

Home to school transport - a guide for constituents

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Paper Overview:

This paper provides information on frequently asked questions about home to school transport.



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Legal position and statutory guidance

The main legislation in respect of home to school transport is the **Learner Travel (Wales) Measure 2008**. The Welsh Government has also published statutory **Learner Travel Operational Guidance** (June 2014) which outlines statutory provisions, specific duties and responsibilities for relevant bodies. The **Learner Travel Information (Wales) Regulations 2009** [PDF 51KB] set out the information that Local Authorities must publish.

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 Learner Travel (Wales) Measure amends section 444 to provide that a parent will have a defence to a prosecution if a local authority has failed to discharge, where required, their statutory duties under the Measure to make travel arrangements to facilitate the attendance of their child at school.

Assessing need

Local Authorities are required to assess the travel needs of learners who are aged under 19 in their area. This includes those who they are legally required to provide transport for and those for whom they may wish to provide discretionary transport when assessing travel needs. An authority is also required to have regard to:

- The needs of disabled learners and learners with learning difficulties;
- Any particular needs of learners who are 'looked after' or learners who have formerly been looked after by a local authority;
- 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.

In assessing the travel needs of learners, Local Authorities must take into account the fact that 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. 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.

The duty to provide home to school transport

Local Authorities **must** provide free home to school transport if a pupil is living either at, or further than specific distances from the nearest, suitable school. This duty only relates to home to school transport and not transport during the school day, for example between a school and a college.

Walking distances

The **Learner Travel (Wales) Measure 2008** sets out the distance criteria whereby learners are entitled to free transport to and from their nearest suitable school. Distances below these thresholds are referred to as 'walking distances'. Local Authorities have a legal duty to provide free home to school transport for learners of compulsory school age.

- For those attending secondary school the distance is pupils who live 3 miles or further from their nearest suitable school;
- For primary schools, the walking distance is 2 miles.

The Measure sets out that 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).

If a route is not 'available' and there is no alternative available walking route within the respective distance threshold, 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. In such cases the local authority has a duty to provide the learner with free transport to and from their nearest suitable school. The Learner Travel Operational Guidance (2014) includes details on risk assessing walked routes to school. Local Authorities must have regard to this guidance.

Nearest suitable school and parental preference

The **Learner Travel Operational Guidance** defines 'nearest suitable school' as one:

"where the 'education or training provided is suitable having regard for the age, ability and aptitudes of the learner and any learning difficulties he or she may have'".

In deciding if a school is 'suitable', the **Learner Travel Operational Guidance** states that 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 learner's 'nearest' is a matter for the local authority to determine in accordance with their own learner travel and education policy. Local Authorities must set out how the nearest suitable school is identified and publish this information in their learner travel policy in accordance with provisions outlined in the **Learner Travel Information (Wales) Regulations 2009 [PDF 51KB]**.

Neither the child's or parent's language preference or mother tongue, nor religious faith or conviction of the child or his or her parent have any bearing on whether a school is considered suitable for these purposes. However, it is noteworthy that in the light of recent judicial review challenges, some Local Authorities have reviewed their home to school transport policies and now go beyond their statutory duty, and so do give consideration to language and faith preferences when determining the 'nearest' school.

The same age and distance criteria apply to 'looked after' children as to those who are not looked after. A looked after child is a person under the age of 18 who is in the care of the local authority, or who is provided with accommodation for more than 24 hours by a local authority in the exercise of its social services functions. This could be a placement with foster carers; in residential homes or with parents or other relatives. 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. The **School Standards and Framework Act 1998** allows parents and learners to express a preference for a particular school. If preference is exercised and the chosen school is not the nearest suitable school agreed by the local authority, the learner is not entitled to free transport provision. However, the Measure provides Local Authorities with powers to provide discretionary home to school transport for learners who are not attending their nearest suitable school in a range of circumstances.

Discretionary provisions

As well as the duty to provide transport to some pupils, a local authority has discretionary powers to provide home to school transport for other learners. A local authority does not have to use their discretionary powers to provide free or assisted travel. The power applies in relation to a learner living or studying in the authority's area.

