

# **PROPOSED LEARNER TRAVEL (WALES) MEASURE**

Explanatory Memorandum to the Proposed Learner Travel (Wales) Measure

This Explanatory Memorandum has been prepared by Department for the Economy and Transport of the Welsh Assembly Government and is laid before the National Assembly for Wales.

Member's Declaration

In my view the provisions of the Learner Travel (Wales) Measure, as introduced by me on 15 April 2008, would be within the legislative competence of the National Assembly for Wales.

Ieuan Wyn Jones AM  
Deputy First Minister and Minister for the Economy and Transport

19 September 2008

# CONTENTS

## PART 1

1. Description
2. Legislative Background
3. Purpose and intended effect of the legislation
4. Consultation
5. Power to make subordinate legislation
6. Regulatory Impact Assessment

## PART 2 – IMPACT ASSESSMENT

7. Options
8. Costs and benefits
9. Competition Assessment
10. Post implementation review

## ANNEX 1 – Explanatory Notes

# 1. Description

1.1 The Measure as amended by Stage 2 proceedings will make law for the travel of school pupils and young people in education or training aged 16-19 in Wales. It replaces the law for travel for learners in Wales set out in the Education Act 1996 (as amended) and consolidates and simplifies current statutory provisions. The Measure, essentially, will:

- increase entitlement to free transport to school for primary school children if they live two miles or further away;
- re-enact entitlement for free transport for secondary school children if they live three miles or further away from the nearest suitable school;
- provide entitlement to free transport to school if the parents wish that their child be educated at a school of a religious character, subject to age/distance criteria, if the nearest suitable school is not of such character;
- introduce a specific requirement to assess and provide for the needs of looked after children and to clarify related payment arrangements between local authorities in Wales;
- require local authorities and the Welsh Ministers, when exercising their functions under the Measure, to promote access to Welsh medium education;
- require Welsh Ministers to make a code of conduct in relation to travel to and from places of learning and require this to become part of a school's behaviour policy; and
- give local authorities the power to change school session times if that can improve transport arrangements or environmental sustainability.

The Measure will also provide the means for Welsh Ministers to issue statutory guidance and to make future provision for young people in post-16 learning and children in nursery education.

## 2. Legislative background

2.1 The Education Act 1996 (as amended) provides the current statutory basis for home to school transport and students aged 16-19 years old.

2.2 The Education and Inspections Act 2006 provided the National Assembly for Wales with a framework power to make provision about *“the travel of persons receiving primary, secondary or further education or training to and from the schools or other places where they receive it”*. The power was converted by Order in Council in accordance with paragraph 31(2) and (4) of Schedule 11 of the Government of Wales Act 2006. The Order repealed sections 178 and 179 of the Education and Inspections Act and inserted provision for the National

Assembly for Wales to legislate in Matter 5.10 of Field 5 Education and Training of Schedule 5 of the Government of Wales Act 2006 as follows:

*“Matter 5.10 (as amended by the National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008)*

Arrangements for persons to travel to and from the places where they receive education or training.

This matter applies to –

- (a) persons receiving nursery, primary, secondary or further education or training;
- (b) persons described in matter 5.17 receiving higher education.

This matter does not include any of the following:

The regulation of use of motor vehicles on roads, their construction and equipment and conditions under which they may be so used;  
Road traffic offences;  
Driver licensing;  
Driving instruction;  
Insurance of motor vehicles;  
Drivers' hours;  
Traffic regulation on special roads, pedestrian crossings, traffic signs and speed limits;  
Public service vehicle operator licensing;  
Provision and regulation of railway services ....  
Registration of local bus services, and the application and enforcement of traffic regulation conditions in relation to those services.”

### **3. Purpose & intended effect of the legislation**

#### **Policy Background**

3.1 Policy and law for home to school transport for school age children, and travel schemes for young people aged 16-19, exist so that children and young people can take part in learning without travel being a barrier to participation. Mass transit of children and young people facilitates access to education and helps reduce road congestion.

3.2 Although current law is contained in the Education Act 1996 (as amended),

it originates from the Education Act 1944 which established entitlement to free transport for pupils of statutory education age. Pupils under the age of eight get free transport if they live two miles or further from the nearest suitable school and those aged over eight are entitled to free transport if they live three miles or further. Age eight was chosen because it was the transition age from infant to junior education which, historically, was provided by different schools. Generally, local authorities are duty bound by section 509 Education Act 1996 to make arrangements for the free transport of children who live further than the statutory distance. A school should be judged suitable for a child if it provides education suitable for the age of that child and any special educational needs s/he has. Parental preference for education through the medium of a particular language, or in a setting with a religious ethos or particular faith, should not determine whether a school is suitable. Local authorities have discretionary power to offer free or discounted transport to children who do not qualify under the statutory criteria.

3.3 The Welsh Assembly Government's policy is that children should attend the nearest suitable school to their home, with Welsh medium and denominational schools available as realistic choices. Whilst the School Standards and Framework Act 1998 allows parents to express a preference for their child to attend a particular school it does not give them an absolute right of admission. If a child is admitted to a school which is not the nearest suitable school, the local authority may use its discretion whether or not to provide free transport or assistance for travel costs.

3.4 The Welsh Assembly Government encourages young people aged 16-19 to enrol in education or training if they are not in full time employment. Many local authorities and further education institutions voluntarily provide support for travel or arrange transport. Local authorities are required by section 509AA of the Education Act 1996 to publish transport policy schemes annually, which provide information about local travel arrangements for educational purposes, but there is no entitlement by law to transport to and from a place of learning for post-16 students.

3.5 There have been several studies published about school transport such as:

- *As Long as I Get There Safe* – published by the Children's Commissioner in 2004, which drew together the experiences and thoughts of children and young people who used school buses;
- The Association of Transport Co-ordinating Officers' and Confederation of Passenger Transport's 2004 report *School Transport*;
- *Good Practice in School Transport in Wales* – a study by the National Foundation for Educational Research commissioned by the Welsh Local Government Association in 2005; and
- The National Assembly's Education and Lifelong Learning Committee's 2005 *Policy Review of School Transport*.

3.6 The Minister for Education, Lifelong Learning and Skills responded to the ELL Committee review in June 2005 and accepted recommendations to issue up to date guidance on the law to local authorities. That Minister also made available £1m per annum from 2007-08 to 2009-10 for home-school transport improvements and to encourage joint working between authorities. New (non-statutory) guidance on home to school transport was issued, following consultation, on 15 April 2008. The studies listed above have commented on the importance of good behaviour on school buses with regard to the implications for safety and making the journey pleasant. Most local authorities have codes of conduct and apply sanctions if necessary. It is essential that codes and sanctions are proportionate, workable and enforceable. The consultation on the Measure suggested that consistency across Wales was also seen to be important. The studies have also identified potential to improve school bus arrangements by making small adjustments to school session times.

3.7 In 2004 the Parliamentary Under Secretary of State for Wales consulted on a draft School Transport Bill. The Bill proposed permitting local authorities to set up travel schemes with means testing. Stakeholder feedback suggested that there was little enthusiasm for using means testing to determine who would qualify for free transport in Wales. The Bill did not become law but much of what had been proposed for it was enacted in relation to England in the Education and Inspections Act 2006.

3.8 The transport needs of children and young people in education and training should be set against the wider context of transport in general. Transport is important to many aspects of society and transport delivery poses complex questions. Local authorities have a variety of transport functions. The Welsh Assembly Government is encouraging local authorities and other public service providers to work collaboratively in accordance with the principles of *Making the Connections* and the *Beecham Review*. The Transport Wales Strategy, developed under the Transport (Wales) Act 2006, places emphasis on collaborative working and sustainability. Four regional transport consortia have been established to improve transport planning and delivery.

