



# Learner Travel (Wales) Measure 2008

## 2008 nawm 2

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

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

### *Main terms*

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

- (1) This section applies for the purposes of this Measure.
- (2) “Travel arrangements” are travel arrangements of any description and include—
  - (a) the provision of transport;
  - (b) the provision of one or more persons to escort a child when travelling;
  - (c) the payment of the whole or any part of a person's reasonable travelling expenses;
  - (d) the payment of allowances in respect of the use of particular modes of travel.
- (3) “Learners” means persons who receive education or training.
- (4) The following are “relevant places”—
  - (a) maintained schools;
  - (b) institutions in the further education sector;
  - (c) independent schools named in statements maintained under section 324 of the Education Act 1996 (c. 56);
  - (d) non-maintained special schools;
  - (e) pupil referral units;
  - (f) places other than pupil referral units where education is arranged under section 19(1) of the Education Act 1996;

*Status: Point in time view as at 01/10/2014.*

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- (g) places where education or training funded by the Welsh Ministers under section 34(1) of the Learning and Skills Act 2000 (c. 21) is provided;
- (h) institutions where education and training and boarding accommodation have been secured by the Welsh Ministers under section 41 of the Learning and Skills Act 2000;
- (i) places where nursery education is provided—
  - (i) by a local authority, or
  - (ii) by any other person who is in receipt of financial assistance given by a local authority under arrangements made by them in pursuance of the duty imposed by section 118 of the School Standards and Framework Act 1998 (c. 31);
- (j) places where work experience is undertaken.

#### Commencement Information

- I1** S. 1(1)-(3)(4)(a)-(i) in force at 6.3.2009 by [S.I. 2009/371](#), [Sch. Pt. 1](#)
- I2** S. 1(4)(j) in force for specified purposes at 30.10.2009 by [S.I. 2009/371](#), [art. 2\(1\)\(a\)](#)
- I3** S. 1(4)(j) in force for specified purposes at 30.10.2009 by [S.I. 2009/2819](#), [art. 2\(1\)\(a\)](#)

### *Learner travel arrangements*

## 2 Duty to assess learner travel needs

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

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#### Commencement Information

**I4** S. 2 in force at 6.3.2009 by [S.I. 2009/371](#), [Sch. Pt. 1](#)

### 3 Local authority duty to make transport arrangements

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

TABLE

Column 1 Circumstances	Column 2 Condition(s)
The child is receiving primary education at— <ol style="list-style-type: none"><li>a maintained school,</li><li>a pupil referral unit,</li><li>an independent school named in a statement maintained for the child under section 324 of the Education Act 1996, or</li><li>a non-maintained special school, at which the child is a registered pupil.</li></ol>	<ol style="list-style-type: none"><li>The child is ordinarily resident at a place 2 miles (3.218688 kilometres) or more from the school or unit.</li><li>No arrangements have been made by the local authority for enabling the child to become a registered pupil at—<ol style="list-style-type: none"><li>a suitable maintained school,</li><li>a suitable pupil referral unit,</li><li>an independent school named in a statement maintained for the child under section 324 of the Education Act 1996, or</li><li>a suitable non-maintained special school,</li></ol>nearer to the place where the child is ordinarily resident.</li><li>No arrangements have been made by the local authority for suitable boarding accommodation for the child at or near the school or unit.</li></ol>
The child is receiving secondary education at— <ol style="list-style-type: none"><li>a maintained school,</li><li>a pupil referral unit,</li><li>an independent school named in a statement maintained for the child under section 324 of the Education Act 1996, or</li><li>a non-maintained special school,</li></ol>	<ol style="list-style-type: none"><li>The child is ordinarily resident at a place 3 miles (4.828032 kilometres) or more from the school or unit.</li><li>No arrangements have been made by the local authority for enabling the child to become a registered pupil at—<ol style="list-style-type: none"><li>a suitable maintained school,</li><li>a suitable pupil referral unit,</li></ol></li></ol>

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at which the child is a registered pupil.

(iii) an independent school named in a statement maintained for the child under section 324 of the Education Act 1996, or

(iv) a suitable non-maintained special school,

nearer to the place where the child is ordinarily resident.

(c) No arrangements have been made by the local authority for suitable boarding accommodation for the child at or near the school or unit.

The child is receiving education or training at an institution in the further education sector at which the child is enrolled as a full-time student.

(a) The child is ordinarily resident at a place 3 miles (4.828032 kilometres) or more from the institution.

(b) No arrangements have been made by the local authority for enabling the child to become enrolled at a suitable institution nearer to the place where the child is ordinarily resident.

The child—

- (a) is a registered pupil at a maintained school, and
- (b) receives secondary education at a relevant place other than that school.

The child is ordinarily resident at a place 3 miles (4.828032 kilometres) or more from the relevant place.

The secondary education referred to in paragraph (b) is education arranged—

- (i) by the local authority, or
- (ii) by, or on behalf of, the governing body of the school at which the child is a registered pupil.

The child is looked after by a local authority and is receiving primary education at—

- (a) a maintained school,
- (b) a pupil referral unit,
- (c) an independent school named in a statement maintained for the child under section 324 of the Education Act 1996, or
- (d) a non-maintained special school, at which the child is a registered pupil.

The child is ordinarily resident at a place 2 miles (3.218688 kilometres) or more from the school or unit.

The child is looked after by a local authority and is receiving secondary education at—

- (a) a maintained school,
- (b) a pupil referral unit,
- (c) an independent school named in a statement maintained for the child

The child is ordinarily resident at a place 3 miles (4.828032 kilometres) or more from the school or unit.

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under section 324 of the Education Act 1996, or

(d) a non-maintained special school, at which the child is a registered pupil.

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

#### **Commencement Information**

**I5** S. 3 in force at 1.9.2009 by [S.I. 2009/371](#), [Sch. Pt. 2](#)

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

- (1) This section applies in relation to a child of compulsory school age if—
  - (a) the child is receiving education or training at a relevant place,
  - (b) the child is ordinarily resident in a local authority's area, and
  - (c) the local authority consider that travel arrangements are necessary to facilitate the attendance of the child each day at the relevant place where the child receives education or training.
- (2) The local authority must make suitable travel arrangements to facilitate the attendance of the child each day at the relevant places where the child receives education or training. But this duty is subject to the provisions of section 5.

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

#### **Commencement Information**

**I6** S. 4 in force at 1.9.2009 by [S.I. 2009/371](#), [Sch. Pt. 2](#)

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

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

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

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#### Commencement Information

- I7** S. 5 in force in so far as not already in force at 1.9.2009 by [S.I. 2009/371](#), [Sch. Pt. 2](#)  
**I8** S. 5 in force for specified purposes at 6.3.2009 by [S.I. 2009/371](#), [Sch. Pt. 1](#)

## 6 Power of local authorities to make learner travel arrangements

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

#### Commencement Information

- I9** S. 6 in force at 6.3.2009 by [S.I. 2009/371](#), [Sch. Pt. 1](#)

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

- (1) This section applies in relation to learners ordinarily resident in Wales—
  - (a) who—
    - (i) are over compulsory school age but have not attained the age of 19, or
    - (ii) have attained the age of 19 and have begun a particular course of education or training before attaining that age and continue to attend that course; and
  - (b) who receive education or training—
    - (i) at a place in Wales, or
    - (ii) which is funded by the Welsh Ministers at a place outside Wales.
- (2) Regulations may make provision about travel arrangements for learners to and from the places where they receive education or training.
- (3) The regulations may in particular—
  - (a) confer powers or impose duties on the following—
    - (i) the Welsh Ministers;
    - (ii) local authorities;
    - (iii) institutions in the further education sector;
  - (b) specify the kinds of place to and from which travel arrangements may or must be made;
  - (c) specify the travel arrangements that may or must be made;
  - (d) specify the matters that must be taken into account in making decisions about travel arrangements;

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- (e) make provision about charges;
- (f) require any person to give any information or other assistance that is reasonably required by any other person in connection with the performance of the other person's functions under the regulations;
- (g) make provision about the standards of behaviour required of learners while travelling to and from the places where they receive education or training.

