

# LEARNER TRAVEL (WALES) MEASURE 2008

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

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

11. **Section 3** places a duty on a local authority to make transport arrangements for children of compulsory school age in specified circumstances and subject to specified conditions. The circumstances and conditions are set out in the table after subsection (2). The section makes provision for a system of entitlement to free transport defined by reference to whether children are receiving primary or secondary education and whether they live at or further than set distances from the places at which they receive education or training. This approach to determining entitlement is similar in effect to the system created by the conjoined working of sections 444 and 509 of the Education Act 1996.
12. Subsection (1) provides that the section applies to children of compulsory school age who are ordinarily resident in a local authority's area if the circumstances set out in column 1 of the table apply to the child and the conditions in column 2 are met.
13. Subsection (2) sets out the main duty of the local authority to make suitable transport arrangements to facilitate the attendance of a child to whom the section applies each day at the relevant places where the child receives education or training. A child's attendance is facilitated if arrangements are made for the child to travel from home to the place where they receive education or training and back home again.
14. The table after subsection (2) sets out the circumstances and conditions which lead to an entitlement to free transport arrangements.
15. Children receiving primary education will be entitled to free transport if they live two miles or more from their maintained school, pupil referral unit, or non-maintained special school, unless the authority has arranged for the child to become a registered pupil at a suitable establishment closer to home or has arranged for the child to board at or near the school. Where a child has a statement of special educational needs which names an independent school, then if that school is two miles or more from the child's home, a local authority will have to provide free transport unless it has arranged for the child to become a registered pupil at a suitable establishment closer to home, or has arranged for the child to board at or near the school.
16. A similar entitlement is provided for children receiving secondary education, but in this case if they live three miles or more from their maintained school, pupil referral unit, non-maintained special school or independent school named in a statement of special educational needs. Where the local authority has arranged for the child to become a registered pupil at a suitable establishment closer to home, or has arranged for the child to board at or near the school, the duty to provide free transport does not apply. The entitlement includes transport for any child of compulsory school age who attends a further education institution as a full time student if it is three miles or more from home and the local authority has not arranged for the child to attend a suitable institution closer to home. The entitlement also includes travel between home and a relevant place other than the one at which a child is a registered pupil. This takes account of the fact that some children attend different places on different days, and would for example cover

work experience placements or attendance at a different school or a further education institution for certain courses. However, travel arrangements are only to be concerned with travel between the home and relevant places at the start and finish of the school day and are not concerned about travel within the day. Any arrangements for travel within the day are outside the scope of the duty on a local authority (see section 5).

17. The same age and distance criteria apply to ‘looked after’ children, but there is no qualification that they attend the nearest suitable establishment to their home. It will be for the local authority looking after a child to determine where he or she should go and that might be a school other than the nearest suitable one because for instance of a priority to maintain continuity in their education or contact with siblings and friends.
18. Subsection (3) forbids an authority from charging for transport arrangements that it is required to make for children of compulsory school age under this section (save in relation to looked after children where it can recoup costs from another authority under section 18).
19. Subsection (4) specifies that the transport arrangements made under the section may include the provision of transport or the payment of the whole, but not part, of a child’s transport expenses. This subsection means that an authority could discharge the duty in subsection (2) by arranging a bus service with a bus or taxi contractor, providing passes for public transport or reimbursing parental or learner travel expenses.
20. Subsections (5) to (8) define whether arrangements are ‘suitable’, whether a school or other education facility makes ‘suitable’ provision, and whether a route is ‘available’.
21. Subsection (5) requires transport arrangements to be reasonably stress free, not to take an unreasonable amount of time, and to be safe.
22. Subsection (6) defines the suitability of education or training for the purpose of this section by reference to a child’s age, ability and aptitude, and to any learning difficulties. Neither the child’s or parent’s language preference or mother tongue, nor religious faith or conviction of the child or his or her parent have any bearing on whether a school is suitable for the purpose of this section.
23. Subsection (7) specifies that the distances in the table are to be measured by the shortest available route. Availability of a route is dealt with in subsection (8) which sets out the circumstances when a child can be expected to walk to school. If these circumstances do not apply, then a child cannot be expected to walk to school even though the distance from home to school is less than the distance limit that applies to his / her age set by the table. The circumstances are that the nature of the route is such that it is safe for a child to walk alone, or where the age of the child requires it, accompanied by an adult. If these circumstances do not apply, subsections (1) and (2) provide entitlement to free travel arrangements unless an authority has made arrangements to educate the child at an alternative suitable school closer to home.
24. The Welsh Ministers may make regulations under subsection (9) prescribing the circumstances and conditions in which children of compulsory school age would be entitled to free transport. Regulations may amend the table or subsections (6), (7) and (8) or entries in the table. For example, the Welsh Ministers could change the distance and age criteria that determine eligibility, provide local authorities with more or less discretion to operate their own transport policies. Any regulations made under this provision would be made using the affirmative resolution procedure and would be subject to a regulatory impact assessment and scrutiny by the National Assembly.