3.9 Transport generates pollution and section 79 of the Government of Wales Act 2006 places a duty on the Welsh Assembly Government to plan to promote sustainable development. The 'school run' causes congestion, and has implications for road safety and pollution. In order to encourage walking and cycling, the Welsh Assembly Government has encouraged walking to school with the *Safe Routes to School* scheme, which has been expanded into the *Safe Routes in Communities* programme. These developments are against a background of an increasing proportion of children travelling to school by car and worsening congestion caused in part by the 'school run'. The tables below provide further information about trends in Wales.

### **Mode of transport of children to school**

All Children aged 5-16	1995-99	2005-06
Car	29%	38%
Bus	32%	21%
Walk	37%	39%

*Source: National Travel Survey.*

There is a marked difference in modes of travel between primary and secondary school children, with car use and walking much higher amongst primary children.

### **Travel of children to school by car and bus during 2003-06**

	Age 5-10	Age 11-16	All ages
Car	48%	26%	37%
Bus	10%	37%	23%
Walk	40%	34%	37%
Other	1%	3%	2%

*Source: National Travel Survey.*

Road Congestion in Wales 2003-06	
Proportion of rush hour cars taking children to school	23%
Peak proportion (0850 hours)	29%

*Source: National Travel Survey. Data are for 08:00 to 08:59 hours on weekdays in urban areas during term time.*

## **Objectives of the Measure**

3.10 The Welsh Assembly Government has concluded that the fundamental principles of the current law are right for Wales but that there is a need to consolidate, simplify and to improve. The law should provide a national framework which sets minimum standards and levels of entitlement to free transport that are based on the age of children and young people and the distance they have to travel. The National Assembly for Wales, during the Stage 2 proceedings, decided that there should also be entitlement to free transport to school if the parents wish that their child be educated at a school of a religious character, subject to age/distance criteria if the nearest suitable school is not of such character. The current age and distance limits are out of date for primary learners and in practice many authorities provide more than the current minimum

requirement. But the age-distance model is still relevant and preferable to means testing of parents or students. Local authorities should continue to have a central role in planning and making travel arrangements and they should have discretion to do more than the minimum entitlement provided by the law should they judge that to be beneficial or necessary to meet local needs.

3.11 A high proportion of local authorities favour deciding entitlement to free transport by reference to a child's age and the distance from home to the nearest suitable school. The age - distance system is regarded as effective, appropriate and workable, although there is support for updating limits to make them more generous. Authorities wish to have discretion to make arrangements but within a strong and clear Wales wide framework that sets minimum requirements and is in line with the Transport Wales Strategy.

3.12 The objectives of the Measure are:

- to provide a separate, simplified Welsh legislative framework which can be developed to support education and transport policies as they evolve (for instance the current separate arrangements for post-16 travel schemes will be abolished);
- to provide from September 2009 a higher level of entitlement to free transport for all primary school children, setting a threshold of two miles or further from home to the nearest suitable school, thereby helping to reduce the proportion who travel by car and bringing benefits for congestion and the environment;
- to maintain the current distance threshold of 3 miles for secondary school pupils to qualify for free transport between home and the nearest suitable school;
- to provide entitlement to free transport to school if the parents wish that their child be educated at a school of a religious character, subject to age/distance criteria if the nearest suitable school is not of such character;
- in the light of the consultation to focus local authorities on the assessment and meeting of the needs of looked after children;
- to require local authorities and the Welsh Ministers, when carrying out their functions under the Measure, to promote access to Welsh medium education;
- to provide the means to make provision at a later date for travel in relation to entitlement for children in nursery education and post-16 students;



- to place collaboration between authorities and schools and further education providers and environmental sustainability at the core of planning and delivery of travel arrangements;
- to facilitate common standards across Wales for behaviour and discipline for those travelling to and from their place of learning or training - whatever means are being used - and to clarify enforcement arrangements;
- to provide local authorities with the power to change school session times if that can help make transport arrangements more effective, efficient or environmentally sustainable; and
- to enable Welsh Ministers to issue directions and statutory guidance.

## **Explanation of Provisions**

3.13 The provisions in the Measure are explained in the Explanatory Notes at Annex 1.

## **Application**

3.14 The Measure will apply to all of Wales.

3.15 Most of the provisions in the Measure will come into effect for the start of the 2009-10 academic year. A date for commencement for the provisions relating to schools of a religious character has yet to be determined.

## **4. Consultation**

4.1 Welsh Assembly Government officials have met all local authorities and the WLGA to scope current policy and law. The discussions focussed on whether the age – distance system was appropriate to determine entitlement to travel or whether a different approach should be taken. There was broad support for retaining the principle of an age – distance system, echoing feedback from consultation on the draft School Transport Bill (Paragraph 3.6 refers). Discussions also considered how well authorities are able to manage, develop and deliver school transport within the current legal framework. This information informed the development of the Measure.

4.2 A cross departmental policy gateway review of the Measure proposals has been undertaken and was supportive.

4.3 In June 2007 the draft Measure was made available for public consultation prior to introduction to the National Assembly for Wales. A copy of the consultation document (which includes the consultation questions) and a summary of the consultation responses can be accessed via the following link: [Welsh Assembly Government | Proposals for a Learner Travel \(Wales\) Assembly Measure](#).

4.4 The National Assembly's Enterprise and Learning Committee also scrutinised the draft Measure and its report was published on 21 November 2007 and can be accessed via the following link: <http://www.assemblywales.org/cr-ld6874.pdf>.

4.5 All the responses received indicated widespread support for the Assembly Government's proposed intervention to address learner travel issues. There were varying views on some key aspects such as local authorities discretion, transport to Welsh medium and faith establishments, changing school session times, behaviour codes and enforcement, 14-19 Pathways and looked after children. There were also issues about bus regulation and safety but the Measure cannot deal with these as the Assembly does not have the legislative competency to do so; this requires separate action.

4.6 Taking account of the views of consultees and the Committee, significant changes have been made to some key areas of the Measure. Primarily, these are;

#### **Looked after children**

- that local authorities must also have regard to the needs of 'looked after' children and former 'looked after' children when they assess learner travel needs in their area (revised section 2);
- that local authorities must provide transport for looked after children if they live beyond two miles (in the case of primary schools) or three miles (in the case of secondary schools) even if there is a nearer school they could attend (revised sections 3 and 4);
- clarification of arrangements for travel costs for a 'looked after' child where travel arrangements are made in another authority's area (new section 18);

#### **Behaviour codes and enforcement**

- to ensure a consistent approach across Wales, Welsh Ministers will be required to make a behaviour code to apply to all travel by those under 19 connected with learning, whether or not arrangements are made by the local authority (revised section 12 – section 10 in consultation draft). The code will become part of the school's general behaviour policy and compliance with it will be compulsory for school pupils (revised section 13 – section 11 in consultation draft);

- local authorities will be responsible for enforcement of the behaviour code. Where incidents involve pupils benefiting from arrangements made by the local authority, the local authority will be able to withdraw entitlement to transport it has arranged (revised section 14 – section 12 in consultation draft). Guidance will clarify this further and also cover arrangements to deal with incidents involving pupils who are not benefiting from travel arrangements made by the local authority; and

#### **Transport to Welsh medium education**

- a requirement on local authorities and Welsh Ministers, when undertaking their functions under the Measure, to promote access to Welsh medium education (new section 10).

4.7 During Stage 2 proceedings a Committee of the National Assembly for Wales also determined that there should be changes to the Measure. Principally:

#### **Transport to schools of a religious character**

- Local authorities will be required to assess the travel needs of learners whose parents wish them to be educated at a school of a religious character (or if they are adults who so wish themselves), and to make arrangements for transport to school if the parent(s) wish that their child be educated at a school of a religious character, subject to age/distance criteria if the nearest suitable school is not of such character.