**Commencement Information**

**I10** S. 7 in force at 1.9.2009 by [S.I. 2009/371](#), [Sch. Pt. 2](#)

**8 Travel arrangements to and from nursery education**

- (1) Regulations may make provision about travel arrangements for children under compulsory school age to and from the places where they receive nursery education.
- (2) The regulations may in particular—
  - (a) require a local authority to make travel arrangements;
  - (b) permit a local authority to make travel arrangements;
  - (c) specify the kinds of place to and from which travel arrangements may or must be made;
  - (d) specify the travel arrangements that may or must be made;
  - (e) specify the matters that must be taken into account in making decisions about travel arrangements;
  - (f) make provision about charges;
  - (g) require any person to give any information or other assistance that is reasonably required by the local authority in connection with the performance of the authority's functions under the regulations.

**Commencement Information**

**I11** S. 8 in force at 1.9.2009 by [S.I. 2009/371](#), [Sch. Pt. 2](#)

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

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

TABLE

Column 1

Column 2



*Status: Point in time view as at 01/10/2014.*

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

#### **Commencement Information**

**I12** S. 9 in force at 1.9.2009 by [S.I. 2009/371](#), [Sch. Pt. 2](#)

### *Promoting access to Welsh medium education*

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

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

#### **Commencement Information**

**I13** S. 10 in force at 6.3.2009 by [S.I. 2009/371](#), [Sch. Pt. 1](#)

### *Sustainable modes of travel*

#### **11 Sustainable modes of travel**

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

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(ii) the whole or part of Wales, in the case of the Welsh Ministers.

#### Commencement Information

**I14** S. 11 in force at 6.3.2009 by [S.I. 2009/371](#), [Sch. Pt. 1](#)

### *Travel behaviour code*

## 12 Travel behaviour code

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

#### Commencement Information

**I15** S. 12 in force at 30.10.2009 by [S.I. 2009/371](#), [art. 2\(1\)\(b\)](#)

**I16** S. 12 in force at 30.10.2009 by [S.I. 2009/2819](#), [art. 2\(1\)\(b\)](#)

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

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

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

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

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- (4) In subsection (3) for “The” substitute “ In relation to a relevant school in England, the ”.
- (5) After subsection (3) insert—
  - “(3A) In relation to a relevant school in Wales, the standard of behaviour which is to be regarded as acceptable must be determined by the head teacher, so far as it is not determined by—
    - (a) the governing body, or
    - (b) the Welsh Ministers.”
- (6) In subsection (5), after “head teacher” insert “ of a relevant school in England ”.
- (7) After subsection (5) insert—
  - “(5A) The measures which the head teacher of a relevant school in Wales determines under subsection (1) may, to such extent as is reasonable and not required by subsection (2A)(c), include measures to be taken with a view to regulating the conduct of pupils at a time when they are not on the premises of the school and are not under the lawful control or charge of a member of the staff of the school.”

#### **Commencement Information**

**I17** S. 13 in force at 4.1.2010 by S.I. 2009/2819, art. 2(2)(a)

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

- (1) This section applies to learners for whom travel arrangements are made under section 3 or 4.
- (2) The local authority may withdraw travel arrangements made for a learner if—
  - (a) the authority is satisfied that the learner has failed to comply with the travel behaviour code made under section 12, and
  - (b) the following conditions applicable to the learner are satisfied.
- (3) All six of the following conditions apply to any learner who is a registered pupil at a relevant school.
- (4) The first, third and fourth of the following conditions apply to any learner who is not a registered pupil at a relevant school.
- (5) The first condition is that before any decision is taken to withdraw travel arrangements—
  - (a) the learner and the parent of the learner are given the opportunity to make representations, and
  - (b) those representations are considered by the local authority.
- (6) The second condition is that the head teacher of the relevant school at which the learner is a registered pupil—
  - (a) is consulted about the decision to withdraw travel arrangements; and
  - (b) is given notice of the decision at least 24 hours before the withdrawal takes effect.

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- (7) The third condition is that the decision to withdraw travel arrangements is reasonable in the circumstances.
- (8) The fourth condition is that the local authority gives notice of the withdrawal of travel arrangements to the learner's parent at least 24 hours before the withdrawal takes effect.
- (9) The fifth condition is that the period of withdrawal does not exceed 10 consecutive school days.
- (10) The sixth condition is that the period of withdrawal would not result in the learner having travel arrangements withdrawn for more than 30 school days in the school year in which the withdrawal takes effect.
- (11) In determining whether a decision to withdraw travel arrangements is reasonable for the purposes of subsection (7), the following matters in particular must be taken into account—
- (a) whether the period of withdrawal is proportionate in the circumstances of the case,
  - (b) any special circumstances relevant to the withdrawal of travel arrangements which are known to the local authority (or of which the authority ought to be aware) including in particular—
    - (i) the learner's age,
    - (ii) any special educational needs the learner may have,
    - (iii) any disability the learner may have,
    - (iv) whether the learner would lose an opportunity to take a public examination, and
    - (v) whether suitable alternative travel arrangements can reasonably be made by the learner's parent.
- (12) A notice under subsection (6) or (8) must be in writing and specify—
- (a) the period for which travel arrangements are to be withdrawn, and
  - (b) the authority's reasons for withdrawal of the travel arrangements.
- (13) For the purposes of this section and section 17, a “relevant school” means—
- (a) a maintained school,
  - (b) a pupil referral unit, or
  - (c) a non-maintained special school.
- (14) Regulations may—
- (a) amend or repeal either or both of subsections (9) and (10);
  - (b) make provision for reviews of decisions under subsection (2);
  - (c) make provision for appeals from decisions under subsection (2).
- (15) Regulations under subsection (14)(c) may in particular—
- (a) specify the categories of person who may appeal;
  - (b) specify the circumstances in which appeals may be made;
  - (c) provide for the constitution of appeals panels;
  - (d) provide for appeal procedures;
  - (e) make provision about the effect of appeal decisions;
  - (f) provide for the payment of allowances to members of appeals panels;

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- (g) require the provision of information about appeals.

#### Commencement Information

**I18** S. 14 in force at 4.1.2010 by S.I. 2009/2819, art. 2(2)(b)

#### *[<sup>F1</sup>Safety on learner transport*

#### Textual Amendments

**F1** S. 14B and cross-heading inserted (10.7.2011) by [Safety on Learner Transport \(Wales\) Measure 2011](#) (nawm 6), ss. 2, 16(2)

#### **[<sup>F2</sup>14A Requirement for seat belts on buses used for learner transport**

- (1) A relevant body must ensure that every bus used for the learner transport it provides or otherwise secures is one that has a seat belt fitted to every passenger seat.
- (2) A person who provides learner transport secured by a relevant body must ensure that every bus used for such transport is one that has a seat belt fitted to every passenger seat.
- (3) A person who fails to comply with subsection (1) or (2) commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (4) It is a defence to show that the failure to comply with subsection (1) or (2) was justified by exceptional circumstances.
- (5) Nothing in this section is to be interpreted as setting technical standards for a vehicle's construction or equipment which differ from the standards that would or might otherwise apply to that vehicle by virtue of any enactment or directly applicable requirement of European Union law.
- (6) In this section—
  - “bus” means a motor vehicle constructed or adapted to carry more than eight seated passengers in addition to the driver;
  - “enactment” means any of the following, whenever passed or made—
    - (a) an Act of Parliament;
    - (b) subordinate legislation made under an Act of Parliament;
    - (c) a provision of any such Act or subordinate legislation;
  - “seat belt” means a belt intended to be worn by a person in a vehicle and designed to prevent or lessen injury to its wearer in the event of an accident to the vehicle.]

