admission authority has determined an admission number for a relevant age group which is lower than the current indicated admission number, identified through the capacity assessment process, for that age group or where admission arrangements provide for selection of pupils by ability, these **must** be published in a local

⁸ As defined by section 100 of the [1998 Act](#).

newspaper within 14 days of the determination. The details published **must** include an explanation of parents' right to object to the Welsh Ministers about such selection arrangements or lower admission number. The admission authority **should** consult parents and other interested parties about the intention to determine a lower number.

2.12 Each LA **must** publish an annual composite prospectus which sets out the determined admission arrangements (including a timetable for the admissions process which sets out the relevant dates for the receipt and determination of applications and for the receipt of appeals) for **every** maintained school within its area⁹ and ensure that up to date arrangements are included. This prospectus **must** be published no later than 1 October in the publication school year and not later than six weeks before the date by which parents may express a preference for a school in respect of the admission school year.

2.13 Admission authorities other than LAs **must** ensure that they supply their relevant LA with a copy of their determined admission arrangements. They **should** do so by no later than 1 June to allow the LA to comply with these publication requirements. LAs **should** verify this information with all contributors where possible, prior to publication.

Objections to admission arrangements

2.14 If the bodies listed as consultees in paragraph 2.5 wish to object to the determined admission arrangements they **must** do so in writing to the Welsh Ministers within six weeks of the date on which they were notified that the arrangements had been determined¹⁰. Later objections will only be considered if the Welsh Ministers are satisfied that it was not reasonably practicable for the objection to have been received earlier than the time it was received.

2.15 However, the governing body of a community or voluntary controlled school (which does not have delegated admissions powers) may not make an objection to:

- The admission arrangements for any other community or voluntary controlled school in the relevant area for whom the LA are the admission authority, or
- The admission arrangements for the school for which they are the governing body, unless the objection relates to the determination of an admission number for that school (see paragraph 2.9).

2.16 Objections can not be made if the substance of the objection is to seek an alteration to the admission arrangements which can only be made by way of publishing statutory proposals, for example, the introduction of pupil banding or single sex admissions.

Parental objections to admission arrangements

2.17 Parents who are eligible to object (see paragraph 2.19) may do so in the case of 'pre-existing' selection arrangements, i.e. arrangements for selection by ability which have been in place since the beginning of the 1997/98 school year. This right of objection does not however, apply to pupil banding or admissions to sixth forms.

⁹ [The School Information \(Wales\) Regulations 2011.](#)

¹⁰ [Education \(Objections to Admission Arrangements\) \(Wales\) Regulations 2006.](#)

2.18 Eligible parents may also object to a proposed admission number for any year group which is set lower than that indicated by the capacity assessment method set out in the guidance document [‘Measuring the capacity of schools in Wales’](#) (see paragraph 2.9).

2.19 To be eligible to object to pre-existing selection arrangements a parent **must** be resident in the relevant area for the school and have a child of compulsory school age in primary education. To be eligible to object to a proposed admission number, a parent **must** be resident in the relevant area for the school and have a child who is aged between 2 and 5 years or who is of compulsory school age receiving primary education. An objection may only be determined by the Welsh Ministers if five or more parents make the same or substantially the same objection to the same admission arrangements.

Variation to determined admission arrangements

2.20 Once admission arrangements have been determined for a school year they may only be varied where:

- a. There has been a major change of circumstances (e.g. a fire which has destroyed classroom space).
- b. A genuine error occurred in the determined arrangements.
- c. An admission authority has been made aware of the inclusion of unlawful practices in its admission arrangements.
- d. An admission authority sees a need to revise its admission arrangements in the light of a Welsh Ministers determination in relation to another school with the same or substantially the same admission arrangements.
- e. An omission or misprint has occurred in the determined arrangements.
- f. It is necessary to vary the determined admission number, catchment areas or ordering of oversubscription criteria to implement approved school organisation proposals¹¹.
- g. Admission arrangements are not compliant with the statutory provisions of this Code.

2.21 In the case of a, b, c and d above, the admission authority **must** first notify the proposed variation to the consultees listed in paragraph 2.5 above and then refer the matter to the Welsh Ministers for determination. This process is not required in relation to the points e, f and g.

Admission arrangements for new schools

2.22 [The New School \(Admissions\) \(Wales\) Regulations 2006](#) set out the process by which the initial arrangements for admission to new schools should be determined. These arrangements **should** be made in accordance with the principles, requirements and guidance found in this Code.

Common dates of return and common dates of offer issue

2.23 In order to ensure consistency between admission authorities and avoid confusion on the part of parents, all admission authorities in any LA area **must** have common dates of return for primary applications and secondary applications for the normal year of entry, different common dates may be agreed for primary and secondary applications. Admission

¹¹ [The School Admissions \(Variation to the Admission Arrangements\) \(Wales\) Regulations 2013](#).

authorities **should** consult neighbouring authorities through their admission forum to agree common dates for return of application forms.

2.24 Admission authorities **must** ensure that offer letters for secondary school applications are made on the prescribed Secondary Offer Day, **1 March or the next working day**¹². For primary school applications, admission authorities **should** ensure that all offers are made on the prescribed Primary Offer Day, **16 April or the next working day** until regulations require that admission authorities **must** ensure that all offers are made on the prescribed Primary Offer Day¹³ or the next working day.

Content of the admission arrangements

2.25 All maintained schools in Wales (including schools with a designated religious character), that have enough places available (up to and including the admission number)¹⁴ **must** offer a place to every child who has applied (except where they are twice excluded, see paragraphs 3.58 to 3.60). However, some schools will have more applicants than places. Admission authorities **must** therefore have in place, as part of their admissions arrangements, criteria to determine the allocation of places in the event of oversubscription. Authorities **must** ensure these criteria are reasonable, clear, objective, procedurally fair, and comply with current legislation. Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly a child from a particular social or racial group, or a child with special educational needs. It **must** be clear in which order oversubscription criteria will be applied. Admission arrangements **must** include an effective, clear and fair tie-breaker for occasions when it is necessary to distinguish between applicants when the criteria are used. The criteria **must not** require any 'interpretation' and **must** be clear and unambiguous.

2.26 This chapter prohibits the use of oversubscription criteria that are unfair or undesirable. It also provides guidelines and examples of good practice for admission authorities to help them set criteria that are fair to all children and their families.

2.27 The most common oversubscription criteria are covered in this chapter but it is not practicable to provide an exhaustive list of what is good practice and what is not. For example, there may be criteria not mentioned here that are also unfair and should not feature in a school's admission arrangements. It is possible for a criterion to be fair in some circumstances and not in others. It is for admission authorities, acting in accordance with the provisions and guidelines in this Code, to decide which criteria they will use and in what circumstances. Admission authorities **must not** place any conditions on the consideration of any application other than those relevant to the oversubscription criteria published in their admission arrangements.

2.28 Examples of possible oversubscription criteria can be found at Annex B.

¹² The School Admissions (Common Offer Date) (Wales) Regulations 2013.

¹³ Please see Annex G for coming into force for both secondary and primary offer dates.

¹⁴ See paragraph 2.9.

Prohibition of undesirable oversubscription criteria

2.29 In setting oversubscription criteria admission authorities **must not**:

- Adopt criteria which select pupils on the basis of ability or aptitude (except in relation to school sixth forms)¹⁵ except schools with partially selective arrangements which already had such arrangements in place at the beginning of the 1997/98 school year and are permitted to continue to use selection by ability. There is only one school in Wales with partially selective arrangements. The general prohibition on ability based criteria includes, in the case of Welsh medium schools, the ability to speak Welsh.
- Give higher priority to children whose parents are more able or willing to support the ethos of the school or to support the school financially or in some other way.
- Give higher priority to applications on the basis of the order of preference.
- Give higher priority to children according to the background or status of parents, including marital status or sexual orientation.
- Take account of reports about past behaviour, attitude or achievement.
- Discriminate against or disadvantage children with SEN or disabilities.
- Allocate places at a school on the basis that a sibling or other relative is a former pupil.
- Take account of the behaviour of other members of a child's family, whether good or bad, including a good or bad attendance record.
- Give priority to children whose parents are current or former staff or governors or who have another connection to the school.
- Give priority to children who (or whose parents) have particular interests, specialist knowledge or hobbies.
- Give priority to children based on the order in which applications were received.
- Expressly exclude applicants from a particular social or religious group.
- State that **only** applicants from a particular social or religious group will be considered for admission.
- Give priority to children based on religious faith except where the school has been designated¹⁶ as having a religious character (Equality Act 2010).
- Allocate places on the basis of chronological age.
- In the case of application to a reception class, give priority to children who have attended the school's nursery class or co-located children's centre (see paragraph 2.59).
- Make admission to a school conditional on parents signing a home-school agreement¹⁷. (Schools must not ask parents to sign agreements before they have been offered a place at the school).
- Random allocation e.g. lottery.

Guidelines on setting fair oversubscription criteria

2.30 Looked after children (children in public care)¹⁸ (see paragraph 3.22) are among the most vulnerable children in society. As set out in the [Placement of Children \(Wales\)](#)

¹⁵ Except in relation to school sixth forms and banding the [1998 Act](#) made it unlawful for any school to adopt selection by ability as a means of allocating places. Section 39 of the [2006 Act](#) reaffirms the position.

¹⁶ [The Designation of Schools Having a Religious Character \(Wales\) Order 2007](#).

¹⁷ Section 111 of the [1998 Act](#).

[Regulations 2007](#) and [Towards a Stable Life and a Brighter Future Guidance](#) which came into force in July 2007, it is of paramount importance that a school place is found as quickly as possible, that is in the best interests of the child.

2.31 For the purposes of setting and administering oversubscription criteria a looked after child is a child who is looked after by a LA in Wales or England in accordance with the [Children Act 1989](#)¹⁹ and whom the LA has confirmed will be looked after at the time of child's admission to the school. Subject to the exceptions in paragraphs 2.32 to 2.34 all admission authorities **must** give highest priority in their oversubscription criteria to looked after children as required by the [Education \(Admission of Looked After Children\) \(Wales\) Regulations 2009](#) and previously looked after children as required by this Code.

2.32 Admission authorities for schools with a designated religious character (faith schools) may give first priority to all looked after children and previously looked after children, whether or not of the faith but **must** give first priority to looked after children and previously looked after children of their faith above any other children of their faith. If they give first priority to looked after children and previously looked after children of the faith, then they **must** give a higher priority to looked after children and previously looked after children not of the faith than other children not of that faith.

2.33 Admission authorities for schools which have provision for selection by ability **must** give higher priority to looked after children and previously looked after children who have been selected by ability over other children who have been selected by ability. Looked after children and previously looked after children who have not been allocated a place on the basis of ability **must** be given priority over other children who have not been allocated a place on that basis.