## **5. Power to make subordinate legislation**

5.1 Sections 2(1)(c), 3(9), 7, 8, 12(3)(c), 16, 21(2) and 28(2) contain powers to make subordinate legislation. These powers are all conferred on the Welsh Ministers, and are powers to make regulations or orders by statutory instrument (see section 27(1)).

### **Regulation Making Power for Entitlement**

5.2 The Measure contains an enabling power that will permit Welsh Ministers to make regulations for children's entitlement to travel (section 3(9)). The power is intended to give Welsh Ministers the means to replace, add to, or alter the entitlement to free transport granted by the Measure to primary and secondary school children.

5.3 Welsh Ministers have concluded that entitlement of primary and secondary school children to transport is determined best by reference to their age and the

distance from home to school. The Stage 2 proceedings also determined that there should be entitlement linked to schools of a religious character. Over time this may change and another arrangement, or different age and / or distance limits might be preferable. The power will enable Welsh Ministers to update and develop the law for entitlement to free or subsidised travel in line with developments in education or travel policy. It is considered appropriate to do this by regulations in order to respond quickly and flexibly to a need to change the entitlements. Regulations made under section 3(9) could therefore amend or repeal the provisions governing the circumstances and conditions that apply in respect of the local authority's duty to make travel arrangements, and could also make incidental, supplementary, transitional, saving or consequential provision including amendments to other legislation (see section 27(2), (3) and (4)).

5.4 There are also powers to enable Welsh Ministers to make regulations about travel arrangements for children in nursery education and for young people in post-16 learning (sections 7 and 8). Regulations made under section 7 and 8 can also make incidental, supplementary, transitional, saving or consequential provision including amendments to other legislation (see section 27(2), (3) and (4)).

5.5 In relation to nursery education (section 8), the regulations may require or permit a local authority to make travel arrangements; specify the kinds of place to and from which travel arrangements may or must be made; specify the travel arrangements that may or must be made as well as matters that must be taken into account in making decisions about travel arrangement; make provision about charges; and require information and assistance to be given to the local authority. The regulations could reflect the type of provision made in the Measure in relation to children of compulsory school age. It is considered appropriate to place duties on or give powers to local authorities because they are best placed to make arrangements on the basis of the assessment of needs they will have carried out under section 2 of the Measure.

5.6 In relation to post 16 learners, the regulations may confer powers on Welsh Ministers, local authorities and/or institutions in the further education sector because all three may have a role. The regulations may specify the kinds of place to and from which travel arrangements may or must be made; specify the travel arrangements that may or must be made as well as matters that must be taken into account in making decisions about travel arrangement; make provision about charges; require information and assistance to be given to other persons in connection with the performance of functions under the regulations (this is particularly relevant as local authorities will have gathered key information as a result of the assessment of needs they are required to carry out under section 2 of the Measure); and make provision about standards of behaviour expected while travelling to and from places of learning (so enabling provision to be made about the enforcement of the Travel Behaviour Code made under section 12).

5.7 The transport requirements for children in nursery education and young people in post-16 learning are complex and pose different issues from children in primary and secondary school. Welsh Ministers acknowledge that availability and cost of transport can be a factor for these learners or their parents. However, Welsh Ministers want to scope options for providing entitlement to transport for these groups and research costs, benefits and practicalities carefully. This will take time and needs to take account of a review of pilot projects. For these reasons, regulations for entitlement to travel for these groups will not be available for consideration during the passage of the Measure. It is considered appropriate to have a power to make regulations in relation to these groups so that once the options have been considered, then if it is concluded that provision should be made to confer entitlements on these groups, this can be done in a flexible and prompt manner.

5.8 It is likely that any provisions made using the powers in sections 7 and 8 would be about:

- duties on bodies to provide or make arrangements for transport of children and young people (see in particular section 7(2) and (3)(a) in relation to travel arrangement for learners in post 16 education or training and section 8(1) and (2) (a) and (b) in relation to travel to and from nursery education); or
- the groups of children and young people entitled to transport (using section 7(2) in relation to travel arrangement for learners in post 16 education or training or section 8(1) in relation to travel to and from nursery education).

5.9 Welsh Ministers will commission impact and cost – benefit studies of any proposals before proposing regulations under section 3(9) or sections 7 or 8. Under section 27(7) these regulations will be subject to the affirmative resolution procedure and a regulatory impact assessment will be undertaken. This is because the regulations confer a significant discretion on Welsh Ministers and they could also amend other provisions in the Measure and in other legislation. In those circumstances it is considered appropriate for the Assembly to scrutinise the regulations before they are made.

## **Other Regulation and Order Making Powers**

5.10 The Measure enables Welsh Ministers to make regulations about other aspects of the Measure as follows:

- prescribing other learners to be included in assessment of travel needs (section 2(1)(c)) and other learners to whom the travel behaviour code will apply (section 12(3)(c));

- the publication of information about assessments, travel arrangements and the travel behaviour code (section 16); and
- the procedures to be followed when a local authority uses its powers to change school start and finish times (section 21 - amendments to Education Act 2002).

5.11 The regulations will also be able to make different provision for different cases or areas, make provision generally or in relation to specific cases, and make incidental, supplementary, transitional or saving provision including amendments to other legislation (see section 27(2) and (4)).

5.12 Regulations under these powers will relate to matters which are technical or procedural in nature or will set out detail. The nature and content of the provisions made by any such regulations would not appropriate to be included on the face of the Measure. It is also desirable that the Welsh Ministers have the flexibility to amend provisions about matters such as the timing of publication of information quickly.

5.13 Under section 27(5) the negative resolution procedure will apply to these regulations because their scope is limited and they are concerned with detail and process. The negative resolution procedure affords the Assembly a degree of scrutiny appropriate to the limited type of provision that can be made in these regulations. However if any regulations under these powers amend or repeal any provision of any Measure or Act of Parliament then, in accordance with section 27(7)(d), they will be subject to the affirmative resolution procedure as this higher level of scrutiny is considered appropriate for regulations that amend primary legislation.

5.14 Section 28(2) contains a power for the Welsh Ministers to make an order to commence provisions of the Measure. As is normal practice for commencement orders, no procedure will apply to such orders.

## **6. Regulatory Impact Assessment (RIA)**

6.1 A Regulatory Impact Assessment for this Measure is at part 2.

# PART 2 – REGULATORY IMPACT ASSESSMENT

## 7. Options

7.1 The law has not kept up with education policy and changes in people's behaviour which means that parents can be reluctant to let their children walk to school or to accompany them. Roads are busier, car ownership more common, and parents are more likely to drive children to school. Many children enter education before their fifth birthday and young people are encouraged to undertake post-16 learning. The current statutory framework is fragmented. The Welsh Assembly Government wants to be able to update and change children's and young people's entitlements to free or subsidised transport as education and transport policy develop. The Welsh Assembly Government wants local authorities and governing bodies of schools and colleges to collaborate to make the planning and delivery of services efficient, effective and environmentally sustainable.

7.2 The options are:

- Option 1 – do nothing;
- Option 2 – provide guidance and additional resources to authorities; or
- Option 3 – introduce an Assembly Measure.

### Option 1 – Do Nothing

7.3 The law for home – school transport and post-16 travel schemes is long established and understood. All local authorities operate transport arrangements in accordance with the law or use their discretionary power to offer more generous terms. Some 21% of pupils travel to school by bus, 39% by foot and 38% by car (*Source: National Travel Survey 2007*).