#### Textual Amendments

**F2** S. 14A inserted (1.10.2014) by [Safety on Learner Transport \(Wales\) Measure 2011](#) (nawm 6), ss. 1, 16(1)

*Status: Point in time view as at 01/10/2014.*

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

- (1) Regulations may make further provision to—
  - (a) require a relevant body to ensure that only prescribed descriptions of vehicle are used for the learner transport it provides or otherwise secures;
  - (b) require a person who provides learner transport secured by a relevant body to use only prescribed descriptions of vehicle;
  - (c) provide for criminal offences and penalties for breaches of requirements imposed under this section.
- (2) Regulations under paragraphs (a) and (b) of subsection (1) may describe vehicles by reference to a vehicle's construction, equipment or other characteristics.]

## **[<sup>F3</sup>14C Recording visual images or sound on learner transport**

- (1) Regulations may—
  - (a) require prescribed arrangements to be made for recording visual images or sound of events occurring on the learner transport provided or otherwise secured by a relevant body;
  - (b) make provision about the use, storage and retention of visual images or sound recorded on learner transport provided or secured by a relevant body;
  - (c) provide for criminal offences and penalties for breaches of requirements imposed under this section.
- (2) Regulations under subsection (1) may (among other things) confer powers or duties on any of the following—
  - (a) a relevant body;
  - (b) a person who provides learner transport secured by a relevant body.
- (3) Regulations under subsection (1) may not authorise or require recording to be carried out in a manner that is calculated to ensure that persons who are subject to it are unaware that it is or may be taking place.]

### **Textual Amendments**

**F3** S. 14C inserted (10.7.2011) by [Safety on Learner Transport \(Wales\) Measure 2011 \(nawm 6\), ss. 3, 16\(2\)](#)

## **[<sup>F4</sup>14D Safety risk assessment of learner transport**

- (1) Regulations may require a relevant body to carry out safety risk assessments of the learner transport it provides or otherwise secures.
- (2) Regulations under subsection (1) may—
  - (a) impose requirements as to the nature of the assessment to be carried out;
  - (b) require the production and publication of reports;
  - (c) prescribe the form and manner of publication;
  - (d) prescribe the frequency of assessments.]

*Status: Point in time view as at 01/10/2014.*

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#### Textual Amendments

- F4** S. 14D inserted (10.7.2011) by [Safety on Learner Transport \(Wales\) Measure 2011 \(nawm 6\)](#), **ss. 4, 16(2)**

#### [<sup>F5</sup>14E Driver training

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

#### Textual Amendments

- F5** S. 14E inserted (10.7.2011) by [Safety on Learner Transport \(Wales\) Measure 2011 \(nawm 6\)](#), **ss. 5, 16(2)**

#### [<sup>F6</sup>14F Supervisors on learner transport

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

#### Textual Amendments

- F6** S. 14F inserted (10.7.2011) by [Safety on Learner Transport \(Wales\) Measure 2011 \(nawm 6\)](#), **ss. 6, 16(2)**

#### [<sup>F7</sup>14G Civil sanctions

Schedule A1 has effect.]

#### Textual Amendments

- F7** S. 14G inserted (10.7.2011) by [Safety on Learner Transport \(Wales\) Measure 2011 \(nawm 6\)](#), **ss. 7(1), 16(2)**

#### [<sup>F8</sup>14H Enforcement authority

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

*Status: Point in time view as at 01/10/2014.*

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- (2) More than one person or body may be appointed as an enforcement authority.
- (3) Regulations may confer powers or impose duties on an enforcement authority to enforce provision made by section 14A and by regulations under sections 14B and 14C and Schedule A1 and may (among other things)—
  - (a) confer power on an enforcement authority to authorise a person (referred to in this Measure as an “inspector”) to exercise the powers in sections 14I and 14J,
  - (b) make modifications to any enactment applying to the enforcement authority, or
  - (c) provide for any such enactment to apply, with or without modifications, for the purposes of section 14A and regulations under sections 14B and 14C, this section and Schedule A1.
- (4) References in this Measure to an enforcement authority are references to a person or body appointed under this section and include a person appointed by an enforcement authority.
- (5) In this section “enactment” includes—
  - (a) an enactment whenever passed or made,
  - (b) an enactment comprised in a Measure or Act of the National Assembly for Wales, and
  - (c) provision contained in subordinate legislation within the meaning of the Interpretation Act 1978 (including subordinate legislation made under a Measure or Act of the National Assembly for Wales).]

#### Textual Amendments

**F8** S. 14H inserted (10.7.2011) by [Safety on Learner Transport \(Wales\) Measure 2011 \(nawm 6\)](#), **ss. 8**, 16(2)

#### [<sup>F9</sup>14I Power of entry

- (1) This section applies to—
  - (a) a vehicle or any premises owned or controlled by a relevant body;
  - (b) a vehicle or premises falling within subsection (2).
- (2) A vehicle or premises falling within this subsection are those—
  - (a) which are used, or proposed to be used, by any person in connection with the provision of learner transport provided or otherwise secured by a relevant body, or
  - (b) which an inspector reasonably believes to be so used, or proposed to be so used.
- (3) An inspector may at any reasonable time—
  - (a) detain a vehicle;
  - (b) enter a vehicle or premises.
- (4) But the power in subsection (3) does not include the power to enter premises used wholly or mainly as a private dwelling.



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

#### Textual Amendments

**F9** S. 14I inserted (10.7.2011) by [Safety on Learner Transport \(Wales\) Measure 2011 \(nawm 6\), ss. 9, 16\(2\)](#)

### [<sup>F10</sup>14J Power of inspection

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

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

#### Textual Amendments

**F10** S. 14J inserted (10.7.2011) by [Safety on Learner Transport \(Wales\) Measure 2011 \(nawm 6\)](#), **ss. 10**, 16(2)

#### [<sup>F11</sup>14K Power to require provision of information

- (1) An enforcement authority may at any time require any person specified in subsection (2) to provide it with any information, documents, records or other items—
  - (a) which relate to the provision of learner transport, and
  - (b) which the enforcement authority consider necessary or expedient to have for the purpose of its functions as the enforcement authority.
- (2) The persons referred to in subsection (1) are—
  - (a) a relevant body;
  - (b) any person who provides learner transport secured by a relevant body.
- (3) The power in subsection (1) includes, in relation to information, documents or records kept by means of a computer, power to require provision of them in a legible form which can be taken away.
- (4) The power in subsection (1) does not include power to require the provision of information, documents or records in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- (5) Any person who without reasonable excuse fails to comply with any requirement imposed by virtue of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.]