2.34 Admission authorities for schools which make provision for selection by banding **must** give priority to looked after children and previously looked after children within each band over another child who is eligible for a school place within that band.

2.35 The remaining criteria listed below, are not preferred criteria but rather those most commonly used. Guidance is provided on the circumstances in which their use will be acceptable and when it would not. It is for admission authorities to decide the order of and whether any or all of these criteria are appropriate in their local circumstances, but where this Code states that, in particular circumstances, a criterion **should not** be used, admission authorities must be prepared to justify their decision to use the criterion if an objection is made to the Welsh Ministers.

Siblings of pupils still at the school

2.36 Giving priority to children who have siblings who will be at the school when they join may support parents of young children. Admission authorities **should** give consideration particularly to the needs of younger children at primary schools, where parents may have problems with transporting children placed at different schools. Admission authorities **should** also consider carefully how twins or triplets or other relatives, including those adopted, living permanently in the household will be treated if a sibling criterion is adopted.

¹⁸ This means a child who is looked after by a LA in Wales or England in accordance with section 22 of the [Children Act 1989](#).

¹⁹ Section 22 of the [Children Act 1989](#).

2.37 If using a sibling criterion, admission authorities **should** clearly define what they mean by the term and bear in mind that different ethnic and social groups may understand terms such as “sibling” in different ways. Admission authorities **should** make clear the position of other children living in the same household and define terms used such as step-children, and once defined **must** use the same definition consistently.

Multiple birth children (e.g. twins or triplets)

2.38 Particular difficulties may occur if schools can admit a child but not his or her siblings, and parents may be deterred by the prospect of taking children to two or more schools. Admission authorities **should** consider how they will treat multiple birth children when prioritising applications. If necessary appropriate over-subscription criteria **should** be included in published admission arrangements.

Medical need

2.39 Admission authorities may give higher priority to children or families where there is a medical need (for example where one or both parents or the child has a disability that may make travel to a school further away more difficult).

2.40 If using this criterion, admission authorities **must** give a clear explanation of what supporting evidence will be required - for example a letter from a registered health professional such as a doctor or social worker - and how this will be assessed objectively. It should be made clear that the supporting evidence should set out the particular reasons why the school in question is the most suitable school and the difficulties that would be caused if the child had to attend another school. Admission authorities **must not** give higher priority to children under this criterion if the required documents have not been produced.

2.41 This criterion, if used, **must not** relate to particular aptitudes for some subjects such as in sport or music. For example, schools **must not** seek to admit children, under this criterion, on the basis e.g. that they ‘need’ to attend the school because they have an aptitude or interest in sport and the school has particularly good sports facilities.

Faith-based oversubscription criteria

2.42 Schools designated as having a religious character may give preference in their admission arrangements to members of a particular faith or denomination, providing this does not conflict with other legislation, such as equality legislation or the mandatory provisions of this Code. As with all other maintained schools faith schools **must not** keep open places if they have insufficient applicants of their own faith and other families have applied for a place at the school.

2.43 As with all oversubscription criteria, those that are faith-based **must** be objective and transparent. Parents and families **must** be able to understand easily how the criteria will be satisfied.

2.44 Where preference is to be given to members of a particular faith, published admission arrangements **must** make clear how religious affiliation or commitment is to be demonstrated - for example by a simple statement of affiliation, or through a reference signed by the family’s priest, minister, or other representative(s) of the church (any reference **should** be in writing). Where reference is made to the frequency of attendance at worship, the definition **should** be specific and refer, for example to ‘weekly worship’

rather than 'regular worship'. It also needs to be made clear whether any requirement is to be met by parents (or one parent if only one parent is an adherent of the particular faith) or by the child or both.

Guidance provided by church or religious authorities

2.45 Church or religious authorities may provide guidance for the admission authorities of schools of their faith that sets out what process and criteria may be used to establish membership of the faith. Such guidance **should** clearly define the terms used and how membership is to be determined, and **must** be consistent with the provisions and guidelines of this Code. Where such guidance is produced, the admissions authorities for schools of the faith **should** follow it.

2.46 Admission authorities for faith schools **should** consider how their particular admission arrangements impact on the local community. Faith schools can contribute to community cohesion by having admission arrangements that are inclusive of other faiths, beliefs and of all elements of the population of their local area.

2.47 Faith schools, as a minimum, **must** give first priority in their oversubscription criteria to looked after children and previously looked after children of their faith (see paragraph 2.32).

Distance between home and school

2.48 Distance between home and school is a clear and objective oversubscription criterion and is useful as a tie-breaker. Where an admission authority determines to use the distance between home and school as part of oversubscription criteria it **should** explain clearly how the shortest available route from home to the school will be measured including the points at the school and the child's home from which distance is to be measured (for example, the main school gate, the front door to the home, how flats will be treated) and care should be taken to use a reliable and reasonable system which parents can readily understand. Reference to 'straight line' and 'how the crow flies' **should not** be used as measures of distance.

2.49 Consideration may be given to the inclusion of the following oversubscription criteria 'furthest from the next appropriate alternative school'. This may also be useful as a tie-break where the pattern of school provision might lead to some children having to travel excessive distances to access a school place.

2.50 Where a child lives with parents with shared responsibility, each for part of a week, the oversubscription criteria need to make clear how the 'home' address will be decided in a fair and considered way.

Split-site schools

2.51 Where split site schools are in operation, the admission authority **should** in most cases, apply the admission arrangements as if the school were a single unit. They **should** make it clear to parents that admission applications are made to the school as a whole and not to a particular site. The site that children attend is a matter for the internal organisation of the school. Appeals cannot be made against the site allocated.

Catchment areas

2.52 The 1997 Rotherham Judgment²⁰ confirmed that there is nothing unlawful in the principle of admission authorities operating catchment areas as part of their oversubscription criteria and thereby giving priority to local children whose parents have expressed a preference for the school. However, admission authorities **should not** guarantee places to parents in a local catchment area, in case the number of in-catchment applications in any one year cannot be accommodated.

2.53 LAs **must not** suggest that parents should express a preference for the school in whose catchment area they live, or that they have been allocated a place at that school before they have expressed a preference. Although they **should** explain the possible consequences of not doing so, LAs **must** make it clear that parents are allowed to express a preference for any school.

2.54 For children of UK Service personnel, admission authorities **must** treat a family moving to their area as meeting the residency criteria for the relevant school catchment area once proof of the posting has been provided, even if no address is currently established in that area.

2.55 Where catchment areas are used, they should be designed so they are reasonable and clearly defined. Reference to historic/traditional or LA boundaries is not always appropriate and may be open to different interpretation. Admission authorities **must** make maps of the specified areas available, for example on their websites or in public libraries or otherwise enable parents to easily identify their home in relation to school catchment areas. Catchment areas **must not** be set or changed after applications have been made. There is nothing to prevent parents expressing a preference for a school if they live outside its catchment area.

Additional guidelines relating to primary schools

2.56 If a primary school has more than one year of entry (for example where a separate infant school feeds into a primary school junior department) separate arrangements **must** be determined for each of the years of entry.

Admission of children below the age of normal entry to school (nursery)

2.57 Local authorities in Wales are under a duty to secure sufficient provision of nursery places for their area for children in the term following their third birthday. When determining and publishing the arrangements for admission to a reception class, the admission authority **must** make it clear that:

- The arrangements do not apply to those being admitted for nursery education including nursery provision delivered in a co-located children's centre.
- Parents of children who are admitted for nursery education will still need to apply for a place at the school if they want their child to transfer to the reception class.
- Attendance at the nursery or co-located children's centre does not guarantee admission to the school.

²⁰ R v Rotherham Metropolitan Council ex parte Clark and others (1997) EWCA Civ 2768.

Primary schools with attached nursery class

2.58 Where schools admit nursery pupils, arrangements for their admission **must** be separately identified and published. The provisions in this Code only apply to nursery admissions to the extent set out in paragraphs 1.8 to 1.10 and in this and paragraphs 2.59 and 2.60. Published admission arrangements **must** make it clear to parents that their child's attendance at the nursery class does not guarantee admission to the school for primary education, and that a separate application **must** be made for transfer from nursery to primary school (as it **must** for transfers from infant to junior schools).

2.59 Nursery provision can be in a maintained or non-maintained setting. Admission authorities must ensure that parents are aware of the formal process for applying for a place²¹ and the practice of registering a child's name at a specific school should be discouraged. There is no role for headteachers in the allocation of places as this is the responsibility of the admission authority. In areas where nursery applications are in excess of the number of places available, admission authorities **should** apply fair oversubscription criteria in order to allocate the places.

2.60 Admission authorities **must not** include attendance at the nursery or the co-located children's centre for nursery education in their oversubscription criteria for admissions to primary school. Such arrangements can advantage those parents willing to travel a substantial distance to allow their child to attend nursery school so that they will have priority in admission to the primary school over more local parents. Such criteria may also disadvantage families who have recently moved to the area and those who have opted for other providers or who choose to take up the free entitlement at an alternative local provider. It may make some parents feel they have to enrol their child at the school before they consider him or her ready, in order to gain a place at the primary school.

Deferred entry to primary schools

2.61 The law does not require a child to start school until the start of the term following the child's fifth birthday. Where the admission authority for a primary school offers places in reception classes to parents before their children are of compulsory school age, they **must** allow parents the option of deferring their child's entry until later in the same school year. The effect is that the place is held for that child and is not available to be offered to another child. The parent would not however be able to defer entry beyond the beginning of the term after the child's fifth birthday, nor beyond the school year for which the original application was accepted. This **must** be made clear in the admission arrangements for the school.

2.62 Where there are separate but 'paired' infant and junior schools, published arrangements must make it clear that parents of children at the infant school will need to apply for places at the junior school and that attendance at the infant school does not guarantee a place at the junior school.

Additional guidelines for secondary schools

2.63 The use of named feeder primary schools as an oversubscription criterion can allow better continuity for pupils but needs to be used with caution. Admission authorities **should** ensure that such arrangements do not unduly disadvantage children who move

²¹ [Education Act 2002](#), Schedule 4, paragraph 12 amended section 98 of the [1998 Act](#).

into an area at a late stage and consider carefully the impact that such arrangements have on the ability of a school to serve its immediate local area.

Additional guidelines for middle schools

2.64 Admission authorities with middle schools²² need to determine tailored arrangements for each of the nursery, primary and secondary phases for the relevant years of entry, but once in attendance in the primary phase, those pupils would not need to apply for the secondary phase.

Sixth form admission arrangements

2.65 If an admission authority wishes to adopt specific arrangements for admissions to a school sixth form, including a separate admission number, it **must** consult on, determine and publish those arrangements at the same time and in the same way as all other admission arrangements.

