

## Appendix 1

### 1. Under the Measure the Council **must**:-

- Assess the travel needs of learners in its area
  - Provide free home to school transport for learners of compulsory school age attending primary school who live 2 miles or further from their nearest suitable school
  - Provide free home to school transport for learners of compulsory school age attending secondary school who live 3 miles or further from their nearest suitable school
  - Assess and meet the needs of “looked after” children in its area
  - Promote access to Welsh medium education
  - Promote sustainable modes of travel
- 1.1 The Council must therefore continue to meet these responsibilities in any future policy it adopts.
- 1.2 The Measure requires the Council to provide learners with free transport to their nearest suitable school if they ordinarily reside beyond a ‘safe’ walking distance to that school. The term “suitable school” applies to the catchment area English, Welsh or dual-language mainstream school or special school/class as appropriate. Where learners are not entitled to free transport the Council has the power to provide transport on a discretionary basis.
- 1.3 The definition of nearest “suitable school” is where the “education or training provided is suitable having regard for the age, ability and aptitudes of the learner and any learning difficulties he or she may have”.
- 1.4 The walking distance is measured by the shortest available route. The Guidance states that, “a route is considered to be ‘available’ if it is safe (as far as reasonably practicable) for a learner without a disability or learning difficulty to walk the route alone or with an accompanying adult if the learner’s age and levels of understanding requires this.” If a route is not ‘available’ then a learner is entitled to free transport to their nearest suitable school even though the distance from home to school is less than the distance limit that applies to his/her age.
- 1.5 Assessing the travel needs of learners does not mean providing free transport. Learners will only qualify for free transport provision if they meet the entitlement criteria. Whilst the Council is required to assess the travel needs of all learners under the age of 19 there is currently no legal duty to provide free or assisted transport arrangements for non-compulsory school age children (up to the term in which a child turns 5 or post 16 learners).
- 1.6 Parents and learners may express a preference for a particular school/ a particular type of language provision or Faith school, but the Measure does not confer on those parents and learners any rights to free transport to their preferred school and or location, unless that school is determined by the Council to be the learner’s nearest suitable school and the learner meets the distance criteria. Members should note particularly however the position in relation to Welsh medium education as outlined in paragraphs 5.17 – 5.20 below.

- 1.7 The Council is also required to have regard to:-
- The needs of disabled learners and learners with learning difficulties
  - Any particular needs of learners who are 'looked after' or formerly looked after by the Council
  - The age of a learner
  - The nature of the route that the learner is expected to take between home and the places where they receive education or training.
- 1.8 In assessing the travel needs of learners the Council must take into account the fact that the travel arrangements they make in light of the assessment must not cause unreasonable levels of stress, take an unreasonable amount of time or be unsafe.
- 1.9 When exercising functions under the Measure the Council is **not** required to take account of extra-curricular activities, breakfast or after-school clubs when assessing learner travel needs.
- 1.10 If a learner cannot be admitted to their nearest suitable school which results in the learner having to attend the next available nearest suitable school, the Council has the same duty to provide free transport as long as they meet the agreed distance criteria.
- 1.11 Free transport for learners who attend special schools, pupil referral units and learning support classes is provided in accordance with the Council's agreed policy on walking distance and safe routes (as set out above) and must be supported by appropriate evidence and be confirmed by the Council's Access and Inclusion ALN Panel. Learners with disabilities (as defined by the Equality Act 2010) may be entitled to assistance with transport from home to an appropriate school/college even though the Council's agreed criteria on safe walking distance (as set out above) are not met.
- 1.12 There is no statutory duty for the Council to provide free transport to post 16 learners who continue their studies in mainstream further education or training. There is no statutory duty to provide free transport to a learner with a disability or learning difficulty in post-16 further education or training. Although in assessing learner travel needs the Council "must have regard in particular" to the needs of learners who are disabled or with learning difficulties.