#### Textual Amendments

**F11** S. 14K inserted (10.7.2011) by [Safety on Learner Transport \(Wales\) Measure 2011 \(nawm 6\)](#), **ss. 11**, 16(2)

#### [<sup>F12</sup>14L Offences: liability of officers and partners

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

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#### Textual Amendments

**F12** S. 14L inserted (10.7.2011) by [Safety on Learner Transport \(Wales\) Measure 2011 \(nawm 6\)](#), **ss. 12**, 16(2)

#### [<sup>F13</sup> 14M Regulations: consultation

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

#### Textual Amendments

**F13** S. 14M inserted (10.7.2011) by [Safety on Learner Transport \(Wales\) Measure 2011 \(nawm 6\)](#), **ss. 13**, 16(2)

#### [<sup>F14</sup> 14N Interpretation of sections 14A to 14K

- (1) This section applies for the purposes of sections 14A to 14K.
- (2) Each of the following is a “relevant body”—
  - (a) a local authority;
  - (b) a governing body of a maintained school.
- (3) “Learner transport ” means transport to facilitate the attendance of a child at any relevant place where he or she receives education or training; but it does not include transport provided for the purpose of travel during the day between relevant places or between different sites of the same institution.
- (4) The act of making any of the following arrangements is not to be considered, by itself, as providing or otherwise securing the provision of learner transport.
- (5) The arrangements mentioned in subsection (4) are—
  - (a) arrangements to pay the whole or any part of a person's reasonable travelling expenses;
  - (b) arrangements to pay allowances in respect of the use of transport.
- (6) The Welsh Ministers may by order amend subsection (3) so as to omit the words from “but it does not include” to the end of the subsection.]

#### Textual Amendments

**F14** S. 14N inserted (10.7.2011) by [Safety on Learner Transport \(Wales\) Measure 2011 \(nawm 6\)](#), **ss. 14**, 16(2)

*Status: Point in time view as at 01/10/2014.*

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## Supplementary

### 15 Guidance and directions

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

#### Commencement Information

**I19** S. 15 in force at 6.3.2009 by [S.I. 2009/371](#), [Sch. Pt. 1](#)

### 16 Information about travel arrangements

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

- (a) received while carrying out assessments under section 2(2);
- (b) about assessments made under that section;
- (c) about the travel arrangements made under this Measure;
- (d) about the travel behaviour code made under section 12.

#### Commencement Information

**I20** S. 16 in force at 6.3.2009 by [S.I. 2009/371](#), [Sch. Pt. 1](#)

### 17 Co-operation: information or other assistance

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

*Status: Point in time view as at 01/10/2014.*

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- (4) A head teacher of a relevant school must give a local authority any information or other assistance that is reasonably required by the local authority for the performance of their functions under section 14.

#### **Commencement Information**

- I21** S. 17(1)(2) in force at 6.3.2009 by S.I. 2009/371, **Sch. Pt. 1**  
**I22** S. 17(3) in force at 1.9.2009 by S.I. 2009/371, **Sch. Pt. 2**  
**I23** S. 17(4) in force at 4.1.2010 by S.I. 2009/2819, **art. 2(2)(c)**

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

- (1) This section applies where a local authority (“authority A”) makes travel arrangements under sections 3 or 4 for a child who is looked after by a local authority responsible for a different area (“authority B”).
- (2) Authority A may demand reimbursement from authority B for the full cost or part of the cost of making the travel arrangements.
- (3) Authority B must comply with the demand.

#### **Commencement Information**

- I24** S. 18 in force at 1.9.2009 by S.I. 2009/371, **Sch. Pt. 2**

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

- (1) If a person has no ordinary residence, that person is to be treated for the purposes of this Measure as being ordinarily resident at the place at which he or she is for the time being resident.
- (2) Subsections (3) to (6) apply to a child or young person who is either—
- (a) a registered pupil at a school, or
  - (b) enrolled as a full-time student at an institution in the further education sector.
- (3) This subsection applies to a child or young person—
- (a) whose parents are not living together, and
  - (b) who usually lives with more than one parent in the periods during which the child or young person receives education or training.
- (4) This subsection applies to a child or young person who usually lives with a parent and also at a children's home in the periods during which the child or young person receives education or training.
- (5) For the purposes of this Measure—
- (a) a child or young person to whom subsection (3) applies is ordinarily resident at the places where each of his or her parents is ordinarily resident;
  - (b) a child or young person to whom subsection (4) applies is ordinarily resident at the children's home and the place where his or her parent is ordinarily resident.

*Status: Point in time view as at 01/10/2014.*

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- (6) But if there are more than two such places, the child or young person is ordinarily resident at the two places nearest—
- (a) the school at which the child or young person is a registered pupil, or
  - (b) the institution in the further education sector at which the child or young person is enrolled as a full-time student.
- (7) In this section—
- (a) “children's home” has the same meaning as in section 1 of the Care Standards Act 2000 (c. 14);
  - (b) “parent” means a parent within the meaning of section 576(1) of the Education Act 1996 who is an individual.

#### Commencement Information

**I25** S. 19 in force at 6.3.2009 by [S.I. 2009/371](#), [Sch. Pt. 1](#)

## 20 Amendments to section 444 of the Education Act 1996

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

#### Commencement Information

**I26** S. 20 in force at 1.9.2009 by [S.I. 2009/371](#), [Sch. Pt. 2](#)

## 21 Amendments to the Education Act 2002

- (1) The Education Act 2002 is amended as follows.
- (2) Section 32 (fixing dates of terms and holidays and times of school sessions) is amended as follows—
- (a) in subsection (1)(b) before “the governing body” insert “ subject to subsections (5) to (9), ”;
  - (b) in subsection (2)(b) before “the times” insert “ subject to subsections (5) to (9) ”;
  - (c) after subsection (4) insert—
 

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

(6) The circumstances are—

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- (a) that the local education authority in whose area the school is situated have given notice in writing to the governing body of the school that the times of the school sessions are to be determined in accordance with subsection (8), and
    - (b) that the notice has not been withdrawn by the local education authority.
  - (7) A local education authority must not issue a notice of the kind mentioned in subsection (6)(a) unless they consider a change in the times of the sessions of that school to be necessary or expedient in order to—
    - (a) promote the use of sustainable modes of travel within the meaning of section 11 of the Learner Travel (Wales) Measure 2008, or
    - (b) improve the effectiveness or efficiency of travel arrangements made, or to be made, by the authority under that Measure.
  - (8) In relation to a school subject to a notice of the kind mentioned in subsection (6)(a)—
    - (a) where there are two school sessions on the relevant school day—
      - (i) the local education authority must determine the time each day at which the first school session starts and the second school session ends, and
      - (ii) the governing body must determine the time each day at which the first school session ends and the second school session starts;
    - (b) where there is one school session on the relevant school day the local education authority must determine the time each day at which the school session starts and ends.
  - (9) The Welsh Ministers may make provision by regulations—
    - (a) as to the procedure to be followed where the local education authority propose to issue a notice of the kind mentioned in subsection (6)(a);
    - (b) as to the matters to be included in such a notice;
    - (c) as to the implementation of any determination under subsection (8);
    - (d) for enabling the local education authority to determine, for any purposes of the regulations, whether any person is to be treated as a parent of a registered pupil at the school.
  - (10) In giving notice as described in subsection (6) and in discharging any function conferred by subsections (7) or (8) or by regulations under subsection (9), a local education authority must have regard to guidance given by the Welsh Ministers.”
- (3) In section 210 (orders and regulations)—
- (a) in subsection (1) for “the National Assembly for Wales” substitute “ the Welsh Ministers ”;
  - (b) after subsection (6) insert—

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

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

(c) in subsection (7)—

(i) for “the National Assembly for Wales” substitute “ the Welsh Ministers ”,

(ii) for “the Assembly thinks” in paragraph (c) substitute “ the Welsh Ministers think ”.