2.66 Applications for admission/entry to a sixth form may be made by either the parent or the young person or both. These applications **must** be treated in the same way as any other application for admission to a school.

2.67 Admission authorities are permitted to set arrangements for entry to sixth forms which are wholly based on selection by reference to ability and where such arrangements exist, the duty to comply with that preference does not apply²³. This means that a young person can be refused a place even if the year group is not full. However, before setting criteria for transfer or admission to the sixth form which are based on ability, admission authorities **should** take into account the needs of the young person and the provision of suitable post compulsory education available in the area that a young person would have access to if they failed to meet the criteria.

2.68 Admission authorities may establish a set of oversubscription criteria for entry to sixth forms which differ from the oversubscription criteria applied in the case of younger year groups. These criteria might include selection by ability. If selection arrangements are adopted, the minimum requirements **should** be fully identified (for example, where entry is dependent on applicants having achieved 5 GCSEs at Grade C or above, this **must** be clearly set out). Such arrangements **should** also include information on how applicants will be prioritised if there are more applications than sixth form places available. These would only need to be used where there are more applications than places.

2.69 To enable the effective application of sixth form oversubscription criteria, admission authorities need to publish a separate sixth form admission number calculated using the '[Measuring the capacity of schools in Wales](#)' formula. Unless this is done, the relevant admission number would be the admission number that applies at Year 7 and this is likely to be too high.

2.70 Any admission authority which sets wholly selective sixth form admission arrangements **must** apply those arrangements equally to both young people who are currently attending the same school but seeking entry to the sixth form and those who are applying to be admitted to the school for the first time. In all other instances young people

²² As defined by Section 5 of the Education Act 1996.

²³ Section 86(3a) of the [1998 Act](#).

who are already attending the school will not need to apply for entry to the sixth form and cannot be refused entry.

2.71 Schools **must not** interview young people or their families for entry to a sixth form, although meetings can be held to provide advice on options and entry requirements for particular courses. Entry **must not** be dependent on attendance, behaviour record, or perceptions of attitude or motivation.

3. Applying admission arrangements

3.1 All admission authorities **must** consider and decide on applications for school places in accordance with their published arrangements.

3.2 If a school is oversubscribed then the admission authority **must** consider all applicants against its published oversubscription criteria (except looked after children, and previously looked after children or children with a statement of SEN).

3.3 Wherever possible all applications for admissions, **should** be returned to the admission authority.

3.4 In a normal year of entry, a child **must not** be refused admission to a school on the grounds of prejudice to efficient education or the efficient use of resources except where the number of applications for admission exceeds the admission number²⁴.

3.5 The admission number reflects the school's ability to accommodate pupils and it **should not** be exceeded. However, it may be reasonable for the admission authority to consider exercising discretion, in exceptional circumstances, to admit more pupils than the admission number indicates. Such instances might include:

- Where there are a significant number of surplus places across the year groups in the school, so that the pupil can be accommodated without prejudicing future intakes if the increased uptake of places continues.
- If there is a temporary shortage of a particular type of provision in an area, for example Welsh medium education, while additional provision is being established.

3.6 It would not be appropriate to exceed the admission number of a school as described above where there are places available at a suitable alternative school which is within a reasonable travelling distance of a child's home having had regard to the local authority's school travel policy.

3.7 It is important to note the difference between class size legislation and admission numbers. Class size legislation should not be confused with the admission number for a school. If the admission number is lower, or higher than 30, pupils **must** be admitted up to the admission number in the normal year of entry, as this reflects the school's capacity to admit children in the relevant age group. The infant class size limit of 30 applies to the organisation of the classes not to the number of children to be admitted.

3.8 When considering applications to years other than the normal year of entry, (i.e. reception or year 7) admission authorities **should** admit to the school's admission number and will rarely be able to prove prejudice as a ground for refusing an additional pupil while numbers remain below the admission number. As the admission number reflects the school's ability to accommodate pupils, it **should not** be exceeded to any significant degree in relation to any year group. If an admission number is routinely exceeded overcrowding could result.

²⁴ Section 86(5) of the [1998 Act](#) as substituted by section 47 of the [Education Act 2002](#).

Application forms

3.9 All applications for admission **must** be made by means of a completed application form whether hard copy or electronic. The information requested **must** be the same on both forms and treated in the same way when submitted. This includes applications made on behalf of a looked after child by a corporate parent where the LA is both the corporate parent and the admission authority. Admission authorities **must** ensure that an application form is produced for each of the schools for which they are responsible. These forms may relate to just one school or to a group of schools. Each form **must** include the deadline by which it is to be returned (i.e. the common date of return) together with the name and address of the person to whom it should be sent. They **should** ask for the following information (a model form is provided at Annex F):

- The child's or young person's full name, date of birth and place of residence (as this may differ from the parent's address).
- The child's or young person's sex (where authorities have single sex secondary schools).
- Whether the child is a 'looked after child' (child in care) or previously looked after child.
- Whether the child has a statement of SEN which includes a named school.
- The young person's or parent's preferred school/s (in order of preference).
- The name/s and dates of birth of older children already in attendance at the preferred school/s (where sibling links are an oversubscription criterion).
- The young person's or child's current school (where feeder schools are a criterion).
- The young person's or parent's signature, printed name, correspondence address and telephone number.
- Over-riding medical reasons for admission with supporting evidence (where medical reasons are an oversubscription criterion).

3.10 To avoid the potential for discrimination, additional information on matters which are not directly relevant to the published oversubscription criteria **should not** be sought.

3.11 Admission authorities **should** also consider providing the following information on application forms:

- That the child/young person on behalf of whom a preference has been expressed will be given priority and that failure to express a preference/submit a form will make it less likely that the child/young person will be able to attend a school of their or their parent's choice.
- That attendance at a nursery class within a primary or infant school does not guarantee a place in the school's reception class and that an application form **must** be submitted.
- That all first preferences will be met except where the number of applications exceeds the number of places available and that in such cases places will be allocated on the basis of the published oversubscription criteria.
- The authority's oversubscription criteria.
- A number to contact in the event that parents/young person wish to find out the relevant catchment area school/s (English/Welsh medium or denominational) where a catchment policy is in operation.
- That there is no right of appeal in relation to nursery admissions.

3.12 Admission authorities **should** also consider acknowledging receipt of application forms so as to provide assurances to young people, parents and carers.

Interviewing

3.13 The [1998 Act](#)²⁵ prohibits the interviewing of parents, a young person and/or a child as a method for deciding whether a place should be offered to the child/young person at a school. This includes both face to face interviews and those using the telephone or other means, for example written questions and answers and essays. Open evenings and other events for prospective parents, young people and children are not affected, but information gained at these events **must not** play a part in the decision making process. Attendance at an open evening or other meeting at the school **must not** be a condition for the allocation of a place.

3.14 This prohibition does not apply to interviews conducted by boarding schools solely for the purpose of determining a child's suitability for a boarding place (see Annex C).

Handling late applications and applications outside the normal admission round

3.15 Admission authorities **should** have an agreed policy on handling late applications. They **should** accept applications which are received after the closing date for application when a good reason is given, for example, when a single parent has been ill for some time, or a family has just moved into the area, or is returning from abroad - provided applications are received before offers of places are made. Looked after children and children with statements of SEN that name a specific school **must** be admitted regardless of when their application was received.

3.16 In dealing with applications outside the normal admissions round, whether in-year or for a school year which is not the normal point of entry to the school, admission authorities **must** comply with parental preference or in the case of a sixth form a young person's preference unless one of the statutory reasons (see paragraph 2.1) for refusing admission applies.

3.17 Anyone expressing an interest in admission **must** be given an application form at the first point of contact. Once received, such applications **must** be considered without delay and a formal decision either to offer or to refuse a place **should** be made and notified to the applicant within 15 school days or 28 calendar days whichever is the sooner. Applicants **must not** be refused the opportunity to make an application, or told that they can only be placed on a waiting list rather than make a formal application.

3.18 Applications for admission to school for a short period only **must** be treated in the same way as any other application for admission.

3.19 The same statutory reasons for refusing admission apply outside the normal admission round as with applications made during the normal admissions round. Admission authorities **must not** refuse to admit a child because they followed a different curriculum at their previous school. However, in such instances, parents should be made aware of the curriculum on offer at the chosen school.

²⁵ Section 88A of the [1998 Act](#) inserted by the [Education and Skills Act 2008](#).

3.20 While it is essential that children who have no school place are found one quickly, the [Education Act 1996](#)²⁶ permits deferment of admission to the start of a school term. In cases involving school transfers that do not require a house move, or where there is no need for an immediate move, admission authorities may wish to arrange for a child to start at the school at the beginning of term to minimise disruption to their own and other children's education. Admission authorities **must** ensure this does not prejudice vulnerable children such as those described in the paragraphs below.

3.21 Where an application outside the normal admission round is made some time in advance of the requested start date (e.g. where a pupil is due to move into an area several months hence) the admission authority **should** consider carefully in the circumstances of the case, the length of time it would be reasonable to hold open the place for the pupil. It would not normally be appropriate to hold open a place for more than a school term.

Looked after children

3.22 [The Education \(Admission of Looked after Children\) \(Wales\) Regulations 2009](#) places a duty on admission authorities in Wales to admit children looked after by a LA in Wales where an application for admission outside the normal admissions round is made by the corporate parent on their behalf. However, before making an application, the corporate parent (i.e. the Welsh LA responsible for looking after the child) **must** consult with the relevant admissions authority (and in the case of a looked after child permanently excluded from two or more schools, the governing body of the relevant community or voluntary controlled school) and make every effort to ensure the appropriateness of the named school in the light of the child's background including SEN and/or faith needs. The consultation need not be onerous and a telephone call between the parties should be sufficient.

3.23 Where an admission authority (or governing body of a community or voluntary controlled school in the case of a looked after child permanently excluded from two or more schools) believes that compliance with the duty to admit a looked after child would seriously prejudice the provision of efficient education or the efficient use of resources, it may, within 7 calendar days of the date on which the application is received, refer the matter to the Welsh Ministers. Any such reference must be made in writing, and **must** set out the admission authority's (or governing body's) basis for believing that serious prejudice will arise. The Welsh Ministers may either uphold the duty to admit, or if the LA that looks after the child agrees, determine that another school in Wales **must** admit the child. The decision of the Welsh Ministers is binding.

3.24 The Welsh Ministers may not determine that an alternative school must admit the child if the child has already been excluded from that school or if the admission would seriously prejudice the provision of efficient education or the efficient use of resources. Where an admission application on behalf of a looked after child or previously looked after child is not referred to the Welsh Ministers, the decision to admit **must** be notified to the applicant within 10 calendar days and the child **must** be permitted to take up the place from the next available school day.