### **Power To Provide Discretionary Provision**

2. The Measure provides the Council with the power to provide discretionary transport arrangements for non-compulsory school age children.
- 2.1 When deciding which schools are most suitable for learners in its area, the Council and Welsh Ministers have a duty under the Measure to 'promote access to education and training through the medium of Welsh'.
- 2.2 The Council has the power to provide discretionary transport arrangements for learners who are not attending their nearest suitable school because of language preference.

- 2.3 The Council has to make it clear in its Home to School Transport Policy (which is contained in the annual Starting School Booklet) its arrangements for providing free or assisted travel to schools teaching through the medium of Welsh or English.
- 2.4 Preference for either language should be treated equally. The Council must also take into account its Welsh Language Promotion Strategy and Action Plan 2022-2027 and Welsh in Education Strategic Plan 2022 – 2032 (WESP). The WESP sets out the ten-year plan for the planning and improvement of provision of Welsh Medium and Welsh Language education.
- 2.5 A learner is entitled to free transport to a denominational/Faith school if that school is considered by the Council to be the learners nearest suitable school. However, the Measure also provides the Council with the power to provide discretionary transport arrangements for learners who are not attending their nearest suitable school because of denominational preference.
- 2.6 The Council is also required to make clear in its Home to School Transport Policy its arrangements for providing free or assisted travel to denominational schools.
- 2.7 If the Council does make use of its discretionary powers, it must ensure that the policy applies to all learners in similar circumstances living in that Council's area. The Council should ensure that any policy is fair, reasonable and complies with relevant equality legislation to ensure it does not discriminate unlawfully between learners when using their discretionary powers.

### **Charging for Transport**

3. The Council may not charge for transport arrangements that it is *required* to make for learners of compulsory school age (i.e. the statutory requirement to provide free home to school transport), except in relation to looked after children where the Council makes travel arrangements for a child who is looked after by another authority (where a charge may be made to another authority).
  - 3.1 However when the Council uses its Section 6 powers under the Measure to provide discretionary travel arrangements for learners not entitled to free transport provision, a charge can currently be made for these arrangements.
  - 3.2 The Public Service Vehicle Accessibility Regulations (PSVAR) of 2000 and 2005 apply to all new public service vehicles (buses or coaches) that:
    - Have been introduced since 31 December 2000
    - Have a capacity exceeding 22 passengers; and
    - Are used to provide a local or scheduled service.
  - 3.3 PSVAR applies in England, Scotland and Wales and are the responsibility of the UK Government Department for Transport. Requirements under the regulations have been introduced in phases. The final requirement from the PSVAR was implemented on 1 January 2020. This requirement means that any coach used on a scheduled service from that date must provide wheelchair access. The PSVAR apply only to public service vehicles. A vehicle that is not a public service vehicle (that is, one that is not operated on a commercial basis for hire and reward) is outside the scope of the PSVAR.

- 3.4 The PSVAR apply to transport for learners provided by Local Authorities on a discretionary basis where the Local Authorities collect a fee from the learner (i.e make a charge or sell surplus seats). The regulations do not include transport that Local Authorities provides. In some areas, as a consequence of PSVAR, some fare paying schools buses have been withdrawn.
- 3.5 Medium-term exemptions to the PSVAR have been introduced by the UK Government in respect of in-scope home-to-school services. Those exemptions came into force on 1 July 2023 but expire on 31 July 2026. The grant of such exemptions will require the operator concerned to progressively increase the compliance rate among its vehicles that are available for in-scope home to school transport services. All must be what the UK Government describes as “either fully or partially compliant with PSVAR” by 1 August 2025.
- 3.6 There is currently a significant shortfall in the number of buses that meet the PSVAR requirements within the marketplace. Due to the additional time required to operate scheduled school bus routes, and the geographical restrictions along these routes e.g. a bus with wheelchair lift requires a road to be flat without incline, it is also not practical to operate such vehicles on school contract routes.
- 3.7 As a result of the above the option of charging for transport under the statutory distance has not been proposed as a viable option.