#### Commencement Information

**I27** S. 21 in force at 6.3.2009 by [S.I. 2009/371](#), [Sch. Pt. 1](#)

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

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

(2) In section 455 (permitted charges)—

(a) after subsection (1)(b) insert—

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

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

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

(d) after subsection (2)(b) insert—

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

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

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

#### Commencement Information

**I28** S. 22 in force at 1.9.2009 by [S.I. 2009/371](#), [Sch. Pt. 2](#)



*Status: Point in time view as at 01/10/2014.*

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## 23 Amendments to the Education and Inspections Act 2006

- (1) The Education and Inspections Act 2006 is amended as follows.
- (2) In section 162 (power to repeal references to “local education authority”), after subsection (5) insert—
  - “(5A) The Welsh Ministers may by order make such provision as appears to them to be appropriate for the purpose of—
    - (a) repealing any reference in a Measure of the National Assembly for Wales to a local education authority (however expressed), and
    - (b) replacing it, where it appears to them to be appropriate, with a reference (however expressed) to a Welsh local authority.”
- (3) In section 181—
  - (a) for subsection (1) substitute—
    - “(1) Any power of the Secretary of State or the Welsh Ministers to make an order or regulations under this Act is exercisable by statutory instrument.”;
  - (b) in subsection (2)—
    - (i) for “the Assembly”, the first time that expression appears, substitute “ the Welsh Ministers ”,
    - (ii) for “the Assembly thinks” in paragraph (c) substitute “ the Welsh Ministers think ”.
- (4) After section 182 insert—

### “182A Assembly control of orders and regulations

- (1) Any statutory instrument containing an order made under section 162(5A) by the Welsh Ministers may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Assembly.
- (2) Paragraphs 33 to 35 of Schedule 11 to the Government of Wales Act 2006 make provision about the Assembly procedures that apply to any statutory instrument containing regulations or an order made in exercise of functions conferred upon the Assembly by this Act that have been transferred to the Welsh Ministers by virtue of paragraph 30 of that Schedule.”

#### Commencement Information

**129** S. 23 in force at 6.3.2009 by [S.I. 2009/371](#), [Sch. Pt. 1](#)

#### General

## 24 General interpretation

- (1) In this Measure—
  - “academic year” (“blwyddyn academaidd”) means any period from 1 August to 31 July;

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

“education” (“addysg”) does not include higher education;

“learning difficulty” (“anhawster dysgu”) in respect of a person means—

- (a) a significantly greater difficulty in learning than the majority of persons of the same age, or
- (b) a disability which either prevents or hinders that person from using facilities of a kind provided at relevant places,

but a person is not to be taken as having a learning difficulty solely because the language (or form of the language) in which the person is taught or will be taught is different from a language (or form of a language) which has at any time been spoken in the person's home;

“local authority” (“awdurdod lleol”) means a <sup>F15</sup>local authority] in Wales; but in any reference to a child looked after by a local authority it means a council of a county or county borough in Wales exercising social services functions within the meaning of the Local Authority Social Services Act 1970 (c. 42);

“maintained school” (“ysgol a gynhelir”) means a community, foundation or voluntary school, a community or foundation special school or a maintained nursery school;

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

“nursery education” (“addysg feithrin”) means education suitable for children who have not attained compulsory school age;

“prescribed” (“rhagnodi”) means prescribed in regulations;

“regulations” (“rheoliadau”) means regulations made by the Welsh Ministers;

“work experience” (“profiad gwaith”) means work experience arranged for—

- (a) a registered pupil of a maintained school or a pupil referral unit, or
- (b) a student enrolled at an institution within the further education sector,

by, or on behalf of, the governing body of the relevant educational institution.

- (2) References in this Measure to a child who is looked after by a local authority have the same meaning as they have in section 22(1) of the Children Act 1989 (c. 41).
- (3) Subject to subsection (4), the Education Act 1996 and the provisions of this Measure are to be read as if those provisions were contained in the Education Act 1996.
- (4) Where an expression is given for the purposes of any provision of this Measure a meaning different from that given to it for the purposes of the Education Act 1996, the meaning given for the purposes of that provision is to apply instead of the one given for the purposes of that Act.

#### Textual Amendments

- F15** Words in s. 24(1) substituted (5.5.2010) by [Local Education Authorities and Children's Services Authorities \(Integration of Functions\) \(Wales\) Order 2010 \(S.I. 2010/1148\)](#), arts. 1, 2

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#### Commencement Information

**I30** S. 24 in force at 6.3.2009 by [S.I. 2009/371](#), [Sch. Pt. 1](#)

## 25 Minor and consequential amendments

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

#### Commencement Information

**I31** S. 25 in force for specified purposes at 1.9.2009 by [S.I. 2009/371](#), [Sch. Pt. 2](#)

**I32** S. 25 in force for specified purposes at 6.3.2009 by [S.I. 2009/371](#), [Sch. Pt. 1](#)

## 26 Repeals

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

#### Commencement Information

**I33** S. 26 in force for specified purposes at 30.10.2009 by [S.I. 2009/371](#), [art. 2\(1\)\(c\)](#)

**I34** S. 26 in force for specified purposes at 30.10.2009 by [S.I. 2009/2819](#), [art. 2\(1\)\(c\)](#)

**I35** S. 26 in force for specified purposes at 1.9.2009 by [S.I. 2009/371](#), [Sch. Pt. 2](#)

**I36** S. 26 in force for specified purposes at 6.3.2009 by [S.I. 2009/371](#), [Sch. Pt. 1](#)

## 27 Orders and regulations

- (1) Any power of the Welsh Ministers to make an order or regulations under this Measure is exercisable by statutory instrument.
  - (2) Any power of the Welsh Ministers to make an order or regulations under this Measure includes power—
    - (a) to make different provision for different cases or <sup>F16</sup>classes of case or different purposes or <sup>F16</sup>areas;
    - <sup>F17</sup>(aa) make provision subject to specified exemptions or exceptions;
    - (b) to make provision generally or in relation to specific cases<sup>F18</sup> or classes of case ];
    - (c) to make such incidental, supplementary, transitional or saving provision as the Welsh Ministers think fit.
  - (3) The power of the Welsh Ministers to make regulations under section 3(9), 7 <sup>F19</sup>...<sup>F20</sup>, 8, 14B, 14C, 14D, 14E, 14F, 14H or 14L or Schedule A1] also includes power to make such consequential provision as the Welsh Ministers think fit.
- t
- (4) The incidental, supplementary, transitional, saving or consequential provision to be made in regulations may include such provision that amends or repeals any provision of—
    - (a) this Measure or any other Measure of the National Assembly for Wales passed before or in the same Assembly year as this Measure;

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

[<sup>F21</sup>(4A) In the application of subsection (4) to regulations made under sections 14B to 14F, section 14H or 14L or Schedule A1 the reference to “this Measure” in subsection (4) is to be interpreted as a reference to the Safety on Learner Transport (Wales) Measure 2011.]

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

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

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

- (a) regulations under section 3(9),
- (b) regulations under section 7,
- (c) regulations under section 8,
- (d) regulations under section 14(14)(a), <sup>F22</sup>...