Gypsy and Traveller children

3.25 The Gypsy Traveller community is very strongly family orientated and parents will normally want all of the children in their family to attend the same school. It is an

²⁶ Section 433 of the [Education Act 1996](#).

important element of their culture that older children are expected to look after younger siblings and this especially applies in the school context. If places are not found for all children in the family in the same school, this could result in them being kept home for long periods whilst waiting for places. This potentially presents particular difficulties for admission authorities where families arrive outside the normal admissions cycle.

3.26 Arrangements **must** be in place for Gypsy and Traveller children to be registered quickly at a school whether residing permanently or temporarily in the area. Guidance on best practice in relation to access to education for this group of learners can be found in Welsh Assembly Government Circular 003/2008 '[Moving Forward - Gypsy Traveller Education](#)'.

Waiting lists

3.27 Admission authorities **must** maintain waiting lists for oversubscribed schools, details of which must be set out in the published admission arrangements. Following the allocation of places during the normal admissions round, children **must** remain on the waiting list until the 30 September in the school year for which they have applied. Thereafter the parents **should** be expected to make a fresh application for admission.

3.28 If additional places become available while the waiting list is in operation they **must** be allocated to children on the waiting list on the basis of the published oversubscription criteria. Waiting lists **must not** give priority to children based on the date the application was added to the list. For example, if a child moves to an area outside the normal admissions round and has higher priority under the oversubscription criteria, they **must** be ranked above those with lower priority already on the list. Admission authorities **should** notify parents of where their child has been placed on a waiting list but **must not** give any indication of the likelihood of being offered a place.

3.29 Where school places become vacant before admission appeals are heard, admission authorities **must** fill these vacancies from any waiting list. Placing a child's name on a waiting list does not affect the parent's right of appeal against an unsuccessful application.

Admission outside the normal age group

3.30 Although most children will be admitted to a school with their own chronological age group, from time to time parents seek places outside their normal age group for gifted and talented children, or those who have experienced problems or missed part of a year, often due to ill health. While it would not normally be appropriate for a child to be placed in a year group that is not concurrent with their chronological age, admission authorities **should** consider these requests carefully and make decisions on the basis of the circumstances of each case and in consultation with the parents and the school, and specifically in relation to what is most beneficial to the child. Due regard **should** also be given to the Educational Psychologist's report where available, and clear reasons ascertainable for such a decision to be made.

3.31 If it is decided that there are grounds to consider an 'out of year' application, parents refused an application for a place at a school have a statutory right of appeal. However, there is no right of appeal if a place has been offered but not in the desired year group.

Decision taking

3.32 Where the school is its own admission authority, the admissions committee established by the governing body, **must** make such decisions²⁷. Decisions on admissions **must not** be made by one individual in a school. Where the LA is the admission authority the decision **must** be taken by the appropriate LA officer(s) (usually the admissions officer). Whilst LAs may delegate all of their admissions functions to a governing body of a community or voluntary controlled school, they **must not** delegate to the governing body (or Head) part of the functions of an admission authority such as the power to decide admissions applications.

3.33 Heads or other school officials **must not** give parents an expectation that their application will be successful, or tell them that their child has been given a place at the school, before an offer of a place has been made formally. However, where there is evidence that parents have been told by a head, or other school official, that their child will be given a place at a school, they could reasonably expect that the person making the offer had authority to do so. If an informal offer has been made the admission authority **should** normally honour the offer, even though in fact it may not have authorised that person to make it. It is important to note that this offer **should not** prejudice the admission of other children who would otherwise have been offered a place if the informal offer had not been made. The making of unofficial offers could result in a breach of the class size regulations²⁸ (in the case of infant classes), and this is a matter that the school would have to address. It is therefore important to avoid such situations arising.

Notifying parents

3.34 The outcome of all admission applications **must** be notified to parents in writing. The letter **must** be expressed clearly without the use of jargon.

3.35 Where the application is being accepted, a starting date **should** be included where possible. Admission authorities may include a return proforma asking parents if they will/will not be taking up the place offered and set a deadline for its return.

3.36 Where the application is being rejected, the letter **must** set out the reasons for the decision taken including the number of applications received, the number of places available, and the oversubscription criteria applied. If the refusal is because of the infant class size limit this **must** be made clear (see paragraph 3.46). The letter **must** also include information on the parents' right of appeal against the decision, the process for doing this, and the deadline for responding.

Admission appeals

3.37 Parents may appeal against decisions "as to the school at which education is to be provided for the child in the exercise of the authority's functions"²⁹. In the case of sixth form admissions, the parent and the young person are able to appeal separately or jointly. Where they apply separately, the appeals **must** be heard together. Where an admission application is being rejected, admission authorities **must** inform parents of their right of appeal in the letter of rejection and **must not** comment on the likelihood of success. They

²⁷ Regulations made under Sections 21 and 138 of the 1998 Act; and Sections 19-21, 23-25, 34-36, 210 and 214 of the Education Act 2002.

²⁸ The School Admissions (Infant Class Sizes) (Wales) Regulations 2013.

²⁹ Section 94 of the [1998 Act](#).

are also required to establish independent panels to which parents can appeal against decisions to refuse admission to preferred schools. Admission authorities **must** ensure that appeals made during the timetabled admissions process are heard within 30 school days of the specified closing date for the receipt of appeals. Appeal hearings for appeals made outside the timetabled admissions process **must** be held within 30 school days of the appeal being received in writing. During the summer holidays admission authorities **must** arrange their appeals hearings within 30 working days of the appeal being received in writing (see paragraph 4.9 of the School Admission Appeals Code).

3.38 The Education (Admission Appeals Arrangements) (Wales) Regulations 2005 as amended set out the constitution of admission appeal panels. The School Admission Appeals Code imposes mandatory requirements and provides guidelines on how panels should be set up and how they should conduct their hearings.

3.39 Admission authorities **must** admit a child whose parents have won an appeal. If the admission authority wants to challenge the decision of the appeal panel, it may seek judicial review. The Welsh Government has no jurisdiction over the decisions of appeal panels.

Withdrawing offers of places

3.40 Once an admission authority has made an offer of a school place, it may only lawfully withdraw that offer in very limited circumstances. These may include when the admission authority offered the place on the basis of a fraudulent or intentionally misleading application from a parent or young person (for example, a false claim to residence in a catchment area) which effectively denied a place to a child with a stronger claim or where a place was offered by the LA rather than by the admission authority in error.

3.41 A school place **must not** be withdrawn once a child or young person has started at the school, except where that place was fraudulently obtained. In deciding whether to withdraw the place, the length of time that the child had been at the school **must** be taken into account. Where a place is withdrawn on the basis of misleading information, the application **must** be considered afresh, and a right of appeal offered if a place is refused.

Duty of a governing body to implement the decision of an admission authority

3.42 The governing body of a community or voluntary controlled school, for which a LA is the admissions authority, **must** implement any decision taken by the admission authority relating to the admission of pupils³⁰ without undue delay.

LA power of direction

3.43 A LA may direct the governing body for a maintained school for which it is **not** the admission authority to admit any child in their area where the child has been refused admission to, and/or is permanently excluded from, each school which is a reasonable distance from their home and provides suitable education, except where the child has been permanently excluded from that school³¹.

³⁰ Section 88(1A) of the [1998 Act](#) (as inserted by section 43 of the [2006 Act](#)).

³¹ Section 96 of the [1998 Act](#) as amended by paragraph 10 of Schedule 4 to the [Education Act 2002](#).

3.44 Before giving a direction the LA **must** consult the governing body for the school they propose to specify in the direction. If following the consultation, the LA decides to issue the direction it **must** first serve a notice in writing of its decision on the governing body and head. The governing body may, within a period of 15 days on which the notice was served, refer the matter to the Welsh Ministers informing the LA that they have done so. If the matter is not referred and the direction is issued, the governing body **must** admit the child to the school.

Other information relevant to school admission arrangements

Infant class size limit

3.45 Statutory limits on class sizes provide that when a single school teacher³² is present, and subject to certain limited exceptions (see below), infant classes (reception, Year 1 and Year 2) may not contain more than 30 pupils³³.

3.46 An admission authority can refuse to admit a child to a school where to do so would cause class size prejudice, that is to say, prejudice to efficient education or efficient use of resources as a result of the relevant measures that would be needed to comply with the duty to limit the size of infant classes. However, in relation to the reception year such prejudice can not be said to arise unless the schools admission number would be exceeded.

3.47 Whilst there is no legislation limiting Key Stage 2 classes to 30 or fewer this is the class size target for the Welsh Government.

3.48 Where certain types of children ("excepted pupils") cannot be provided with education at the school in another infant class in which the limit is not exceeded without relevant measures being taken which would prejudice efficient education or the efficient use of resources, those children are not to be counted for the purpose of ascertaining whether or not the limit of 30 pupils is exceeded. Excepted children are:

1. Children whose statements of SEN specify that they should be educated at the school concerned, and who were admitted to the school outside a normal admission round.
2. Children who are looked after by local authorities (looked after children), or who have ceased to be looked after (previously looked after children) as a result of being adopted or being placed with a family or given a special guardian and are admitted to the school outside a normal admissions round.
3. Children initially refused admission to a school, but subsequently offered a place outside a normal admission round by direction of an admission appeal panel, or because the person responsible for making the original decision recognises that an error was made in implementing the school's admission arrangements.
4. Children admitted outside the normal admission round who:
 - the maintaining local authority confirmed cannot gain a place at any other suitable school within a reasonable distance of their home because they have moved into the area outside a normal admission round, or

³² A person qualified under the [Education \(School Teachers Qualifications\) \(Wales\) Regulations 2004](#).

³³ Section 1 of the [1998 Act](#) and the School Admissions (Infant Class Sizes) (Wales) Regulations 2013.

- they desire a religious education, or a Welsh speaking education and the school in question is the only suitable school within a reasonable distance.
5. Children who were admitted to the school outside the normal admission round after which the school has arranged its classes, and after the first day of the school year, the effect of which would mean that the school would have to take a relevant measure if such children were not excepted pupils.
 6. Children of armed forces personnel who are admitted outside the normal admission round.
 7. Children whose twin or other sibling from a multiple birth are admitted as non-excepted pupils, as the final pupil(s) allocated a place before the admission number is reached.
 8. Children who are registered pupils at special schools, but who receive part of their education at a mainstream school.
 9. Children with SEN who are normally educated in a special unit in a mainstream school, who receive part of their lessons in a non-special class.