7.4 Doing nothing is unlikely to bring improvement:

- the law would remain fragmented and would become more out of date with no scope for the Welsh Assembly Government to update entitlement to travel in line with education or transport policies as they develop;
- there would continue to be separate travel schemes for post-16 learners, rather than integrated approaches to assessing children and young people's travel needs;
- local authorities would be unable to alter school session times to make travel arrangements more efficient, effective and more environmentally sustainable;

- uncertainty would remain about discipline on school buses and there could continue to be an inconsistent approach across Wales; and
- Welsh Assembly Government guidance would not have statutory status and best practice might not be adopted.

## **Option 2 – Provide Guidance and Additional Resources**

7.5 The Welsh Assembly Government has issued non-statutory guidance on the current law and practice in response to recommendations of the Education and Lifelong Learning Committee review. The guidance explains the legal duties on local authorities and provides the Welsh Assembly Government's policy opinion about a range of topics. The Welsh Assembly Government is also providing £1m a year of additional funding to the Welsh Local Government Association to fund improvements in home to school transport between 2007-08 and 2009-10).

7.6 The Welsh Assembly Government intends that these steps will:

- eliminate any uncertainty about what the current law requires authorities to do;
- make clear Welsh Assembly Government policy expectations;
- help raise standards; and
- support collaboration between local authorities, with sharing of good practice and common approaches to operational matters when appropriate.

7.7 Under option 2 the Welsh Assembly Government would update the non-statutory guidance periodically and could continue to provide additional resources for school transport. Option 2 would bring benefits but they would be limited by the legal framework set by the Education Act 1996. Option 2 would mean that:

- there was no scope for the Welsh Assembly Government to update legal entitlement to travel in line with education and transport policy developments;
- there would still be separate travel schemes for post-16 learners, rather than integrated approaches to assessing children and young people's travel needs;
- local authorities would still be unable to alter school session times;



- doubt might remain about local authority powers to ensure good behaviour on school buses and more generally during travel, and there could be inconsistency across Wales; and
- Welsh Assembly Government non-statutory guidance would remain an opinion and would not have statutory status.

### **Option 3 – Introduce an Assembly Measure**

7.8 This is the only option which can fully address the policy objectives. A Measure would permit the National Assembly to make a statutory framework that suits the needs of children and young people best. It provides maximum flexibility for policy making and scope for the Welsh Assembly Government to develop subordinate legislation in line with education and transport policy requirements. A Measure would address the policy objectives as follows:

- it would establish a separate, simplified and consolidated Welsh legislative framework, independent of the law for England, which can be developed to support education and transport policy as those evolve;
- it would permit the setting of different levels of entitlement to free transport – in the first instance a more generous limit for primary school children eliminating the age 8 distinction and entitlement to schools of a religious character – but in the longer term providing the means to make legal entitlement for young people in the post-16 sector, children in nursery education, or to set different distance limits for primary or secondary school children;
- it would place duties to collaborate on authorities and schools and further education institutions and would place environmental sustainability at the core of planning and delivery of travel arrangements;
- it would strengthen safeguards for behaviour and discipline for those travelling to their place of learning; and
- it would permit Welsh Ministers to issue statutory guidance and directions in relation to functions in the Measure.

7.9 Under option 3, the Welsh Assembly Government would still be able to pursue the actions described in option 2. Option 3 takes developments and opportunities to a further stage.

## **8. Costs & benefits**

### **Option 1 – Do Nothing**

8.1 Option 1 would cost the Welsh Assembly Government and local authorities nothing but it would bring no benefits for them or for the public. Local authorities would continue to provide transport as required by the law, with discretion to offer more.

8.2 The change in the statutory distance limit from two to three miles at age eight for primary school children to qualify for free transport would remain and would be at odds with a school system that has moved towards unified primary schools in place of separate infants and junior schools. Parents in authorities which adhere to the statutory level of entitlement would be more likely to drive their children to school contributing to road congestion. Over time, authorities that operate policies that are more generous than the law requires might cut back their transport offer reducing it towards or to the statutory minimum. The Welsh Assembly Government would not be able to stop this. Nor could the Welsh Assembly Government ensure that transport support was available for young people in the post-16 sector.

8.3 At the local level, authorities would have limited ability to make operational changes to transport arrangements if school governing bodies were unwilling to make changes to school session times. The ELL Committee review concluded that minor changes to session times could allow use of the same bus for two trips making cost savings.

### **Option 2 – Provide Guidance and Additional Resources**

8.4 The Welsh Assembly Government could build on current arrangements by boosting funding for transport, by funding initiatives that raised standards and joint working, and by providing non-statutory guidance and encouragement of good practice. The Welsh Assembly Government has already allocated £1m a year for the period 2007-08 to 2009-10 for the Welsh Local Government Association to support local authorities working together on common issues that will raise standards. The Welsh Assembly Government has issued new non-statutory guidance for authorities which explains the law and sets out the Assembly Government's expectations. Issuing such guidance periodically entails a minor administration cost to the Welsh Assembly Government but raises awareness and understanding and can lead to changes in practice. But neither it, nor additional resources, overcome the fundamental point that the law sets the duties for local authorities and that the Welsh Assembly Government cannot determine the national standards of travel entitlement from which specific groups of children and young people benefit.

### Option 3 – Introduce an Assembly Measure

8.5 Introducing an Assembly Measure would generate costs if it made children and young people's entitlement to transport more generous than under the current law. The costs that would fall on local authorities would have to be funded by the Welsh Assembly Government in line with the commitment to fund any new or additional responsibilities that are placed on local government. Additional revenue costs would also be directly incurred by the Assembly Government, particularly in respect of the Travel Behaviour Code.

8.6 It is proposed that the Measure will provide free transport for primary school children (irrespective of whether they are older or younger than age eight) if they live two miles or further from the nearest suitable school. The new level of entitlement would come into effect from 1 September 2009 and would continue indefinitely unless changed. It is estimated that some 7,700 more children across Wales would be legally entitled to free transport. Providing this entitlement is estimated to cost £3.7m in 2009-10 rising to £6.6m in 2010-11 (based on local authority cost data collected by the Wales Audit Office, and home – school driving distance data derived from the January 2006 PLASC, with inflation built in by using HM Treasury's GDP inflators). These figures have been reviewed recently against latest data and costs and are considered to be robust.

8.7 The new provisions about travel entitlement to schools of a religious character will also have significant financial implications for local authorities and the Assembly Government. More detailed work and information will be required to fully assess such costs but, based on current available information about the number of pupils attending denominational schools who live 2 or more miles (primary) and 3 or more miles (secondary) from their school – in the region of 13,300, the additional cost to the Assembly Government could be up to £13m per annum. This initial estimate reflects estimated projected population changes and nets off those who would already benefit from the general primary school entitlement increase. There is currently no budget provision for this and there is a need to consider when these provisions should be implemented.

8.8 The Assembly Government does not consider that the inclusion in section 2 (duty on local authorities to assess the learner travel needs of their area) *to have particular regard to the needs of learners whose parents wish, or in the case of learners who are adults, who wish themselves, that the education is provided by a school of a religious character* will impose a significant additional financial burden on local authorities. Local authorities should already have this information since the School Standards and Framework Act 1998 allows parents to express a preference for their child to attend a particular school and Section 9 of the Education Act 1996 places a general duty on local authorities to have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents so far as that is compatible with the provision of

efficient instruction and training and the avoidance of unreasonable public expenditure.

8.9 The revision to section 3(8)(a) means that routes are only safe to walk if there is a footway or footpath and will have the effect of reducing the number of routes that are deemed 'available'. This means that local authorities will be required to make transport arrangements for a greater number of children who live within the statutory distances. Clearly, this will have financial consequences for local authorities and, in turn, for the Assembly Government. Information is not readily available to ascertain these additional costs – each local authority will have to review all its relevant routes and assess the additional financial consequences of each if they are considered not to be 'available'.

