

Ieuan Wyn Jones AC/AM
Dirprwy Brif Weinidog /Deputy First Minister



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Eich cyf/Your ref
Ein cyf/Our ref:LF/DFM/0022/10

Jenny Randerson AM
Chair, Legislation Committee 4
Cardiff Bay
Cardiff
CF99 1NA

11 November 2010

Dear Jenny

Proposed Safety on Learner Transport (Wales) Measure – points of clarification

Thank you for your letter of 4 November relating to the evidence session of that date. I am pleased to be able to provide clarification on the points raised as outlined below.

1. In the case of a contracted bus service, would the provisions of the proposed Measure extend to a school-to-home journey taking place later than the end of the school day, e.g. as part of an educational visit or after-school club?

In relation to a school to home journey as part of an educational visit, the proposed Measure would not apply. Local authorities only have a duty to make suitable transport arrangements to facilitate the attendance of a child at “relevant places” which are educational institutions. Trips to other places, even for educational purposes, would not be covered.

There is no legal requirement on local authorities to provide transport to learners following an after-school club or similar activity, and we are not aware of any such arrangement. However, if a relevant body provides or otherwise secures school to home transport following after school activities at the school itself, and if the children attending those clubs receive education or training there, then the provisions of the proposed Measure would apply.

2. Where a child travels to a college as part of their studies on a service contracted or paid for by the local authority, would the provisions of the proposed Measure apply?

Yes on local authority contracted services, as long as it was at the beginning or end of the day. Local authorities are under a duty to provide transport between home and a relevant place other than the one at which a child is registered pupil. This takes account of the fact that some children attend different places on different days.

3. Since October 2001, how many injuries on school transport have occurred as a result of a child wearing an inappropriately fitting seat belt?

Unfortunately, this information is not collected.

4. Would it be possible for risk assessments carried out under the proposed Measure to take account of the age appropriateness of the seat belts fitted on dedicated learner transport?

Risk assessment of the vehicle would be able to identify the kind of seatbelt available on the vehicle, and for the operator to identify any risk with using the particular seatbelts. However the risk assessment document would only be able recommend the type of safety belt available for a particular age group. This requirement is already part of the Welsh Assembly Government's non-statutory Guidance on Home to School Transport Risk Assessment.

Current UK legislation does not specify age appropriate seatbelts for vehicles. The legislation specifies the type of seatbelt which may be fitted to a vehicle dependent upon the type and age of the vehicle. No remedial action could be forced upon a bus operator following such a risk assessment if the seatbelts met current UK legislation specifications. The Assembly has no competence to legislate in this area.

5. Who is responsible for ensuring a Criminal Records Bureau check is carried out on drivers of contracted taxis and private hire vehicles?

The employer of a taxi or PHV driver would be responsible for obtaining a CRB check on their staff. There is no provision which would allow a self employed individual to obtain a CRB check on themselves. Instead, if a self employed person requires a CRB check they must obtain one from an Umbrella Body, who are agencies registered with the Home Office that will obtain the necessary check on their behalf.

6. Would it be possible for CCTV footage taken on dedicated school transport to be used for training purposes?

Part II of Schedule 5 to the Government of Wales Act 2006 provides that a provision of an Assembly Measure cannot make modifications of any of the provisions of the Data Protection Act 1998 ("DPA 1998"). Accordingly the Assembly could not legislate in any way which would contravene the DPA 1998.

The proposed Measure allows the Welsh Ministers to make regulations in relation to: " the use, storage and retention" of images. This will enable the Welsh Ministers to make regulations in relation to the purposes for which such footage may be used. Such regulations will be subject to consultation with stakeholders and affirmative procedure in the Assembly.

7. In relation to section 11, inserting new section 14K, who will be an 'officer' and a 'partner'? Will head teachers be personally liable for offences under new sections 14A and 14B?

The proposed Measure allows for regulations to make provision in certain circumstances (to be determined by the Welsh Ministers) for individual partners or officers to be personally liable for offences committed in relation to descriptions of vehicles permitted for learner transport and in relation to the recording of visual images and sound on learner transport, as well as the partnership or corporate body itself.

The proposed Measure states that regulations "may provide" in certain specified circumstances, for such personal liability, so this is something that the Welsh Ministers will need to decide upon.

The definition of a "partnership" within the Partnership Act 1890 is : "the relation which subsists between persons carrying on a business in common with a view of profit", so any person (other than a person within a limited company/corporate body) falling within this definition would be considered as a "partner". Therefore a further definition within the Measure is not required.

There is no definition in the Measure of “officer” as there is no absolute definition in any other legislation. The reason for this is, no doubt, that it would be unwise to exclude any particular individual who had a significant decision making role in a body corporate regardless of that person’s actual title.

The definition of “officer” in the Companies Act 2006, for example, states that in relation to a body corporate it, “*includes* a director, manager or secretary”. The word “includes” indicates that the definition is not limited to directors, managers or secretaries. As such it has limited value in terms of trying to interpret who is included within the definition and who is not.

Persons appointed to governing bodies are considered to be “members” of the governing body rather than “officers”. Accordingly personal liability will not attach to individual members, including head teachers.

A handwritten signature in black ink, appearing to read 'Ieuan Wyn Jones', with a large, stylized initial 'I'.

Ieuan Wyn Jones

Gweinidog dros yr Economi a Thrafnidiaeth
Minister for the Economy and Transport