3.49 Excepted pupils will remain so, once admitted, for the remainder of their time in an infant class or until class numbers fall back and they can be organised to comply with the infant class size limit. For example, because a non-excepted child leaves the class, an additional infant class is created, or an additional teacher is appointed, then that child ceases to be an excepted pupil. Classes **must** be organised so as to comply with the limit wherever possible.

3.50 The exceptions in respect of previously looked after children, children of armed forces personnel and twins or other siblings from multiple births will apply in respect of admissions from 2014/15 school year. All other exceptions will apply from the 2013/14 school year.

Children with statements of SEN

3.51 In general, the admission of children with statements of SEN is covered by the [Education Act 1996](#)³⁴. Guidance on the admission of children with statements is provided in the Special Educational Needs Code of Practice for Wales. Consequently the admissions provisions in the [1998 Act](#) do not generally apply to children with statements of SEN. Section 324 of the [Education Act 1996](#) requires a maintained school that is named in a statement of SEN to admit the child. Schools cannot refuse to admit even if by doing so they would exceed their admission number.

3.52 If a LA has provided a statement for a child with SEN it is responsible for ensuring that the special educational provision is made for the child. The LA may identify a particular school which it considers to be suitable for the child's needs, and name the school in the statement. Admission authorities must be mindful of their duties with regards to Equalities Legislation and guidance on improving the ³⁵accessibility of schools³⁶. If the parent of a child with a statement of SEN wishes to appeal against the school named in the statement, or the fact that no school has been named, the appeal is to the Special Educational Needs Tribunal for Wales, not to the admission appeal panel.

³⁵ Sections 312 to 349 of, and Schedules 26 and 27 to the [Education Act 1996](#)

³⁶ Planning to Increase Access to Schools for Disabled Pupils: National Assembly for Wales Circular No: 15/2004.

Children with SEN without statements

3.53 Children with SEN but without statements **must** be treated as fairly as other applicants. Admission authorities **must not** refuse to admit a child because they consider themselves unable to cater for his or her SEN. Admission authorities **must** consider applications from children who have SEN but no statement, on the basis of the school's published admission criteria. They **must not** refuse to admit a child on the grounds that he or she does not have a statement of SEN, or is currently being assessed for one. Where admission authorities give some priority to children with special, medical or social needs etc but without a statement, their published admission arrangements **should** explain what evidence of need is required to qualify under the criterion.

3.54 If a child is going through an assessment process for a statement, the parents may wish to apply for a school place under the normal admissions procedures in case the LA concludes that the child's needs do not require a statement of SEN. If the LA decides that the child **should** have a statement of SEN then decisions about an appropriate school placement will be addressed as part of the statementing process.

Children with disabilities

3.55 Schools and admission authorities have had a duty to provide reasonable adjustments for disabled pupils since 2002 (originally under the Disability Discrimination Act and from October 2010 under the Equality Act 2010). Admission authorities **must not** discriminate against a disabled child by:

- a) the arrangements they make for determining pupil admission to the school
- b) the terms on which they offer to admit a disabled child to the school
- c) refusing or deliberately omitting to accept an application for admission or
- d) failing to provide auxiliary aids and services for disabled pupils.

The reasonable adjustments duty is owed to disabled pupils, as defined in the Equality Act 2010. The new duty is anticipatory and applies in respect of potential pupils so admission authorities and schools **must** think ahead, anticipate barriers to disabled pupils and remove or minimise them.

Children with challenging behaviour

3.56 Admission authorities **should not** refuse to admit a child on the basis of their behaviour elsewhere. Schools **should not** refuse to admit a child thought to be potentially disruptive, or to exhibit challenging behaviour, on the grounds that the child ought first to be assessed for SEN. The law disapples the normal principle that parents' preferences should be complied with, only in the 'twice excluded' situation described in paragraph 3.57. If following admission, a child is found to be seriously and persistently disruptive, then the school may consider disciplinary action, including temporary and, ultimately, permanent exclusion procedures. However it is important to note that children with challenging behaviour may be disabled as defined in the [Equality Act 2010](#) and therefore require reasonable adjustments to be made for them in the school, or require SEN support. The school **must** be proactive in promoting disability equality in relation to these pupils, as with all disabled pupils.

3.57 Some undersubscribed schools may find that they have been required to admit an undue proportion of children with a recent history of challenging behaviour, which may

have led to a permanent exclusion from another school. Admission forums **should** discuss how local admission arrangements might allow all schools to admit a more even share of such children, including children excluded from other schools, and to agree protocols for the admission of hard to place children. Consideration should be given to the guidance in the Welsh Assembly Government Information Document: Effective managed moves: A fresh start at school for children and young people. Admission authorities **must** have regard to their admission forum's advice.

Twice-excluded pupils

3.58 Where a child has been permanently excluded from two or more schools, their parents can still express a preference for a school place, but the requirement to comply with that preference is removed for a period of two years from the date on which the latest exclusion took place³⁷.

This does not apply to:

- Children with statements of SEN.
- Children who were below compulsory school age when excluded.
- Children who were reinstated following a permanent exclusion.
- Children who would have been reinstated following a permanent exclusion had it been practicable to do so.
- Looked after children and previously looked after children, where the application for admission is made by or on behalf of the corporate parent.

3.59 A permanent exclusion is regarded as taking effect from the first school day the head has told the child not to attend school.

3.60 The admission authority for the school may refuse admission, or in the case of a community or voluntary controlled school, the governing body may appeal against the decision of the LA as the admission authority to admit the child (see the School Admission Appeals Code for information on these appeals). LAs are still responsible for providing suitable full-time education for these children and may need to use their powers of direction or provide a place in a Pupil Referral Unit.

Hard-to-place children

3.61 All admission authorities **must** have protocols in place for admitting children they consider hard to place. All need to play their part in ensuring that these children, especially the most vulnerable, are admitted to a suitable school as quickly as possible. This includes, potentially, admitting children to schools that are already full.

3.62 There is a balance to be struck between finding a place quickly in an undersubscribed school or one facing challenging circumstances and finding a school place that is appropriate for the child. The protocol **should** therefore ensure that no school, including those with places available, is asked to take an excessive or unreasonable number of children who have been excluded from other schools.

3.63 Protocols may include all children who arrive outside the normal admissions round who may have difficulty securing a place. Admission authorities should make reference to

³⁷ Section 87 of the [1998 Act](#).

the guidance provided at paragraph 3.25 to 3.26 in relation to Gypsy and Traveller children. Children with SEN but without statements **should** be treated in the same way as all applicants, but protocols **should** include arrangements for ensuring that, where there is prior knowledge of a need for particular SEN support, such children are placed quickly.

3.64 Once these protocols have been agreed, admission forums **should** monitor how well they are working, how quickly the children are found places, and the contribution every school in the area is making.

Children of UK Service personnel and other Crown Servants (including diplomats)

3.65 Families of UK Service personnel and other Crown Servants³⁸ are subject to frequent movement within the UK and from abroad, often at relatively short notice. School places **must** be allocated to children and their families in advance of the approaching school year if accompanied by an official Ministry of Defence (MOD) or Foreign and Commonwealth Office (FCO) letter declaring a return date. Children of UK Service Personnel may be given excepted status for infant class size purposes when admitted to a school outside the normal admission round.

3.66 Admission authorities **must**:

- Ensure that the needs of the children of these families are taken into account.
- Allocate a school place in advance, if the applicant would meet the criteria when they move to their destination.
- Invite a Service representative or representatives of other significant concentrations of Crown Servants to join the admission forum.
- Accept a Unit postal address for applications from service personnel in the absence of a new home postal address.

3.67 Admission authorities **must not**:

- Reserve places for blocks of these children, or
- Refuse a place to such a child because the family does not currently live in the LA area.

Children from overseas

3.68 Admission authorities **must** treat applications for children coming from overseas in accordance with European Union law or Home Office rules for non-European Economic Area nationals. The Home Office website³⁹ carries the most up to date information and should be used as first point of reference.

Teacher exchange schemes

3.69 Where a child goes abroad to accompany his or her parent on a teacher exchange scheme, the school **should** ensure that the child is able to take up his or her place on return. The child **should** remain on roll and time away may be treated as an “approved educational activity”.

³⁸ A Crown Servant is an officer of the United Kingdom Government.

³⁹ www.homeoffice.gov.uk

3.70 The LA has a duty to find a place for a child who will become resident in their area as a result of his or her parent's participation in a teacher exchange scheme. LAs **should** plan in advance for the needs of these children to ensure that they can take up a suitable school place for the duration of the exchange, wherever this is practicable.

Transfers from the independent sector

3.71 Lone children may be admitted to the UK if they can show that they have a place at an independent, fee-paying school. Where a child has been given leave to enter on that basis, the Home Office will not normally grant an extension of stay, or amend the child's conditions of entry, if the child transfers to a community, voluntary or foundation school. LAs and governing bodies may wish to bear this in mind when considering a request for a transfer in respect of a child from overseas who has been previously attending a fee-paying school. The Home Office website should always be checked for the most up to date advice.

Applications made in the UK for children living abroad

3.72 Admission authorities may receive an application from parents overseas for a school place for a child who is not yet resident in the UK. The admission authority will not necessarily know when the child is expected to be resident in the UK, or whether the parents' application for leave to enter the UK has been or will be successful, or if it has been, on what terms entry has been granted. These are all considerations that an admission authority may reasonably wish to take into account when considering the application.

School uniform

3.73 School uniform plays a valuable role in contributing to the ethos and setting the tone of a school. Admission authorities should have regard to Welsh Government guidance on this matter⁴⁰.

Learner travel

3.74 The [Learner Travel \(Wales\) Measure 2008](#) sets out specific requirements for home to school transport in Wales. The Welsh Government has issued guidance on this⁴¹.

⁴¹ [Guidance for Governing Bodies on School Uniform and Appearance Policies – Welsh Government Circular No: 15/2011.](#)

⁴¹ [Learner Travel Operational Guidance, Welsh Assembly Government, April 2009.](#)

Annex A: The admissions timetable

The timetable and procedures for school admissions are set out in this Code and the relevant regulations. The admissions timetable applied to all maintained schools.

Local authorities have a key role in providing information to parents on admission arrangements and schools in their area.

Example timetable

Determination year (20**/20**)	
1 September	Earliest date to start consultation on proposed arrangements. Consultation should be of a reasonable length in all the circumstances.
1 March	Deadline for the completion of the consultation on proposed admission arrangements.
15 April	Deadline for admission arrangements to be determined even if they have not changed from the previous year and a consultation has not been required.
1 June	<p>Latest date by which governing body admission authorities should send a copy of their full determined admission arrangements to their LA to allow them to compile composite prospectus.</p> <p>LAs should verify this information where possible prior to publication with all contributors.</p>
Autumn Term	Publish and distribute composite prospectus to parents.