8.10 The requirement that local authorities must carry out risk assessments during the times when journeys are undertaken should not have any additional financial consequences. This should already be happening.

8.11 Apart from the above, the Measure does not substantially alter the current entitlement to transport for secondary school children. It makes provision for Welsh Ministers to introduce subordinate legislation to provide entitlement for children in nursery education, a power for Welsh Ministers to make arrangements for young people in post-16 learning, and a power for Welsh Ministers to amend the provisions for primary and secondary school children. Subsequent subordinate legislation might have cost implications for local authorities and perhaps further education institutions and post-16 providers, depending on the type of entitlement made. Cost increases arising from such legislation would have to be funded by the Welsh Assembly Government and would be subject to a separate regulatory impact assessment. Regulations would be made by affirmative resolution thus allowing the National Assembly to scrutinise them.

8.12 Local authorities already have clear policies, strategies and plans in relation to Welsh medium education and related transport. The requirement in the Measure for local authorities, when exercising their functions under the Measure, to promote access to Welsh medium education is not likely to incur any significant additional burden or costs. The duty to promote sustainable modes of transport is also not expected to place additional burdens on local authorities – indeed, they are expected to bring benefits.

8.13 Provisions in the Measure to encourage collaboration between authorities, and with governing bodies, should not incur costs and might bring benefits. The power for local authorities to change school session times could bring cost savings depending on local circumstances.

8.14 The Measure is unlikely to bring costs or savings for schools because they do not bear the cost of providing pupil transport to and from home. Parents of children who gain entitlement to free transport will save money if they have

driven children to school solely for that purpose and not on their way to work or another destination.

8.15 The higher level of entitlement for primary school children and the new entitlement based on schools of a religious character should marginally increase the volume of business for the bus industry. In most cases, such transport is already arranged by local authorities using their discretionary powers and the existing funding made available through the local government revenue settlement. The exact effect will depend on local circumstances. The Measure will not alter the legislation that applies to the bus industry and so will not affect bus operators' costs.

8.16 It is not anticipated that the Measure will impact on the voluntary sector.

8.17 The requirement for Welsh Ministers to make a travel behaviour code will result in set up costs, which are currently being assessed.

8.18 There will also be ongoing costs, both for the Assembly Government and local authorities, associated with the travel behaviour code. There is a duty on the Welsh Ministers to consult relevant persons before revising the code, which the Assembly Government will have to fund as the need arises. Also, local authorities will need to promote the code on an ongoing basis and they will be required to ensure all relevant parties can access it, including inter alia learners of all ages, their parents (where appropriate) and transport operators.

## **Summary**

8.13 Only Option 3 can fully address the policy objectives by providing a new statutory framework for Wales that simplifies and consolidates the current law, improves entitlement for primary school children, introduces a new entitlement in relation to schools of a religious character and provides the platform to provide entitlement to other groups of children and young people such as post-16 learners and children in nursery education. It would also strengthen safety through consistent standards for behaviour and discipline for those travelling to/from their place of learning.

## **9. Competition Assessment**

9.1 The Measure will not have a negative effect on competition.

## **10. Post implementation review**

10.1 The Measure will be monitored by noting changes to travel patterns recorded by the National Travel Survey. Feedback will be obtained also from

Welsh Assembly Government casework and preparatory work undertaken to make regulations.

## **Explanatory Notes**

1. These Explanatory Notes are for the Learner Travel (Wales) Measure 2008 laid before the National Assembly for Wales on 15 April 2008 and as amended during Stage 2 proceedings. They have been prepared by the Department for the Economy and Transport in conjunction with the Department for Children, Education, Life-Long Learning and Skills of the Welsh Assembly Government to assist the reader of the proposed Measure. The Explanatory Notes should be read in conjunction with the Measure but are not part of it.

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

## **Commentary on Sections**

### **Section 1 – Main terms used in this Measure**

3. Section 1 defines the main terms used in the Measure.

4. 'Travel arrangements' may include providing transport, providing escorts to accompany children, the payment of all or part of travel expenses, and the payment of allowances.

5. 'Learners' within the scope of the Measure are persons who receive education or training.

6. 'Relevant places' are defined as maintained schools, further education institutions, independent schools named in statements of special educational needs, non-maintained special schools, pupil referral units, places where nursery education is provided by a local authority or funded by the authority, any place funded by Welsh Ministers to provide education or training to post-16 learners (such as further education in a higher education institution or work based learning) and any place where learners undertake work experience. The definition also covers arrangements made for pupils with exceptional needs whose education has been arranged by a local authority at a place other than a school and institutions where Welsh Ministers have secured education and training and boarding accommodation for post-16 learners with learning difficulties.

### **Section 2 - Duty to assess learner travel needs**

7. Section 2 places a duty on a local authority to assess the travel needs of

learners who are persons under the age of 19 who receive education or training, or persons who have attained the age of 19 who started a course of education or training when under 19 and continue to attend that course, and who are ordinarily resident in the authority's area. 'Learner travel needs' are the needs of learners for suitable travel arrangements each day between home and schools or other places where they receive education and training (known as 'relevant places'). In practice, this means that pupils of compulsory school age, of sixth form age, and children of nursery education age in provision funded by the authority, are in the scope of the assessment required by section 2. The Welsh Ministers can, under subsection (1)(c), make regulations specifying other learners if they wish so that the scope of the assessment could be changed. The assessment will include learners who travel to relevant places in other authority areas. An authority must make this assessment every academic year in preparation for the following academic year. The assessment will give a local authority an overview of the travel needs of learners and that information will help them make travel arrangements for learners in an efficient and effective manner.

8. The duty puts into effect the sorts of activities that a local authority would already undertake to discharge effectively its duties under the Education Act 1996 (as amended). Although that Act does not place a specific duty on a local authority to assess the travel needs of children in statutory age education, an effective authority will consider the travel needs of learners in order to make arrangements under section 509(1) of the Education Act 1996 for the transport of children of compulsory school age. For learners of sixth form age, an authority will currently gather and assess information in order to prepare a transport policy statement under section 509AA.

9. The assessment is to cover the travel needs of a learner who attends different 'relevant places' on different days. This is to take account of the fact that some learners attend a different school or a further education institution for part of their education or training or they undertake work experience elsewhere, or are enrolled on work based learning. However, as section 5 makes clear, the assessment is only to be concerned with travel to and from the home to such places and is not concerned about travel within the day between places. The assessment is not to be concerned with travel needs for residential trips or day trips organised by schools or further education institutions, nor are authorities required (but they may choose to if they wish) to take account of extra-curricular activities, breakfast or after-school clubs.

10. When making an assessment, a local authority is required to have regard to matters listed in subsection (4)(a) to (f). These are the needs of disabled learners or learners with learning difficulties; any particular needs of learners who are children 'looked after' or formerly looked after by a local authority; learners who wish, or their parents wish, for their education to be provided by a school of a religious character; the age of a learner; and the nature of the route that s/he is



expected to take between home and the places where s/he receives education or training.

### **Section 3 – Local authority duty to make transport arrangements**

11. Section 3 places a duty on a local authority to make transport arrangements for children of compulsory school age in specified circumstances and subject to specified conditions. The circumstances and conditions are set out in the table after subsection (2). The section makes provision for a system of entitlement to free transport defined by reference to whether children are receiving primary or secondary education and whether they live at or further than set distances from the places at which they receive education or training. This approach to determining entitlement is similar in effect to the system created by the conjoined working of sections 444 and 509 of the Education Act 1996.

12. Subsection (1) provides that the section applies to children of compulsory school age who are ordinarily resident in its area if the circumstances set out in column 1 of the table apply to the child and the conditions in column 2 are met.