However, if a local authority does make use of their discretionary powers, the authority must ensure that the policy applies to all learners in similar circumstances living in that authority's area. The local authority should ensure that any policy is fair, reasonable and complies with relevant equality legislation to ensure that they do not discriminate unlawfully between learners when using their discretionary powers. This has been highlighted by the Courts in recent judicial review cases.

While Local Authorities are not required to offer free transport, examples of where discretionary transport provision might be used include:

- Children under the age of five - Local Authorities are required to assess the travel needs of learners who are under the compulsory school age attending nursery education and who are ordinarily resident in the authority's area;
- Welsh medium schools that are not the nearest suitable schools - Local Authorities and Welsh Ministers have a duty under the Learner Travel Measure to 'promote access to education and training through the medium of Welsh' when deciding which schools are most suitable for learners in their area;
- Faith schools that are not the nearest suitable schools;
- Post-16 learners who continue their studies in mainstream further education or training.

Equality legislation and school transport

Schedule 3, Part 2, section 11 of the **Equality Act 2010** includes exceptions in relation to religious or belief-related discrimination with regard to the provision of services. It states that in relation to religious or belief related discrimination, the provisions of the Equality Act do not apply with regard to transport to or from school. Therefore, it is legal to provide more favourable treatment to pupils of one particular religion or belief over another type of religion or belief. However,

Local Authorities still need to ensure that their transport policies do not unlawfully discriminate in relation to other protected characteristics or contravene the Human Rights Act and also that they comply with the statutory Learner Travel guidance.

Additional Learning Needs

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 an Additional Learning Needs (ALN) Individual Development Plan (IDP).

If an independent school named in an IDP for a child 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.

The transport arrangements for a learner with ALN will depend on their individual circumstances and the route they must travel. The Learner Travel (Wales) Measure 2008 provides that, 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, there is 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.

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 specified walking distances, but travel arrangements are necessary to facilitate the child's attendance at that school, the authority has a duty to make those arrangements.

¹ The Learner Travel Operational Guidance uses the term 'special educational needs', but as this legal term is being replaced by the term 'additional learning needs' under the Additional Learning Needs and Education Tribunal (Wales) Act 2018, this is the term being used in this paper.

However, the 'reasonable adjustments' (under the provisions of the **Equality Act 2010**) duty is still relevant to the nature of transport or travel arrangements which the local authority make under the Measure. The local authority should ensure that the arrangements they make allow disabled learners to benefit in the same way as those who are not disabled – for example, by ensuring that the transport provided is accessible and safe for the particular disabled learner.

Safety

The **Learner Travel Operational Guidance** states that 'the safety of children is of paramount importance' and Local Authorities are required to assess the suitability of travel for learners between home and places of education and training.

When assessing learner needs, the guidance lists a number of things that a local authority is required to have regard to. This includes 'the nature of the route that the learner is expected to take between home and the places where they receive education or training.'

Neither the Measure nor the guidance specifically mention hazardous route assessments for walking routes to pick up points. However, the then Minister for Economy, Science and Transport **said in a letter to all Assembly Members** (October 2015) [PDF 158KB] that where travel arrangements made by Local Authorities require children to walk to and from pick up points for learner transport, they must ensure that both the walked route and the learner transport itself are suitable.

Guidance on risk assessing dedicated school service contracts is provided in the Welsh Government **Guidance on Home to School Transport Risk Assessments** (2009) [PDF 471KB].

Charging for home to school transport

Local Authorities may not charge for transport arrangements that they have a duty to make for learners of compulsory school age, 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 local authority that is looking after the child .

When a local authority uses its powers to provide discretionary travel arrangements for learners not entitled to free transport provision, a charge can be made for these arrangements.

For learners who are not of compulsory school age, there is no restriction on charging. For learners of compulsory school age, charging must be in accordance with Section 455 and 456 of the **Education Act 1996**.

Disabled learners may have specific transport requirements (or reasonable adjustments under the Equality Act 2010 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.