[<sup>F23</sup>(da) regulations under section 14B, 14C, 14D, 14E, 14F, 14H or 14L or Schedule A1, or

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

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

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

#### Textual Amendments

- F16** Words in s. 27(2)(a) inserted (10.7.2011) by [Safety on Learner Transport \(Wales\) Measure 2011 \(nawm 6\), ss. 15\(2\)\(a\), 16\(2\)](#)
- F17** S. 27(2)(aa) inserted (10.7.2011) by [Safety on Learner Transport \(Wales\) Measure 2011 \(nawm 6\), ss. 15\(2\)\(b\), 16\(2\)](#)
- F18** Words in s. 27(2)(b) inserted (10.7.2011) by [Safety on Learner Transport \(Wales\) Measure 2011 \(nawm 6\), ss. 15\(2\)\(c\), 16\(2\)](#)
- F19** Words in s. 27(3) omitted (10.7.2011) by virtue of [Safety on Learner Transport \(Wales\) Measure 2011 \(nawm 6\), ss. 15\(3\), 16\(2\)](#)
- F20** Words in s. 27(3) inserted (10.7.2011) by [Safety on Learner Transport \(Wales\) Measure 2011 \(nawm 6\), ss. 15\(3\), 16\(2\)](#)
- F21** S. 27(4A) inserted (10.7.2011) by [Safety on Learner Transport \(Wales\) Measure 2011 \(nawm 6\), ss. 15\(4\), 16\(2\)](#)
- F22** Word in s. 27(7)(d) omitted (10.7.2011) by virtue of [Safety on Learner Transport \(Wales\) Measure 2011 \(nawm 6\), ss. 15\(5\)\(a\), 16\(2\)](#)
- F23** S. 27(7)(da)(db) inserted (10.7.2011) by [Safety on Learner Transport \(Wales\) Measure 2011 \(nawm 6\), ss. 15\(5\)\(b\), 16\(2\)](#)

## 28 Commencement

- (1) The following provisions come into force at the end of a period of two months beginning on the day on which this Measure is approved by Her Majesty in Council—
- this section;
  - section 27;

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section 29.

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

## **29 Short title and inclusion of Measure within the Education Acts**

- (1) This Measure may be cited as the Learner Travel (Wales) Measure 2008.
- (2) This Measure is to be included in the list of Education Acts set out in section 578 of the Education Act 1996.

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## [<sup>F24</sup>SCHEDULE A1

(introduced by section 14G)

### CIVIL SANCTIONS

#### Textual Amendments

**F24** Sch. A1 inserted (10.7.2011) by [Safety on Learner Transport \(Wales\) Measure 2011 \(nawm 6\), s. 16\(2\), Sch.](#)

#### *Civil sanctions*

- 1 (1) Regulations may make provision about civil sanctions for breaches of safety regulations.
- (2) For the purposes of this Schedule a person breaches safety regulations if, in such circumstances as may be prescribed, the person—
  - (a) fails to comply with a requirement made by or under the safety regulations, or
  - (b) obstructs or fails to assist an enforcement authority.
- (3) In this Schedule—
  - “civil sanction” means—
    - (a) a fixed monetary penalty (see paragraph 2),
    - (b) a discretionary requirement (see paragraph 4),
    - (c) a stop notice (see paragraph 7), or
    - (d) an enforcement undertaking (see paragraph 11);
  - “safety regulations” means regulations made under section 14B or 14C.

#### *Fixed monetary penalties*

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

#### *Fixed monetary penalties: procedure*

- 3 (1) Provision under paragraph 2 must secure that—
  - (a) where an enforcement authority proposes to impose a fixed monetary penalty on a person, the enforcement authority must serve on that person a notice of what is proposed (a “notice of intent”) that complies with sub-paragraph (2),

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

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*Discretionary requirements*

- 4 (1) The regulations may make provision conferring on an enforcement authority the power by notice to impose one or more discretionary requirements on a person who breaches safety regulations.
- (2) The regulations may only confer such a power in relation to a case where the enforcement authority is satisfied on the balance of probabilities that the breach has occurred.
- (3) For the purposes of this Schedule a “discretionary requirement” means—
- (a) a requirement to pay a monetary penalty to an enforcement authority of such amount as the enforcement authority may determine, or
  - (b) a requirement to take such steps as an enforcement authority may specify, within such period as the enforcement authority may specify, to secure that the breach does not continue or recur.
- (4) In this Schedule—
- “variable monetary penalty” means a requirement referred to in sub-paragraph (3)(a);
  - “non-monetary discretionary requirement” means a requirement referred to in sub-paragraph (3)(b).
- (5) The regulations must, in relation to each kind of breach of safety regulations for which a variable monetary penalty may be imposed—
- (a) specify the maximum penalty that may be imposed for a breach of that kind, or
  - (b) provide for that maximum to be determined in accordance with the regulations.
- (6) The regulations may not permit discretionary requirements to be imposed on a person on more than one occasion in relation to the same act or omission.

*Discretionary requirements: procedure*

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



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

*Discretionary requirements: enforcement*

- 6 (1) Provision under paragraph 4 may include provision for a person to pay a monetary penalty (a “non-compliance penalty”) to an enforcement authority if the person fails to comply with a non-monetary discretionary requirement imposed on the person.
- (2) Provision under sub-paragraph (1) may—
- (a) specify the amount of the non-compliance penalty or provide for that amount to be determined in accordance with the regulations, or
  - (b) provide for the amount to be determined by the enforcement authority or in some other way.
- (3) If the regulations make provision within sub-paragraph (2)(b), they must, in relation to each kind of failure for which a non-compliance penalty may be imposed—

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

#### *Stop notices*

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

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*Stop notices: procedure*

- 8 (1) Provision under paragraph 7 must secure the results in sub-paragraph (2) in a case where a stop notice is served.
- (2) Those results are that—
- (a) the stop notice must comply with sub-paragraph (3),
  - (b) the person on whom it is served may appeal against the decision to serve it,
  - (c) where, after service of the notice, the enforcement authority is satisfied that the person has taken the steps specified in the notice, the enforcement authority must issue a certificate to that effect (a “completion certificate”),
  - (d) the notice ceases to have effect on the issue of a completion certificate,
  - (e) the person on whom the notice is served may at any time apply for a completion certificate,
  - (f) the enforcement authority must make a decision as to whether to issue a completion certificate within 14 days of such an application, and
  - (g) the person on whom the notice is served may appeal against a decision not to issue a completion certificate.
- (3) To comply with this sub-paragraph a stop notice must include information as to—
- (a) the grounds for serving the notice,
  - (b) rights of appeal, and
  - (c) the consequences of non-compliance.
- (4) Provision pursuant to sub-paragraph (2)(b) must secure that the grounds on which a person may appeal against a decision of the enforcement authority to serve a stop notice include the following—
- (a) that the decision was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) that the decision was unreasonable;
  - (d) that any step specified in the notice is unreasonable;
  - (e) that the person has not breached the regulations and would not have breached them had the stop notice not been served;
  - (f) such other grounds as may be prescribed.
- (5) Provision pursuant to sub-paragraph (2)(g) must secure that the grounds on which a person may appeal against a decision of the enforcement authority not to issue a completion certificate include the following—
- (a) that the decision was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) that the decision was unfair or unreasonable.

*Stop notices: compensation*

- 9 (1) Provision under paragraph 7 conferring power on an enforcement authority to serve a stop notice on a person must include provision for the enforcement authority to compensate the person for loss suffered as the result of the service of the notice.
- (2) Provision under sub-paragraph (1) may provide for compensation—
- (a) only in prescribed cases;
  - (b) only in relation to prescribed descriptions of loss.

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- (3) Provision under sub-paragraph (1) must secure that the person on whom the stop notice is served is able to appeal against—
- (a) a decision by the regulator not to award compensation, or
  - (b) a decision of the regulator as to the amount of the compensation.