13. Subsection (2) sets out the main duty of the local authority to make suitable transport arrangements to facilitate the attendance of a child to whom the section applies each day at the relevant places where the child receives education or training. A child's attendance is facilitated if arrangements are made for the child to travel from home to the place where they receive education or training and back home again.

14. The table after subsection (2) sets out the circumstances and conditions which lead to an entitlement to free transport arrangements.

15. Children receiving primary education will be entitled to free transport if they live two miles or more from their maintained school, pupil referral unit, or non-maintained special school, unless the authority has arranged for the child to become a registered pupil at a suitable establishment closer to home or has arranged for the child to board at or near the school. Where a child has a statement of special educational needs which names an independent school, then if that school is two miles or more from the child's home, a local authority will have to provide free transport unless it has arranged for the child to become a registered pupil at a suitable establishment closer to home, or has arranged for the child to board at or near the school.

16. A similar entitlement is provided for children receiving secondary education, but in this case if they live three miles or more from their maintained school, pupil referral unit, non-maintained special school or independent school named in a statement of special educational needs. Where the local authority has arranged for the child to become a registered pupil at a suitable establishment closer to home, or has arranged for the child to board at or near

the school, the duty to provide free transport does not apply. The entitlement includes transport for any child of compulsory school age who attends a further education institution as a full time student if it is three miles or more from home and the local authority has not arranged for the child to attend a suitable institution closer to home. The entitlement also includes travel between home and a relevant place other than the one at which a child is a registered pupil. This takes account of the fact that some children attend different places on different days, and would for example cover work experience placements or attendance at a different school or a further education institution for certain courses. However, travel arrangements are only to be concerned with travel between the home and relevant places at the start and finish of the school day and are not concerned about travel within the day. Any arrangements for travel within the day are outside the scope of the duty on a local authority (see section 5).

17. The same age and distance criteria apply to 'looked after' children, but there is no qualification that they attend the nearest suitable establishment to their home. It will be for the local authority looking after a child to determine where he or she should go and that might be a school other than the nearest suitable one because for instance of a priority to maintain continuity in their education or contact with siblings and friends.

18. Subsection (3) forbids an authority from charging for transport arrangements that it is required to make for children of compulsory school age under this section (save in relation to looked after children where it can recoup costs from another authority under section 18).

19. Subsection (4) specifies that the transport arrangements made under the section may include the provision of transport or the payment of the whole, but not part, of a child's transport expenses. This subsection means that an authority could discharge the duty in subsection (2) by arranging a bus service with a bus or taxi contractor, providing passes for public transport or reimbursing parental or learner travel expenses.

20. Subsections (5) to (9) define whether arrangements are 'suitable', whether a school or other education facility makes 'suitable' provision, and whether a route is 'available'.

21. Subsection (5) requires transport arrangements to be reasonably stress free, not to take an unreasonable amount of time, and to be safe.

22. Subsection (6) defines the suitability of education or training for the purpose of this section by reference to a child's age, ability and aptitude, and to any learning difficulties. Neither the child's or parent's language preference or

mother tongue, nor religious faith or conviction of the child or his or her parent have any bearing on whether a school is suitable for the purpose of this section.

23. Subsection (7) specifies that a school is not suitable if it does not provide education of a religious character if it is the parent's wish that their child receives such education.

24. Subsection (8) specifies that the distances in the table are to be measured by the shortest available route. Availability of a route is dealt with in subsection (9) which sets out the circumstances when a child can be expected to walk to school. If these circumstances do not apply, then a child cannot be expected to walk to school even though the distance from home to school is less than the distance limit that applies to his / her age set by the table. The circumstances are that the nature of the route is such that it is safe for a child to walk alone, or where the age of the child requires it, accompanied by an adult. If these circumstances do not apply, subsections (1) and (2) provide entitlement to free travel arrangements unless an authority has made arrangements to educate the child at an alternative suitable school closer to home. Subsection (10) also specifies that local authorities must carry out risk assessments during the time when journeys to and from schools or units would be undertaken.

25. The Welsh Ministers may make regulations under subsection (10) prescribing the circumstances and conditions in which children of compulsory school age would be entitled to free transport. Regulations may amend the table or subsections (6), (7) and (8) or entries in the table. For example, the Welsh Ministers could change the distance and age criteria that determine eligibility, provide local authorities with more or less discretion to operate their own transport policies. Any regulations made under this provision would be made using the affirmative resolution procedure and would be subject to a regulatory impact assessment and scrutiny by the National Assembly.

#### **Section 4 – Local authority duty to make other travel arrangements**

26. Section 4 places a duty on a local authority to make travel arrangements for children of compulsory school age if the authority judges that that is necessary in order to facilitate a child's attendance each at the relevant place where the child receives education or training.

27. Subsection (3) requires arrangements under this section to be free of charge (save in relation to looked after children where it can recoup costs from another authority under section 18). The payment of part of a learner's travel expenses is not permitted by subsection (4) (only payment of the total cost).

28. In considering whether travel arrangements under this section are suitable, subsection (5) requires the authority to have regard to the needs

assessment undertaken under section 2(2), the transport arrangements it is duty bound to make by section 3, the age of the child, any disability or learning difficulty and the nature of the route. Arrangements must, by virtue of subsection (6), be safe, not take an unreasonable amount of time, and must not cause unreasonable levels of stress.

29. An authority must also be satisfied that the arrangements are necessary. In considering this, subsection (7) requires them to consider the same factors as are set out in subsection (5) but also allows them to have regard to whether a child is attending the nearest suitable educational establishment to his or her home. This makes the relationship between sections 3 and 4 clear. Under subsections (7) and (8) a local authority need not consider that travel arrangements are necessary if a child is not attending the nearest suitable school (and arrangements have been made for the child to attend a nearer suitable school). Subsection (8) (a) makes it clear however that this does not apply in relation to looked after children. Whether a looked after child attends the nearest suitable school cannot be a factor that the local authority consider in deciding whether travel arrangements are necessary.

30. An authority may consider it necessary to make arrangements under this section for a child who is not entitled to free transport under section 3 because of that child's individual circumstances. Or an authority may consider it necessary to make arrangements under this section in addition to the provision of transport required under section 3, for example, to arrange for an escort or for equipment for a disabled child. An authority does not have to provide transport. It could, for example, provide a learner with a bus pass or arrange for children to be escorted while walking to the relevant place. This section will also provide the basis for local authorities to support travel for children if they have any particular needs, whether arising from a learning difficulty, a disability or any other factor which makes particular travel arrangements necessary to facilitate the child's attendance.

## **Section 5 – Limits of learner travel duties**

31. This section places limits on the duties imposed on local authorities by sections 2, 3 and 4 so that they do not extend to travel during the day or to travel for purposes other than for attendance at a relevant place for education and training.

32. A local authority is not required to take account of travel needs that might arise during the day. The duties imposed by the Measure to make travel arrangements relate to travel from home to school (or other relevant place) and back home again.

33. The duties to assess and make arrangements for travel apply to travel to/from the places listed in section 1(4) where learners receive education and training. School trips and residential visits are outside the scope of the duties.

## **Section 6 – Power of local authorities to make learner travel arrangements**

34. This section gives a local authority a discretionary power to make any arrangement they think fit to facilitate the travel of learners to and from a place where they receive education or training. The power applies in relation to a learner living or studying in the authority's area. This could include transport to schools other than the nearest suitable school – for instance it could include transport to schools with or without a religious character or to Welsh or English medium schools in cases where the nearest suitable school has not met parental preferences in these respects. An arrangement could include a local authority paying all or part of a learner's travel expenses.