Offer year (20**/20**)	
1 October and not later than six weeks before closing date	Deadline for admission authority to publish composite prospectus.
February	Deadline for admission authorities to publish their Appeals timetables on their websites.
1 March or next working day	National offer day for secondary school places (from 2015/16).
16 April or next working day	National offer day for primary school places (from 2018/19).

Annex B: Oversubscription criteria

B.1 The following are **examples only**. Arrangements for individual schools **must** be set in the context of local circumstances and practical application of the criteria.

Community schools

B.2 Children with a statement of special educational needs naming a particular school will be admitted to that school. Where the number of applications on behalf of other pupils is equal to or less than the number of places remaining (please see the relevant school's published admission number) all applications will be agreed. However, where the number of applications exceeds the number of places available the admission authority will apply the following oversubscription criteria and allocate places accordingly.

1. Looked after children (children in public care) and previously looked after children.
2. Children who live within the school's catchment area with a sibling (see definition) attending the school when they join.
3. Children who live within the school's catchment area.
4. Children who live outside the catchment area with a sibling attending the school when they join.

B.3 If the number of pupils in any one of the above categories exceeds the published admission number, the admission authority will use the following tie-breaker to allocate places e.g. the shortest available route between home and school as measured from the main school entrance to the main entrance of the pupil's home using ... software. The same tie - breaker will be applied to any remaining applications if all pupils in the above categories have been allocated a place.

B.4 Admission authorities should clearly define what they consider to be a 'sibling' where the term is used in their oversubscription criteria.

Voluntary-aided schools

B.5 Children with a statement of special educational needs naming a particular school will be admitted to that school. Where the number of applications on behalf of other pupils is equal to or less than the number of places remaining (please see the relevant school's published admission number) all applications will be agreed. However, where the number of applications exceeds the number of places available the admission authority will apply the following oversubscription criteria and allocate places accordingly.

B.6 Admission authorities for schools with a designated religious character (faith schools) may give first priority to all looked after children and previously looked after children, whether or not of the faith but **must** give first priority to looked after children and previously looked after children of their faith above any other children of their faith. If they give first priority to looked after children and previously looked after children of the faith, then they **must** give a higher priority to looked after children and previously looked after children not of the faith than other children not of that faith. Such as in the following example:

1. Looked after children (children in public care) and previously looked after children of the faith.

2. Children of the faith who live within the school's defined area with a sibling (see definition) attending the school when they join.
3. Children of the faith who live within the school's defined area.
4. Children of the faith who live outside the defined area with a sibling attending the school when they join.
5. Children of the faith who live outside the defined area.
6. Looked after children (children in public care) and previously looked after children not of the faith.
7. Children not of the faith who live within the school's defined area with a sibling (see definition) attending the school when they join.
8. Children not of the faith who live within the school's defined area.
9. Children not of the faith who live outside the defined area with a sibling attending the school when they join.

B.7 If the number of pupils in any one of the above categories exceeds the published admission number, the admission authority will use the following tie-breaker to allocate places e.g. the shortest available route between home and school as measured from the main school entrance to the main entrance of the pupil's home using ... software. The same tie - breaker will be applied to any remaining applications if all pupils in the above categories have been allocated a place.

B.8 It is for individual admission authorities, in accordance with diocesan guidance, to define the means by which parents/guardians will evidence compliance with their faith oversubscription criteria. Likewise where parishes form the 'determined area' details of these should be available to parents. Admission authorities **should** clearly define what they consider to be a 'sibling' where the term is used in their oversubscription criteria.

Annex C: Boarding schools

C.1 There is currently only one maintained boarding school in Wales. This Annex applies specifically to that school and sets out the framework within which admissions to boarding places at the school should be made.

Admission procedures

C.2 As maintained schools, boarding schools **must** adopt a set of published admission criteria for both day and boarding places which comply with education and equality legislation and with the provisions of this Code.

C.3 Boarding schools may adopt separate admission numbers and, if they wish, separate oversubscription criteria for day and boarding places.

C.4 Where there are more applicants who are suitable to board than there are boarding places available, the school **must** apply the oversubscription criteria set out in its published admission arrangements. These criteria **must** be set in accordance with the provisions of this Code and legal requirements and **must not** amount to any form of selection by aptitude or ability, except where otherwise permitted. The oversubscription criteria **must not** include criteria for deciding which pupils are most suitable to board. Interviews and any other information used to judge suitability **must not** be used to determine admission to day places. Setting fair, clear and objective admission criteria should ensure that admission authorities can clearly demonstrate to parents and carers how places have been allocated.

Boarding need

C.5 Boarding schools **must**, after giving the required priority to looked after children and previously looked after children, give next priority in their oversubscription criteria for boarding places to 'children with a boarding need'. Boarding schools **must** ensure that it is clear to parents what is meant by 'boarding need'.

C.6 Although this is not a comprehensive list, children with a boarding need include:

1. Children at risk.
2. Children from single parent families.
3. Children with an unstable home environment.
4. Children of members of the British forces overseas.
5. Children of key workers working abroad (e.g. the children of charity workers, people working for voluntary service organisations, the diplomatic service or the European Union, teachers, law enforcement officers and medical staff working abroad) whose work dictates that they spend much of the year overseas.

C.7 Those children described at paragraph C.6 (1) to (3) **should** be given priority regardless of their normal place of residence, and children described in paragraph C.6 (4) and (5) **should** be given priority when the normal place of residence is based in the locality or priority area of the school.

Suitability for boarding

C.8 A maintained boarding school is entitled to consider an applicant's suitability for boarding before deciding whether to award a boarding place.

C.9 In order to determine the suitability of an applicant to board, the school may have regard to:

- The outcome of an interview with the applicant carried out for that sole purpose.
- Information provided by the applicant's parent, corporate parent, or guardian, on a supplementary application form provided for the same purpose.
- Information provided by the applicant's current school or - if he or she is currently out of school - previous school, requested and provided for the same purpose.
- Information provided by the home LA on safeguarding issues.

C.10 An 'interview' in this context means face-to-face or telephone interviews or meetings with the candidate used to determine suitability for boarding. The general prohibition on interviewing as part of the admissions process does not apply to such interviews.

C.11 Boarding schools **must not** use any other processes to determine suitability. They **must not** ask for or consider information on religious background (unless this is relevant to assessment against published admission arrangements), home circumstances, academic ability, sporting or artistic ability, academic interests or other extraneous matters such as low level misbehaviour. If any such information is provided it **must** be disregarded.

C.12 There is no requirement for admission authorities to use interviews and supplementary application forms to assess suitability, but where they do, they **must** take account of the guidelines contained in this Code.

C.13 Suitability for boarding **must not** be adopted as an oversubscription criterion. Schools with boarding places **must** determine their oversubscription criteria in accordance with the mandatory provisions and guidelines set out in Chapter 2 of this Code. Published admission arrangements **must** state that the school will additionally carry out a process to establish suitability for boarding which will involve an interview and/or using supplementary application forms (if the boarding school decides it wishes to use interviews and supplementary application forms).

Definition of suitability

C.14 Suitability does not refer to those children who best fit the school's ethos. Suitability refers to:

- Whether a child presents a serious health and safety hazard to other boarders, or
- Whether a child is developmentally suited to a boarding place.

C.15 For boarding places, the admission authorities are entitled to take the view that a history of major behavioural difficulties such as sexual misconduct, arson or extreme physical violence is likely to render an applicant unsuitable to board. Low level misbehaviour would not do so.

Preparing for and conducting an interview

C.16 In preparing for and conducting interviews for boarding places schools must:

- Focus purely on whether the applicant would be able to cope with and benefit from a boarding environment.
- Be fair and open. Children and parents **must** be informed of the process in advance, and know what to expect from the interview.
- Give children a chance to state separately from their parents whether they wish to board.

C.17 It is good practice to brief applicants and their parents carefully about the purpose and structure of the interview beforehand. Applicants **should** be put at their ease during the interview, and interviewers **must** make every reasonable effort to accommodate the needs of those with special needs or a disability (e.g. hearing impairment or speech difficulty). In some circumstances, it may be necessary for interviews to be conducted through an interpreter.

C.18 Admission authorities **must not**:

- Require or request children to sit any form of written or verbal test of knowledge, ability or attitudes.
- Seek to screen out pupils who have a record of low level poor discipline which has not resulted in them being twice permanently excluded. This prohibition includes asking questions which seek to ascertain whether applicants' reactions to conflict situations are conciliatory or confrontational.
- Seek to screen out pupils who are not as outgoing or confident as others, or as eloquent.
- Seek information about parental background, finances, marital status or religion.
- Seek information about home circumstances.
- Seek to obtain information about low level misbehaviour, absenteeism, academic ability, sporting, artistic or any other form of achievement or ability, or
- Ask questions about whether applicants know any existing boarders.

C.19 If an admission authority determines that an applicant is not suitable for boarding, it **must** inform the parents in writing of the reasons for the determination and, as with other refusals of admission (i.e. for a day place), the right of appeal and who to contact to lodge an appeal.

Annex D: Admission forums

D.1 Admission forums have a key role in ensuring a fair admissions system that does not disadvantage one child compared with another and is straightforward and easy for parents to understand. Forums are responsible for monitoring compliance with this Code and where they consider admission arrangements to be unfair or not in accordance with this Code and cannot resolve the matter locally they may refer the matter to the Welsh Ministers for consideration. These guidelines should be read in conjunction with the [Education \(Admission Forums\) \(Wales\) Regulations 2003](#).

Legal requirement

D.2 Section 85A of the [1998 Act](#) (inserted by section 46 of the [Education Act 2002](#)) requires all LAs to establish an admission forum. Admission forums provide a vehicle for admission authorities and other key interested parties to discuss the effectiveness of local admission arrangements, consider how to deal with difficult admission issues and advise admission authorities on ways in which their arrangements can be improved. Admission authorities of all maintained schools, when exercising their functions, **must** have regard to any advice offered by the forum. LAs may establish a joint forum with one or more other LAs to consider and advise on admissions in more than one authority area.

Role of admission forums

D.3 Admission forums have a key role in ensuring a fair admissions system that promotes social equity and **must** under section 84 of the [1998 Act](#), act in accordance with this Code. The role of admission forums is set out in Regulations⁴². Admission forums **must**:

- Consider how well existing and proposed admission arrangements serve the interests of children and parents within the area of the LA.
- Promote agreement on admission issues.
- Consider the comprehensiveness and accessibility of the admissions literature and information produced for parents by each admission authority within the area of the forum.
- Consider the effectiveness of any proposed co-ordinated admission arrangements.
- Consider the means by which admissions processes might be improved and how actual admissions relate to the admission numbers published;
- Monitor the admission of children who arrive in the LA's area outside a normal admission round with a view to promoting arrangements for the fair distribution of such children among local schools, taking account of any preference expressed in accordance with arrangements made under section 86(1) of the [1998 Act](#) and in accordance with this Code.
- Promote effective admission arrangements for children with SEN, looked after children and children who have been excluded from school.
- Consider any other admissions issues that arise.