*Stop notices: enforcement*

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

*Enforcement undertakings*

- 11 (1) The regulations may make provision—
- (a) to enable an enforcement authority to accept an enforcement undertaking from a person in a case where the enforcement authority has reasonable grounds to suspect that the person has contravened a restriction or requirement imposed in safety regulations, and
  - (b) for the acceptance of the undertaking to have the consequences in sub-paragraph (4).
- (2) For the purposes of this Part, an “enforcement undertaking” is an undertaking to take such action as may be specified in the undertaking within such period as may be so specified.
- (3) The action specified in an enforcement undertaking must be—
- (a) action to secure that contravention of the restriction or requirement does not continue or recur, or
  - (b) action of a prescribed description.
- (4) The consequences in this sub-paragraph are that, unless the person from whom the undertaking is accepted has failed to comply with the undertaking or any part of it—
- (a) that person may not at any time be convicted of an offence under safety regulations in respect of the act or omission to which the undertaking relates,
  - (b) the enforcement authority may not impose on that person any fixed monetary penalty which it would otherwise have power to impose by virtue of paragraph 2 in respect of that act or omission, and
  - (c) the enforcement authority may not impose on that person any discretionary requirement which it would otherwise have power to impose by virtue of paragraph 4 in respect of that act or omission.
- (5) The regulations may (among other things) include provision—
- (a) as to the procedure for entering into an undertaking;
  - (b) as to the terms of an undertaking;

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- (c) as to publication of an undertaking by an enforcement authority;
- (d) as to variation of an undertaking;
- (e) as to circumstances in which a person may be regarded as having complied with an undertaking;
- (f) as to monitoring by an enforcement authority of compliance with an undertaking;
- (g) as to certification by an enforcement authority that an undertaking has been complied with;
- (h) for appeals against refusal to give such certification;
- (i) in a case where a person has given inaccurate, misleading or incomplete information in relation to the undertaking, for that person to be regarded as not having complied with it;
- (j) in a case where a person has complied partly but not fully with an undertaking, for that part-compliance to be taken into account in the imposition of any criminal or other sanction on the person;
- (k) for the purpose of enabling criminal proceedings to be instituted against a person in respect of the contravention of the requirement or restriction in the event of breach of an undertaking or any part of it;
- (l) to extend any period within which those proceedings may be instituted.

*Combination of sanctions*

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

TABLE

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

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

#### *Monetary penalties*

- 13 (1) If the regulations confer power on an enforcement authority to require a person to pay a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty under paragraph 6(1), they may include provision—
- (a) for early payment discounts;
  - (b) for the payment of interest or other financial penalties for late payment of the penalty, such interest or other financial penalties not in total to exceed the amount of that penalty;
  - (c) for enforcement of the penalty.
- (2) Provision under sub-paragraph (1)(c) may include—
- (a) provision for the enforcement authority to recover the penalty, and any interest or other financial penalty for late payment, as a civil debt;
  - (b) provision for the penalty, and any interest or other financial penalty for late payment to be recoverable, on the order of a court, as if payable under a court order.

#### *Costs recovery*

- 14 (1) Provision under paragraph 4 may include provision for an enforcement authority, by notice, to require a person on whom a discretionary requirement is imposed to pay

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the costs incurred by the enforcement authority in relation to the imposition of the discretionary requirement up to the time of its imposition.

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

#### *Appeals*

- 15 (1) The regulations may not provide for the making of an appeal other than to—
  - (a) the First-tier Tribunal, or
  - (b) another tribunal created under an enactment (within the meaning of section 14H(5)).
- (2) In sub-paragraph (1)(b) “tribunal” does not include an ordinary court of law.
- (3) If the regulations make provision for an appeal in relation to the imposition of any requirement or service of any notice, they may include—
  - (a) provision suspending the requirement or notice pending determination of the appeal;
  - (b) provision as to the powers of the tribunal to which the appeal is made;
  - (c) provision as to how any sum payable in pursuance of a decision of that tribunal is to be recoverable.
- (4) The provision referred to in sub-paragraph (3)(b) includes provision conferring on the tribunal to which the appeal is made power—
  - (a) to withdraw the requirement or notice;
  - (b) to confirm the requirement or notice;
  - (c) to take such steps as the enforcement authority could take in relation to the act or omission giving rise to the requirement or notice;

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- (d) to remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the enforcement authority;
- (e) to award costs.

*Publicity for imposition of civil sanctions*

- 16 (1) The regulations may make provision enabling an enforcement authority to give a publicity notice to a person on whom a civil sanction has been imposed in accordance with regulations under this Schedule.
- (2) A “publicity notice” is a notice requiring the person to publicise—
- (a) the fact that the civil sanction has been imposed, and
  - (b) such other information as may be specified in the regulations,
- in such manner as may be specified in the notice.
- (3) The regulations may provide for a publicity notice to—
- (a) specify the time for compliance with the notice, and
  - (b) require the person to whom it is given to supply an enforcement authority with evidence of compliance within such time as may be specified in the notice.
- (4) The regulations may provide that, if a person fails to comply with a publicity notice, an enforcement authority may—
- (a) publicise the information required to be publicised by the notice, and
  - (b) recover the costs of doing so from that person.

*Persons liable to civil sanctions*

- 17 The regulations may make provision about the persons liable to civil sanctions under regulations under this Schedule and may (among other things) provide for—
- (a) the officers of a body corporate to be so liable as well the body corporate itself, and
  - (b) for the partners of a partnership to be liable as well as the partnership itself, in such circumstances as may be specified.

*Guidance as to use of civil sanctions*

- 18 (1) Where power is conferred on an enforcement authority by the regulations to impose a civil sanction in relation to a breach of regulations under this Schedule, the provision conferring the power must secure that—
- (a) the enforcement authority must publish guidance about the enforcement authority's use of the civil sanction,
  - (b) the guidance must contain the relevant information,
  - (c) the enforcement authority must revise the guidance where appropriate,
  - (d) the enforcement authority must consult such persons as the provision may specify before publishing any guidance or revised guidance, and
  - (e) the enforcement authority must have regard to the guidance or revised guidance in exercising the enforcement authority's functions.
- (2) In the case of guidance relating to a fixed monetary penalty, the relevant information referred to in sub-paragraph (1)(b) is information as to—



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- (a) the circumstances in which the penalty is likely to be imposed,
  - (b) the circumstances in which it may not be imposed,
  - (c) the amount of the penalty,
  - (d) how liability for the penalty may be discharged and the effect of discharge, and
  - (e) rights to make representations and objections and rights of appeal.
- (3) In the case of guidance relating to a discretionary requirement, the relevant information referred to in sub-paragraph (1)(b) is information as to—
- (a) the circumstances in which the requirement is likely to be imposed,
  - (b) the circumstances in which it may not be imposed,
  - (c) in the case of a variable monetary penalty, the matters likely to be taken into account by the enforcement authority in determining the amount of the penalty (including, where relevant, any discounts for voluntary reporting of non-compliance), and
  - (d) rights to make representations and objections and rights of appeal.

#### *Publication of enforcement action*

- 19 (1) Where power is conferred on an enforcement authority by the regulations to impose a civil sanction in relation to a breach of safety regulations, the provision conferring the power must, subject to this paragraph, secure that the enforcement authority must from time to time publish reports specifying—
- (a) the cases in which the civil sanction has been imposed, and
  - (b) where the civil sanction is a fixed monetary penalty, the cases in which liability to the penalty has been discharged pursuant to paragraph 3(1)(b).
- (2) In sub-paragraph (1)(a), the reference to cases in which the civil sanction has been imposed do not include cases where the sanction has been imposed but overturned on appeal.
- (3) The provision conferring the power need not secure the result in sub-paragraph (1) in cases where the relevant authority considers that it would be inappropriate to do so.