35. A charge can be made for these arrangements by virtue of subsections (3) and (4). In relation to learners who are not of compulsory school age, there is no restriction on charging. In relation to children of compulsory school age, charging must be in accordance with sections 455 and 456 of the Education Act 1996 (as amended by section 22).

36. The means to charge or pay all or part of a learner's travel expenses provides flexibility for local authorities to put in place travel arrangements that exceed the statutory requirements by section 2 or 3.

## **Section 7 – Travel arrangements for learners in post -16 education or training**

37. Welsh Ministers will be able to make regulations under this section about travel arrangements for post-16 learners who live in Wales and are attending courses in Wales or elsewhere where the education or training is funded by the Welsh Ministers.

38. The regulations could make provision similar to that made in the Measure in relation to children of compulsory school age. Provision could be made requiring or allowing the Welsh Ministers, local authorities or FE institutions to make travel arrangements and specifying the kind of matters to consider when making them. The regulations could also make provision about charging, could require cooperation between the persons involved in the arrangements, and could make provision about enforcing the travel behaviour code made under section 12 and which sets out standards of behaviour while travelling.

## **Section 8 – Travel arrangements to and from nursery education**

39. Section 8 is a regulation making power allowing the Welsh Ministers to make provision about the travel arrangements for nursery age children. Under this power a local authority could be required by Welsh Ministers to make travel arrangements for children under compulsory school age who are in nursery education. Subsection (2) describes the scope of the regulation making powers. The regulations could make provision similar to that made in the Measure in relation to children of compulsory school age and could require any person to provide information and assistance that a local authority might reasonably require.

### **Section 9 – Learner travel arrangements not to favour certain types of education or training**

40. Section 9 prohibits the travel arrangements made under sections 3, 4 and 6 from discriminating between various categories of learners. The categories are shown in the table. Children of compulsory school age at establishments which are not maintained schools must not be treated less favourably than children of the same age at maintained schools. Other learners receiving full-time education or training at establishments which are not maintained schools must not be treated less favourably than learners of the same age at maintained schools. Likewise there should be no discrimination between those of the same age with learning difficulties, with a disability or who are 'looked after' by a local authority attending establishments other than maintained schools and those attending maintained schools. It provides a safeguard to ensure that learners who benefit from travel arrangements are treated equitably.

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

41. This section places a duty on local authorities and Welsh Ministers, when exercising their functions under the Measure, to promote access to education and training through the medium of the Welsh language.

### **Section 11 – Sustainable modes of travel**

42. Section 11 places a duty on a local authority and Welsh Ministers to promote sustainable modes of travel when exercising their functions under the Measure. This means that a local authority should consider sustainability when assessing learner travel needs under section 2(2). Sustainability must also be considered and promoted when travel arrangements are made by a local authority or Welsh Ministers. For example, this could mean encouraging learners to travel by bus rather than by car.

43. Subsection (2) defines ‘sustainable modes of travel’ as ones that the authority or the Welsh Ministers consider may improve the physical well-being of those who use them and/or the environmental well being of the whole or part of the authority’s area, or the whole or part of Wales (in the case of the Welsh Ministers).

## **Section 12 – Travel behaviour code**

44. Section 12 requires Welsh Ministers to make and periodically review a travel behaviour code which sets out the standards of behaviour required of learners while travelling to and from their place of learning.

45. The Code will apply to all learners under the age of 19 and those who have attained the age of 19 and started a course of education or training when under 19 and continue to attend that course (subsection (3)). The Welsh Ministers can, under subsection (3)(c), make regulations specifying other learners.

46. Subsection (4) requires Welsh Ministers to publish the code and subsection (5) requires them to consult before making or revising the code.

## **Section 13 – Enforcement of travel behaviour code: pupils at relevant schools**

47. Section 13 amends section 89 of the Education and Inspections Act 2006. Section 89 of the 2006 Act requires a head teacher to determine a school’s behaviour policy. Subsection (2) of that section requires a head teacher when determining the measures for children’s behaviour to follow a governing body’s statement or guidance on school discipline. The new subsection (2A) of section 89 inserted by this section places a duty on head teachers to determine disciplinary measures which require pupils at relevant schools in Wales to comply with the travel behaviour code made by Welsh Ministers under section 12 of the Measure.

48. The new subsection (3A) of section 89 of the 2006 Act requires the head teacher to determine what standard of behaviour is acceptable in a school so far as that is not determined by the governing body or the Welsh Ministers (in relation to travel for the purpose of education and training). Section 89(5) of the 2006 Act allows a head teacher to determine measures to regulate the behaviour of pupils when they are not on school premises or under the control or charge of a member of the school staff. Subsection (6) provides that section 89(5) is not to apply in relation to Wales, but the same provision is made in the new subsection (5A) of section 89 but with a reference to the new subsection (2A) of section 89 inserted by this section.

## **Section 14 – Enforcement of travel behaviour code: withdrawal of travel arrangements**

49. This section permits a local authority to withdraw transport arrangements for a learner who does not comply with the behaviour code made by Welsh Ministers under section 11. The section applies to all learners for whom the authority makes travel arrangements under sections 3 or 4. Conditions apply differently depending on whether or not the child is a registered pupil at a relevant school.

## **Section 15 –Guidance and directions**

50. When exercising any of their functions under the Measure, subsection (1) requires local authorities and governing bodies of maintained schools and further education institutions to have regard to guidance given from time to time by the Welsh Ministers.

51. Furthermore, Welsh Ministers may require authorities to make learner travel arrangements, or when making them, to comply with a direction (subsections (2) and (3)). Such directions can be given to one or more authorities or generally under subsection (4). This direction power is similar to that provided by sections 509(1) and 509AA(9) of the Education Act 1996. It permits Welsh Ministers to direct on individual cases or about more general policy matters. The power may be exercised irrespective of whether a local authority is in default of its duties. It does not take the place, or affect, the more general powers of direction that Welsh Ministers have under sections 496-497A of the Education Act 1996.

## **Section 16 – Information about travel arrangements**

52. The Welsh Ministers may make regulations requiring a local authority to publish information about the assessment under section 2, about the arrangements made by the authority or the Welsh Ministers for learner travel and about the travel behaviour code. At present, a local authority is required to publish information about its school transport policy under the Education (School Information) (Wales) Regulations 1999. Regulation 6 of those regulations sets requirements about the timing and manner of publication of information. A local authority is also currently required by section 509AA of the Education Act 1996 to publish a transport policy statement each year for persons of 'sixth form age'.

53. Schedules 1 and 2 of the Measure amend and repeal section 509AA so that a local authority in Wales will no longer have to publish a transport policy statement for learners of sixth form age. Regulations made under section 16 will replace the repealed requirement and bring publication of information requirements for learners of sixth form age together with what is currently



required for school children by the Education (School Information) (Wales) Regulations 1999. This will create a unified set of requirements.

## **Section 17 – Co-operation: information and other assistance**

54. Under subsection (1) the governing body of a maintained school or a further education institution is under a duty to co-operate with a local authority. They must provide them with information or other assistance necessary for the local authority to carry out their duties under the Measure. Local authorities are required by subsection (2) to provide each other with information or assistance that might be reasonably required for them to make assessments and travel arrangements. This will ensure that functions can be carried out effectively when learners travel between authorities or when a child lives in two different authorities.

55. Under subsection (3) and (4) local authorities and head teachers must also assist each other in relation to the enforcement of the travel behaviour code.

## **Section 18 - Payment of travel costs by a local authority which looks after a child**

56. This section concerns circumstances where one local authority makes travel arrangements for a child who is looked after by a different authority in Wales (the responsible authority who has corporate responsibility for the child). It provides the power for the local authority who makes the travel arrangements to demand reimbursement of costs from the responsible authority that looks after that child and for that demand to be complied with.