⁴² [Education \(Admission Forums\) \(Wales\) Regulations 2003](#).

D.4 Admission forums should consider appropriate application dates for all primary and secondary school admissions within their area in consultation with neighbouring authorities as appropriate.

Ensuring fair access

D.5 In discharging these responsibilities, admission forums **must**:

- Review the comprehensiveness, effectiveness and accessibility of advice and guidance for parents by the LAs and schools through the published composite prospectus (see paragraph 2.12).
- Agree procedures for ensuring that potentially vulnerable children and those who arrive in the area outside the normal admissions round are placed in a school as quickly as possible. Vulnerable children include those previously excluded from school, children in care, young offenders, children with SEN and/or disabilities, Gypsy and Traveller children, or those who are hard to place, or have challenging behaviour. Managed transfers of such children should be handled as quickly and sensitively as possible. The forum should ensure that all admission authorities in the area are aware of the agreed procedures and should monitor to ensure that they are working effectively.
- Monitor compliance with the School Admissions, and School Admission Appeals Codes and related legislation.

Annual reports on effectiveness of local admission arrangements

D.6 Admission forums **must** provide a summary annual report which **should** be made public (with due consideration for confidential references to pupils) and include the following information:

- Membership of forum.
- Dates of meetings held during the year.
- Number of attendees.
- Number of parental preferences that were met.
- number of admission appeals made for schools in the area (including information on how many were successful and unsuccessful).
- What admission arrangements have been put in place to serve the interests of vulnerable children.
- How well in-year agreed admission procedures are working and the number of children admitted to each school under the procedures and
- A short summary of the key admission issues in the area and how the forum has addressed them.

D.7 Such reports are a valuable tool in ensuring an open and fair admission system as admission authorities **must** have regard to any advice published by the admission forum. A copy of the report **should** be sent by 30 November each year to Schools Management and Effectiveness Division of the Welsh Government, and be distributed to those with a vested interest in ensuring the needs of vulnerable children are met.

Membership

D.8 The core membership of admission forums is set out in Regulations and is shown in the table below:

Members nominated by	Number
LA - any member or officer of the authority	1 to 5
Church in Wales Diocesan representatives	1 to 3
Roman Catholic Diocesan representatives	1 to 3
Schools - community and voluntary controlled	1 to 3
Schools - foundation	1 to 3
Schools - voluntary aided	1 to 3
Parent governor representatives	1 to 3
Representatives of the local community	up to 3

D.9 Each representative of a school **should** be a head, or a governor (other than one appointed to the school by the LA who is also a member of the authority). Admission forums **should** include representatives of neighbouring LAs where, for example, there are significant cross-border issues or they have a contribution to make. These representatives would be in addition to those of the home LA.

D.10 The core membership of each forum may ask the LA to appoint anyone it considers appropriate to represent significant interests in the local community. For instance, in areas where there is a significant concentration of service personnel the forum **must** invite a UK service representative and where appropriate, representatives from faith groups not already represented, and minority ethnic groups **should** be appointed.

D.11 If the forum considers that it would be useful to appoint additional members to represent the interests of any section of the local community the LA **should** appoint such members. For example, where the forum is considering issues relating to the admission of looked after children and previously looked after children, it **should** ask the LA to appoint LA officers with expertise in children's social care. Where there is a particular issue that needs investigation and more detailed consideration LAs **should** create a working group (which does not need to consist of forum members) to carry out this work and report-back to the forum.

Tenure

D.12 Core members and school members of the forum are appointed for a period not exceeding 4 years, after which they are eligible for reappointment. Other members of the forum are appointed on the terms determined by the core members, including whether or not they are to be eligible for reappointment at the end of their term. Membership of the forum **should** be reviewed in September each year. If a school member ceases to be a head or school governor, they cannot continue on the forum in that capacity.

D.13 The LA may also establish sub-committees to help the forum in the performance of its functions. Sub-committees might be appropriate for considering primary and secondary issues separately, or, if the relevant area is large and has areas with distinct admissions patterns, separate sub-committees might consider issues in each area, before bringing them back to the main forum for discussion.

Procedure for meetings and appointment of officers

D.14 Regulations require forums to meet at least twice a year, but the procedure for the meetings is regulated by the core members themselves. All members of the forum **should** be given at least 7 working days notice of the time and date of the meeting and be given any documents relevant to that meeting 7 days in advance. The forum **must** appoint a Chair and Vice Chair, who may or may not be members of the forum, and a Secretary to convene its meetings.

Promulgating advice and making objections

D.15 Admission forums **should** seek to achieve a consensus among the whole membership rather than secure a majority opinion and **should** only promulgate advice that represents the agreed views of the forum as a whole.

D.16 The LA **must**, as a minimum, publish the forum's advice on the school admissions section of their website and send copies to all admission authorities in the area. The advice **should** also be included in the composite prospectus published by the LA each year for parents.

Annex E: Other relevant legislation

E.1 Below is set out the primary legislation most relevant to admissions decisions. Admission authorities, adjudicators, appeal panels, LAs and schools **must** comply with the relevant law as well as acting in accordance with the provisions of this Code and following its guidelines. The information here aims to signpost the relevant law; it does not aim to provide definitive guidance on interpreting the law: that is for the courts.

Equality Act 2010

E.2 This Act consolidates the law prohibiting discrimination, harassment and victimisation and expands the list of protected characteristics. All schools **must** have due regard to their obligations under the Act and review their policies and practices to make sure these meet the requirements of the Act, even if they believe that they are already operating in a non-discriminatory way.

E.3 An admission authority **must not** discriminate on the grounds of disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; or sexual orientation, against a person in the arrangements and decisions it makes as to who is offered admission as a pupil.

E.4 An admission authority **must not** harass a person who has applied for admission as a pupil, in relation to their disability; race; or sex.

E.5 An admission authority **must not** victimise a person in relation to a protected act either done, or believed to have been done by that person (e.g. bringing proceedings under the [Equality Act 2010](#)) in the arrangements and decisions it makes as to who is offered admission as a pupil.

E.6 This Act contains limited exceptions to the prohibition of discrimination on grounds of religion or belief and sex. Schools designated by the Welsh Ministers as having a religious character (faith schools) are exempt from some aspects of the prohibition of discrimination on the grounds of religion or belief and this means they can make a decision about whether or not to admit a child as a pupil on the basis of religion or belief. Single-sex schools are lawfully permitted to discriminate on the grounds of sex in their admission arrangements.

E.7 Admission authorities are also subject to the Public Sector Equality Duty and therefore **must** have due regard to the need to eliminate discrimination, harassment and victimisation, advance equality of opportunity, and foster good relations in relation to persons who share a relevant protected characteristic and persons who do not share it.

E.8 The protected characteristics for these purposes are: disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

E.9 Further guidance on the Public Sector Equality Duty is available on the website of the Government Equalities Office and from the Equality and Human Rights Commission.

Human Rights Act

E.10 The [Human Rights Act 1998](#) confers a right of access to education. This right does not extend to securing a place at a particular school. Admission authorities, however, do need to consider parents' reasons for expressing a preference when they make decisions about the allocation of school places, to take account of the rights of parents under the Act, though this may not necessarily result in the allocation of a place. These might include, for example, the parents' right to ensure that their child's education conforms to their own religious or philosophical convictions (as far as is compatible with the provision of efficient instruction and the avoidance of unreasonable public expenditure).

United Nations Convention on the Rights of the Child (UNCRC) and the Rights of Children and Young Persons (Wales) Measure 2011

E.11 The UNCRC is an international agreement, which brings together additional human rights into a single Convention, which aims to protect and provide support for children and help them to achieve wellbeing.

E.12 The UNCRC has been incorporated into Welsh domestic law, in so much as it affects the Welsh Ministers, through the [Rights of the Children and Young Persons \(Wales\) Measure](#) 2011.

Annex F: Model application form

This is a model application form and should be amended to reflect the needs of the admission authority.

Name and address of Admissions Authority

Application for admission to [Infant/Junior/Primary/Secondary] school (NB: Separate forms should be made available for each relevant year of entry).

Please read this form carefully and complete it as fully as possible. The information you give will be used to allocate a school place to your child.

1. Child's full name [A]

2. Child's date of birth

3. Child's sex M/F

4. Child's place of residence, including post code [B]

5. Parent/s name/s [C]

6. Parent/s address and telephone number

Please telephone [name of person] on [tel. no.] for information on your catchment area, English and Welsh medium schools and Roman Catholic and Church in Wales schools. [D]

7. Please indicate below your preferred school/s (in order of preference); you may express more than one preference and give a reason for your preference/s. [E]

1.

2.

3.

*Expressing a preference does not guarantee admission to your chosen school but it will give your child priority over children whose parents have **not** expressed a preference for that school. If you do not express a preference, or you submit this form late it will be less likely that your child will be able to attend the school of your choice.*

8. Is the child a Looked After Child/Previously Looked After Child? Yes/No. If yes, please also state the corporate or previous corporate parent. [F]

9. Does the child hold a statement of SEN which names a school? Yes/No. If yes, which school is named? [G]

10. Please give the names and dates of birth of the child's siblings who are already attending the preferred school/s. [H]

Name	_____	DOB	_____	School	_____
Name	_____	DOB	_____	School	_____

11. Please give the name of the child's current infant/junior/primary school. [I]

12. Please indicate your child's special medical circumstances, if any. [J]

13. Has the child been baptised? Yes/No. If, yes, please submit a copy of the baptismal certificate with this form. [K]

14. Is the child/Are the child's parents communicant members of X Church? Yes/No. If yes, please submit with this form a supporting statement from the priest/minister or other Church representative. [L]

*If the number of applications to your preferred school is fewer than or equal to the number of places available, **all** applicants will be admitted. **However**, if the number of applications to your preferred school is greater than the number of places available, the information you give below will be used to rank your child's priority for a place in line with the oversubscription criteria which are:*

[List of oversubscription criteria.]

Your preferred schools will be considered equally and you will be offered a place in the most preferred school where a place is available.

This form must be returned to [name] at [address] by [date]. [M] Applications received by this date will be considered together and places allocated.

Signed _____ **Parent**

Date _____

We recommend that you keep a copy of the completed form for your own records.