#### *Compliance with regulatory principles*

- 20 An enforcement authority must act in accordance with the principles that—
- (a) regulatory activities should be carried out in a way that is transparent, accountable, proportionate and consistent;
  - (b) regulatory activities should be targeted only at cases in which action is needed.

#### *Review*

- 21 (1) The Welsh Ministers must in accordance with this paragraph review the operation of any provision made by them conferring power on an enforcement authority (including themselves) to impose a civil sanction in relation to a breach of safety regulations.
- (2) The review must take place as soon as practicable after the end of the period of three years beginning with the day on which the provision comes into force.

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- (3) The review must in particular consider whether the provision has implemented its objectives efficiently and effectively.
- (4) In conducting a review under this paragraph the Welsh Ministers must consult such persons as they consider appropriate.
- (5) The Welsh Ministers must publish the results of a review under this section.
- (6) The Welsh Ministers must lay a copy of a review under this paragraph before the National Assembly for Wales.

### *Suspension*

- 22 (1) Where provision has been made by the Welsh Ministers conferring power on an enforcement authority other than themselves to impose a civil sanction in relation to a breach of safety regulations, the Welsh Ministers may direct the enforcement authority—
  - (a) where the power is power to impose a fixed monetary penalty, not to serve any further notice of intent referred to in paragraph 3(1)(a) in relation to a breach of that kind;
  - (b) where the power is power to impose a discretionary requirement, not to serve any further notice of intent referred to in paragraph 5(1)(a) in relation to a breach of that kind;
  - (c) where the power is power to impose a stop notice, not to serve any further stop notices in relation to a breach of that kind;
  - (d) where the power is power to accept an enforcement undertaking, not to accept any further undertaking in relation to a breach of that kind.
- (2) The Welsh Ministers may only give a direction under sub-paragraph (1) in relation to a breach of safety regulations if they are satisfied that the enforcement authority has failed on more than one occasion—
  - (a) to comply with any duty imposed on it under or by virtue of this Schedule in relation to a breach of that kind,
  - (b) to act in accordance with the guidance it has published under paragraph 18 in relation to a breach of that kind, or
  - (c) to act in accordance with the principles referred to in paragraph 20 or with other principles of best practice in relation to the enforcement of a breach of that kind.
- (3) The Welsh Ministers may by direction revoke a direction given by them under sub-paragraph (1) if they are satisfied that the enforcement authority has taken the appropriate steps to remedy the failure to which that direction related.
- (4) Before giving a direction under sub-paragraph (1) or (3) the Welsh Ministers must consult—
  - (a) the enforcement authority, and
  - (b) such other persons as they consider appropriate.
- (5) Where the Welsh Ministers give a direction under this section, they must lay a copy before the National Assembly for Wales.
- (6) Where the Welsh Ministers give a direction under this section, the enforcement authority must—

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

*Payment of penalties into Welsh Consolidated Fund*

- 23 Where pursuant to any provision made under this Schedule an enforcement authority other than the Welsh Ministers receives—
- (a) a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty,
  - (b) any interest or other financial penalty for late payment of such a penalty, or
  - (c) a sum paid in discharge of liability to a fixed monetary penalty,
- the enforcement authority must pay it into the Welsh Consolidated Fund.]

SCHEDULE 1

*(introduced by section 25)*

MINOR AND CONSEQUENTIAL AMENDMENTS

*Public Passenger Vehicles Act 1981 (c. 14)*

- 1 In section 46 of the Public Passenger Vehicles Act 1981 (fare-paying passengers on school buses), in subsection (3), in the definition of “free school transport”—
- (a) in paragraph (a) omit “section 509(1) or (1A)”;
  - (b) omit “or” at the end of paragraph (aa);
  - (c) after paragraph (aa) insert —
    - “(ab) in pursuance of arrangements under sections 3 or 4 of the Learner Travel (Wales) Measure 2008, or”.

**Commencement Information**

**I37** Sch. 1 para. 1 in force at 1.9.2009 by [S.I. 2009/371](#), [Sch. Pt. 2](#)

*Transport Act 1985 (c. 67)*

- 2 (1) Section 6 of the Transport Act 1985 (registration of local services) is amended as follows.
- (2) In subsection (1B)—
- (a) omit “section 509(1) or (1A),” in paragraph (a);
  - (b) omit “or” at the end of paragraph (b);
  - (c) after paragraph (c) insert—
    - “(d) the obligation placed on a local authority by sections 3 or 4 of the Learner Travel (Wales) Measure 2008; or
    - (e) the exercise of the power of a local authority under section 6 of that Measure.”
- (3) In subsection (1C)(a), for “or (c)” substitute “, (c), (d) or (e)”.

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**Commencement Information**

- I38** Sch. 1 para. 2(1)(2)(a)(b) in force at 1.9.2009 by [S.I. 2009/371](#), **Sch. Pt. 2**  
**I39** Sch. 1 para. 2(2)(c)(3) in force in so far as not already in force at 1.9.2009 by [S.I. 2009/371](#), **Sch. Pt. 2**  
**I40** Sch. 1 para. 2(2)(c)(3) in force for specified purposes at 6.3.2009 by [S.I. 2009/371](#), **Sch. Pt. 1**

*Further and Higher Education Act 1992 (c. 13)*

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

**Commencement Information**

- I41** Sch. 1 para. 3 in force at 1.9.2009 by [S.I. 2009/371](#), **Sch. Pt. 2**

*Education Act 1996 (c. 56)*

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

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- (5) In section 509A (travel arrangements for children receiving early years education otherwise than at school)—
- (a) in subsection (1), after “authority” insert “ in England ”;
  - (b) in subsection (4A), after “Regulations” insert “ made by the Secretary of State ”;
  - (c) in subsection (5) (as substituted by paragraph 23 of Schedule 2 to the Childcare Act 2006 (c. 21)), omit “in relation to England,” and paragraph (b).

**Commencement Information**

- I42** Sch. 1 para. 4(1)-(4) in force at 6.3.2009 by [S.I. 2009/371](#), **Sch. Pt. 1**  
**I43** Sch. 1 para. 4(5) in force at 1.9.2009 by [S.I. 2009/371](#), **Sch. Pt. 2**

*Childcare Act 2006 (c. 21)*

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

**Commencement Information**

- I44** Sch. 1 para. 5 in force at 1.9.2009 by [S.I. 2009/371](#), **Sch. Pt. 2**

SCHEDULE 2

*(introduced by section 26)*

REPEALS

**Commencement Information**

- I45** Sch. 2 in force for specified purposes at 30.10.2009 by [S.I. 2009/2819](#), **art. 2(1)(d)**  
**I46** Sch. 2 in force for specified purposes at 30.10.2009 by [S.I. 2009/371](#), **art. 2(1)(d)**  
**I47** Sch. 2 in force for specified purposes at 1.9.2009 by [S.I. 2009/371](#), **Sch. Pt. 2**  
**I48** Sch. 2 in force for specified purposes at 6.3.2009 by [S.I. 2009/371](#), **Sch. Pt. 1**

**Short title and chapter**

**Extent of repeal**

Public Passenger Vehicles Act 1981 (c. 14)	In section 46(3)(a) the words “section 509(1) or (1A)”.
Transport Act 1985 (c. 67)	In section 6(1B) the words “section 509(1) or (1A)” in paragraph (a) and the word “or” in paragraph (b).
Education Act 1996 (c. 56)	In section 444(5) the words “and (4)”. In section 455, in subsection (1)(c) the words “or 509(2)” and in subsection (2)(b) “or” at the end of the subsection. Section 509.

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

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