## **Section 19 – Determination of ordinary residence in particular circumstances**

57. This section sets out provisions for determining a person's ordinary residence in particular circumstances. If a person has no ordinary residence, subsection (1) states that the person should be treated for the purposes of the Measure as being ordinarily resident at the place at which s/he is for the time being resident.

58. Subsections (2) to (6) make provision for a child or young person who has more than one home. Where a child's parents are not living together but the child lives with both parents, or with a parent and also at a children's home, then both places of residence should be regarded as their place of ordinary residence for the purposes of the Measure. If there are more than two such places then subsection (6) states that only those two places nearest to their school or further education institution will count.

59. Subsection (7) (b) makes it clear that “parent” means a parent within the meaning of section 576(1) of the Education Act 1996 who is an individual. That section defines a parent as including any person who is not a parent but who has parental responsibility or who cares for the child or young person. This definition can therefore include grandparents, other relatives and foster carers.

## **Section 20 – Amendments to the Education Act 1996**

60. 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 amends section 444 of the Education Act 1996 by substituting a new subsection (4) so as to refer to a local authority’s duties under this Measure and making a consequential amendment to subsection (5). A parent will have a defence to a prosecution if a local authority has failed to discharge a duty under this Measure to make travel arrangements.

## **Section 21 – Amendments to the Education Act 2002**

61. Section 21 makes amendments for Wales to sections 32 and 210 of the Education Act 2002. Section 32 requires a school governing body to determine the times of school sessions. Subsection (3) of section 32 of the Education Act 2002 is a regulation making power governing the procedure for changing the times of school sessions and in Wales such changes are made in line with the Changing of School Session Times (Wales) Regulations 2000.

62. Subsection (2) inserts new subsections (5) to (10) into section 32 of the 2002 Act. Where a local authority is satisfied that changing a school’s session time would promote sustainable modes of travel or would improve the efficiency and effectiveness of travel arrangements, it can change the session times. It will do so by giving notice to the governing body. Where a school has two sessions in a day, the local authority will decide the time at which the morning school session will start and the time the afternoon session will end. The governing body will retain the power to set the time of the end of the morning session and the start of the afternoon session. But if the school only has one session in a day, the authority will decide the time of its start and end. There is a courtesy translation of this insertion in the Appendix to the Welsh language version of the explanatory notes.

63. The power of a governing body of a foundation, voluntary aided or foundation special school to fix the dates of terms and holidays is unchanged by section 21.

64. The Welsh Ministers may make regulations under the new subsection (9) of section 32 of the 2002 Act about how a local authority should issue a notice and related matters about a notice’s content. Under the new subsection (10) of

section 32 the local authority will have to have regard to guidance given by the Welsh Ministers when using this new power.

65. Section 210 of the 2002 Act prescribes how orders and regulations under the 2002 Act are to be made. The amendment made by section 18(3) will have the effect of making the order making power inserted into section 32(8) exercisable by statutory instrument.

66. Section 210(6A) prescribes that any order made under section 32(8) is subject to the negative procedure. Section 210(6B) is a signpost to the effect of Schedule 11 to the Government of Wales Act 2006.

## **Section 22 – Amendments to sections 455 and 456 of the Education Act 1996**

67. Section 22 makes amendments to sections 455 and 456 of the Education Act 1996. Section 455 permits charging and section 456 concerns the regulation of permitted charges. The amendments made by section 22 take account of the power granted by section 6 of the Measure for a local authority to charge for travel arrangements. Charging for those travel arrangements in respect of children of compulsory school age is subject to the rules in the 1996 Act. These include provision for a child's parent to pay permitted charges and for authorities to determine a charging and remissions policy. The amendment made by subsection (3) allows the charge for travel arrangements provided in accordance with section 5 to exceed the cost of its provision.

## **Section 23 – Amendments to the Education and Inspections Act 2006**

68. Section 23 makes amendments to sections 162 and 181 of the Education and Inspections Act 2006 and inserts a new section 182A into that Act. Section 162 prescribes the power to repeal references to local education authority in Acts and in statutory instruments. The amendment made by section 23 will enable Welsh Ministers to amend references in Measures to local education authority.

69. Section 181 of the 2006 Act prescribes how orders and regulations under the 2006 Act are to be made. The amendment made by section 23 of the Measure will have the effect of making the order making power inserted into section 162 of the 2006 Act exercisable by statutory instrument.

70. The new section 182A(1) of the 2006 Act prescribes that any order made under section 162(5A) of the 2006 Act must be laid before and approved by resolution of the National Assembly (the affirmative procedure). The new section 182A(2) of the 2006 Act is a signpost to the effect of Schedule 11 to the Government of Wales Act 2006.

## **Section 24– General interpretation**

71. Subsection (1) defines terminology used in the Measure.

72. Subsection (2) defines a ‘looked after’ child, for the purposes of the Measure, as having the same meaning as in section 22(1) of the Children Act 1989. That is a child who is in the care of a local authority (the responsible authority) or who is provided with accommodation by a local authority whilst exercising any functions under that Act.

73. Subsection (3) provides that the Measure is to be read as one with the Education Act 1996. This means that the definitions in that Act are to be read across into this Measure, and the general provisions in that Act apply to the Measure. For example the Welsh Ministers’ powers to direct under sections 496, 497 and 497A of the 1996 Act will apply in relation to functions conferred on local authorities and governing bodies by the Measure. The definitions set out in subsection (1) take precedence over any used in the Education Act 1996 if there is a difference in meaning (subsection (4)).

## **Section 25 – Minor and consequential amendments**

74. Section 25 gives effect to Schedule 1 which contains minor and consequential amendments.

## **Section 26 – Repeals**

75. Section 26 gives effect to Schedule 2 which contains repeals to other enactments as specified.

## **Section 27 – Orders and regulations**

76. This section makes provision in relation to any orders or regulations made by Welsh Ministers. They will be able to make different provisions for different situations, to make provisions for specific cases or to make them more generally and to make incidental, supplementary, transitional or saving provisions.

77. Section 27 also provides Welsh Ministers with the power to make, through regulations, consequential provision and to amend or repeal provisions of Assembly Measures, Acts or subordinate legislation made before the Measure. The purpose of subsection (3) is to permit Welsh Ministers to make changes they consider necessary, expedient or consequential to give effect to regulations made under sections 3(9), 7 or 8 of the Measure which concern the requirements on local authorities to arrange transport for school children, transport for learners

in post-16 education or training and the provision for transport for children in nursery education.

78. Subsections (5) to (7) set out the procedures that will apply to any statutory instrument made under different sections of the Measure. Regulations that contain provisions listed in subsection (7) will have to be laid before and approved by resolution of the National Assembly (the affirmative resolution procedure). These are regulations that amend the circumstances of learners entitled to transport under section 3, regulations about transport for learners in post-16 education or training under section 7, regulations about the travel arrangements for children in nursery education under section 8, and any regulations which amend an Act of Parliament or an Assembly Measure (a Henry VIII power). Subsection (5) provides for the negative resolution procedure to apply to any other regulations made under the Measure.

## **Section 28 – Commencement**

79. Provisions of the Measure will come into force in accordance with a commencement order made by Welsh Ministers. Subsection (1) makes exceptions for sections 27 and 29 which will automatically come into force two months after the Measure is approved by Her Majesty in Council.

## **Section 29 – Short title**

80. This section establishes the Measure's title as the 'Learner Travel (Wales) Measure 2008'.

## **Schedule 1**

81. Schedule 1 is introduced by section 25. The Schedule makes minor and consequential amendments to various Acts of Parliament.

## **Schedule 2**

82. Schedule 2 is introduced by section 26. The Schedule lists repeals to various provisions of Acts of Parliament.