Notes

- A. It is not appropriate to ask for “Christian” name since not all applicants may be Christian.
- B. Where necessary the authority may wish to indicate that proof of residency may be required.
- C. In relation to a young person or child, the term ‘Parent’ includes any person who is not a parent but who has parental responsibility or care of the child.
- D. Insert the name and telephone number of a person who holds information on catchment area English/Welsh/denominational schools.
- E. You may not limit the number of preferences a parent may express.
- F. All applications made on behalf of Looked After Children and Previously Looked After Children must be approved by the relevant admission authority.
- G. If a school is named in a statement of SEN, the admissions authority has a duty to admit the child to that school.
- H. You may only ask for siblings’ details where these feature in your admissions arrangements’ oversubscription criteria. You should clarify in your admissions arrangements how you intend to define ‘siblings’ e.g. full, half, step, adopted and fostered brothers and sisters. This criterion may not include relatives who previously attended the school.
- I. You should normally only ask for the child’s previous school where a feeder school system is in operation. However, where the information is required for administrative purposes it may still be requested but you must ensure parents are aware of the reason for the request and that such information will not be taken into consideration when allocating a place.
- J. You may only ask this question if your oversubscription criteria give priority to children under medical circumstances.
- K. You may only ask this question if your oversubscription criteria give priority to children baptised into the faith of the school.
- L. You may only ask this question if your oversubscription criteria give priority to children who are themselves/whose parents are communicant members of the Church named.
- M. Insert name and address of person responsible for receiving admission forms.

Annex G: Commencement

Provision	Coming into force
Infant class size exceptions in respect of all those (paragraph 3.48) not listed below.	For the 2013/14 school year.
Infant class size exceptions in respect of previously looked after children, children of armed forces personnel and twins or other siblings from multiple births (paragraph 3.48).	For the 2014/15 school year.
Common date of offer for secondary schools (paragraph 2.24).	In respect of admission arrangements for 2015/16.
Common date of offer for primary schools (paragraph 2.24).	In respect of admission arrangements for 2018/19.

Annex H: Related documents

- Children Act 1989
- Designation of Schools Having a Religious Character (Wales) Order 2007
- Education (Admission Appeals Arrangements) (Wales) (Amendment) Regulations 2013⁴³
- Education (Admission Appeals Arrangements) (Wales) (Amendment) Regulations 2009
- Education (Admission Appeals Arrangements) (Wales) (Amendment No. 2) Regulations 2009
- Education (Admission Appeals Arrangements) (Wales) Regulations 2005
- Education (Admission Forums) (Wales) Regulations 2003
- Education (Admission of Looked After Children) (Wales) Regulations 2009
- Education (Determination of Admission Arrangements) (Wales) Regulations 2006
- Education (Middle Schools) (Wales) Regulations 2012
- Education (Objections to Admission Arrangements) (Wales) Regulations 2006
- Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999
- Education (School Teachers Qualifications) (Wales) Regulations 2004
- Education (Start of Compulsory School Age) Order 1998
- Education Act 1996
- Education Act 2002
- Education and Inspections Act 2006
- Education and Skills Act 2008
- Effective managed moves: A fresh start at school for children and young people: Welsh Assembly Government Information Document No: 096/2011
- Equality Act 2010
- Guidance for Governing Bodies on School Uniform and Appearance Policies – Welsh Government Circular No: 15/2011
- Human Rights Act 1998
- Learner Travel Operational Guidance, Welsh Assembly Government, April 2009
- Learner Travel (Wales) Measure 2008
- Measuring the Capacity of Schools in Wales - Welsh Government Circular No: 021/2011
- Moving Forward - Gypsy Traveller Education – Welsh Assembly Government Circular 003/2008
- New School (Admissions) (Wales) Regulations 2006
- Parents and Parental Responsibility National Assembly for Wales Circular No 12:2007
- Placement of Children (Wales) Regulations 2007
- Planning to Increase Access to Schools for Disabled Pupils: National Assembly for Wales Circular No: 15/2004
- R v Rotherham Metropolitan Council ex parte Clark and others (1997) EWCA Civ 2768
- Rights of Children and Young Persons (Wales) Measure 2011
- School Admission Appeals Code
- School Admissions (Common Offer Date) (Wales) Regulations 2013
- School Admissions (Infant Class Sizes) (Wales) Regulations 2013

⁴³ to be laid before the National Assembly for Wales in September 2013

- School Admissions (Variations to the Admission Arrangements) (Wales) Regulations 2013
- School Information (Wales) Regulations 2011
- School Standards and Framework Act 1998
- School Standards and Organisation (Wales) Act 2013
- Special Educational Needs Code of Practice for Wales
- The School Information (Wales) Regulations 2011
- Towards a Stable Life and a Brighter Future
- United Nations Convention on the Rights of the Child (UNCRC)

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; 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. The Forum comprises representatives of admission authorities and schools, dioceses, the local community and parent governors.

Admission number

The number of school places that the admission authority **must** offer in each relevant age group of a school for which it is the admission authority. 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 LA composite prospectus.

Admission round (Normal)

The normal admission round begins in September/October it is the period when parents are invited to apply for admission to any community, voluntary or Foundation school and ends on the date that offers of places are issued in the school year before admission or transfer. This is usually in the years before reception, year 2 and year 6 for those authorities operating infant, junior and secondary schools.

Appeal panel

The people responsible for considering appeals against decisions not to admit a child or young person to a school. They are totally independent of the LA. Any decision taken by an appeal panel is final and binding on the relevant admission authority.

Banding

A system of oversubscription criteria in which all children applying for a place at a banding school are placed into ability bands based on their performance in a test or other assessment. Places are then allocated so that the school's intake either reflects the ability profile of those children applying to the school, those children applying to a group of schools banding jointly, the LA ability profile or the national ability profile.

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.

Children in public care; Looked after children; Children in care

Children who are in the care of LAs as defined by section 22 of the [Children Act 1989](#). In relation to school admissions legislation a 'looked after child' is only considered as such if the LA confirms he or she will be in public care when he or she is admitted to a school.

Complaints

The Welsh Ministers may use their powers of intervention in the Education Acts to consider complaints about the actions of an admission authority in Wales.

Composite prospectus

The prospectus that a LA is required to publish by 1 October and not later than six weeks before parents express their preferences for schools. This prospectus **must** include the detailed admission arrangements of all maintained schools in the area (including admission numbers, catchment areas and the timetabled admissions process).

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.

Conditionality

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

Corporate parent

The Welsh LA responsible for making an application for admission to school on behalf of a looked after child/child in care.

Determination year

The school year immediately preceding the offer year. This is the school year in which admission authorities determine their admission arrangements.

Furthest from and nearest to

Children who live the furthest from the next nearest appropriate alternative school, at which places are available and where the preferred school is the nearest school to them.

Governing bodies

School governing bodies are bodies corporate responsible for conducting schools 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.

Home Schooling/Flexi Learning

The education of children at home, typically by parents but sometimes by tutors rather than in a formal setting. Some children attend schools part time on days arranged between parents and head teachers.

Home-school agreements

A statement explaining: the school's aims and values; the school's responsibilities towards its pupils who are of compulsory school age; the responsibilities of the pupil's parents; and what the school expects of its pupils. It is not acceptable to require signature of a home-school agreement as a condition of admitting a child to a school.

Infant class size exceptions

These are prescribed exceptions to the statutory requirement that infant classes **must** be no more than 30 children per school teacher. Please see paragraphs 3.45 – 3.50 for full information.

Infant class size limit

The [1998 Act](#) requires children aged 5, 6, and 7 to be taught in classes of no more than 30 children per school teacher.

Junior class size target

The Welsh Government has a target of ensuring children aged 7 to 11 are taught in classes of no more than 30 children per school teacher.

Middle school

Middle schools are schools providing full-time education suitable to the requirements of pupils who—

- a) have attained a specified age below 10 years and six months, and
- b) are under a specified age above 12 years.

Normal year of entry

The point at which pupils are normally admitted to school for example, reception or year 7.

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 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 LA composite prospectus at least 6 weeks before parents express their preferences.

Parent

The definition of “parent” in section 576 of the [Education Act 1996](#) includes: 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. Any reference to a “parent” for the purpose of this Code should be interpreted as the above definition of “parent” under the [Education Act 1996](#).

Parental responsibility

“Parental responsibility” is defined in 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 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.

Previously looked after children

Looked after children who ceased to be so because they were adopted or became subject to a residence order, or special guardianship order immediately following having been looked after.

Primary school

The Education Act 1996 defines “primary school” as a school for providing primary education, whether or not it also provides further education.

Public Services Ombudsman for Wales

An independent, impartial and free service that looks into complaints by members of the public where they have suffered hardship or injustice through maladministration or service failure on the part of a public body in Wales.

Relevant age group

The age group to which children are normally admitted. Each relevant age group **must** have admission arrangements, including an admission number attached. Some schools (for example schools with a sixth form which admit children into the sixth form) have more than one relevant age group.

Relevant area

The area for a school (determined by its LA and then reviewed every two years) within which the admission authority for that school must consult all other schools on its admission arrangements.

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

The Education Act 1996 defines “secondary school” as a school for providing secondary education, whether or not it also provides further education.

Twice excluded

A child who has been permanently excluded from two or more schools.

Waiting list

A list of children/young people held and maintained by the admission authority, when the school has had all of its places allocated, on which children/young people are ranked in priority order against the school’s published oversubscription criteria.

Young person

A child who is seeking admission to a sixth form or a transfer from year 11 to year 12 at their current school.

Agenda Item 11



Report of the Chief Legal Officer

Appeals & Awards Committee – 15 November 2018

Exclusion of the Public

Purpose:	To consider whether the Public should be excluded from the following items of business.	
Policy Framework:	None.	
Consultation:	Legal.	
Recommendation(s):	It is recommended that:	
1)	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.	
	Item No.	Relevant Paragraphs in Schedule 12A
	12	12 & 13
Report Author:	Democratic Services	
Finance Officer:	Not Applicable	
Legal Officer:	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
12	Information relating to a particular individual.
	<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>
13	Information which is likely to reveal the identity of an individual.
	<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>
14	Information relating to the financial or business affairs of any particular person (including the authority holding that information).
	<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> <ul style="list-style-type: none"> a) 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 b) Disclosure of the information would give an unfair advantage to tenderers for commercial contracts. <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	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.
	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.
16	Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
	No public interest test.
17	Information which reveals that the authority proposes: (a) To give under any enactment a notice under or by virtue of which requirements are imposed on a person; or (b) To make an order or direction under any enactment.
	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.
18	Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime
	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.

Agenda Item 12

By virtue of paragraph(s) 12, 13 of Schedule 12A
of the Local Government Act 1972
as amended by the Local Government (Access to
Information) (Variation) (Wales) Order 2007.

Document is Restricted

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