This means if the cost of providing transport for a disabled learner is higher than it would be 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 cannot charge a higher amount for the use of the specialised vehicle and/ or escort (or any other reasonable adjustment) even though the cost to the local authority may be higher.

Public Service Vehicle Accessibility Regulations

The **Public Service Vehicle Accessibility Regulations** (PSVAR) of 2000 and 2005 apply to all new public service vehicles (buses or coaches) that:

- Have been introduced since 31 December 2000
- Have a capacity exceeding 22 passengers; and
- Are used to provide a local or scheduled service.

PSVAR applies in England, Scotland and Wales and are the **responsibility of the UK Government Department for Transport**.

Requirements under the regulations have been introduced in phases. The final requirement from the PSVAR was implemented on 1 January 2020. This requirement means that any coach used on a scheduled service from that date must provide wheelchair access. The Regulations apply only to public service vehicles. A vehicle that is not a public service vehicle (that is, one that is not operated on a commercial basis for hire and reward) is outside the scope of the Regulations. The regulations apply to transport for learners provided by Local Authorities on a discretionary basis where the Local Authorities collect a fee from the learner. The regulations do not include transport that Local Authorities provide

to learners in their area under statutory arrangements or where the local authority does not charge a fee for discretionary transport arrangements.

On 26 November 2019, the Minister for Economy and Transport, Ken Skates issued a **Written Cabinet Statement** which stated that, following his discussions with the UK Secretary of State for Transport on the impact of the Regulations on learner transport, a temporary transitional arrangement has been introduced. This has offered an initial two years extension from PSVAR for vehicles providing home to school transport, on which up to twenty percent of seats are sold. The Cabinet Statement said that whilst the UK Department for Transport had no intention of repealing the Regulation, the extension would provide Local Authorities the ability to plan how they propose to mitigate the unintended consequences of this Regulation on school transport. In some areas, as a consequence of the regulations, some fare paying schools buses had been withdrawn.

Financial support for home to school transport

Some potential sources of funding to help meet the costs of learner transport are listed below.

Youth Concessionary Fare Scheme

The Welsh Government has a youth discount bus travel scheme. This provides discounted travel on buses for those aged between 16 and 21 who live in Wales and may be used for school or college transport. This provides a discount of a third of the cost of fares. Applications and further information can be found on the **[Mytravelpass website](#)**.

Welsh Government Learning Grant Further Education

While not funding specifically for learner transport, learners aged 19 and over may be eligible for the Welsh Government Learning Grant (FE). This grant is based on the amount of the student's household income. To be eligible a student must be studying at least 275 hours at a participating college and the course must lead to a nationally recognised qualification. A student's household income must be £18,370 or less in order to receive Welsh Government Learning Grant FE. Further information can be seen on the **[Student Finance Wales website](#)**.

Financial Contingency Funds (FCF)

The FCF was introduced to support post-16 students, who face financial difficulties and who, without support, are likely to leave their education. The Welsh Government makes available annual FCF monies to individual further education institutions to administer to their students on a discretionary basis. The FCF is generally available to eligible students to assist with childcare, books, equipment and transport costs. Funds are administered by individual institutions.

Where to find information

The Learner Travel Information (Wales) Regulations 2009 require Local Authorities to publish information on travel arrangements. Local Authorities are required to publish information including:

- The general policy on free transport;
- The general policy on transport for learners for whom free transport is not provided;
- The circumstances in which reasonable travel expenses will be made;
- Arrangements and policies for learners with disabilities or learning difficulties
- The information must be made available by the 1 October in the preceding academic year to which the information relates.
- In addition Local Authorities must provide free of charge and on request information relating to:
 - The assessment of learner travel needs;
 - The suitability of transport arrangements;
 - Decisions as to whether a route is 'available';
 - Decisions as to whether travel arrangements are necessary to facilitate the attendance of the child each day at the relevant place where they receive education or training;
 - Decisions to make travel arrangements using discretionary powers.

Generally, local authority websites publish information on school transport arrangements within their admissions information, as recommended by the Welsh Government. This aims to help parents understand any cost implications of any parental preference they may make about their child's school..

