

# **SAFETY ON LEARNER TRANSPORT (WALES) MEASURE 2011**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Section 1 – Requirement for seat belts on buses used for learner transport***

2. This section places a duty on relevant bodies (a local authority or the governing body of a maintained school) and persons who provide learner transport secured by a relevant body (e.g. a bus operator providing services under contract with a local authority), to ensure that every bus used for learner transport has a seat belt fitted to every passenger seat.
3. Sub section 14A(3) provides that a person who fails to comply with those duties commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale. It will be a defence to show that exceptional circumstances prevented compliance with the duties within section 14A(1) or (2).

#### ***Section 2 – Further provision as to descriptions of vehicle that may be used for learner transport***

4. This section empowers the Welsh Ministers to make regulations requiring that only particular descriptions of vehicle are used for learner transport provided or otherwise secured by a local authority or the governing body of a maintained school. The obligations arising from such provision may be placed on those bodies or any person who provides learner transport secured by those bodies (e.g. a bus operator providing services under contract with a local authority).
5. The vehicle may be described by reference to its age, whether it is a single deck or double deck vehicle, or other descriptions of the vehicle by reference to its construction, equipment or other characteristics.
6. Subsection 14B(1)(c) enables the Welsh Ministers to provide for criminal offences and penalties for breaches of requirements imposed under this section. The power of the Welsh Ministers to create criminal offences under this section is subject to the limits imposed by paragraph 2 of Part 2 of Schedule 5 to the Government of Wales Act 2006. They would not be able to use this power to create any criminal offence punishable -
  - on summary conviction, with imprisonment exceeding the prescribed term or with a fine exceeding level 5 on the standard scale (currently £5,000), or
  - on conviction on indictment, with a period of imprisonment exceeding two years.
7. The prescribed term is 51 weeks in the case of a summary offence and 12 months where the offence is triable either way. But before the coming into force of sections 154(1) and 281(5) of the Criminal Justice Act 2003 no term of imprisonment of more than

six months is to be imposed on conviction of a summary offence created under the regulations or on summary conviction of an such an offence triable either way<sup>1</sup>.

### ***Section 3 - Recording visual images or sound on learner transport***

8. This section empowers the Welsh Ministers to make regulations requiring arrangements to be made for recording visual images or sound on learner transport and setting out provisions about the use, storage and retention of visual images or sound. The regulations may specify the kinds of arrangements that are to be made. This could include the method of recording or ancillary matters such as providing information to parents and children about the fact that such recording is taking place.
9. Regulations under this section may confer functions on local authorities, the governing bodies of maintained schools and persons who provide learner transport secured by a relevant body.
10. The purpose of subsection (3) of section 14C is to make plain that this section does not authorise and cannot require covert recording.
11. Regulations may provide for criminal offences and penalties and such provision is subject to the limitations mentioned in paragraphs 6 and 7 above.

### ***Section 4 - Safety risk assessment of learner transport***

12. This section empowers the Welsh Ministers to make regulations requiring a relevant body to carry out safety risk assessments on the learner transport it provides. This may include setting out the nature of the assessment, publication of reports, the manner of publication or the frequency of assessments.

### ***Section 5 - Driver training***

13. This section empowers the Welsh Ministers to make regulations requiring a local authority or a governing body of a maintained school that provides learner transport to ensure that the drivers of those vehicles have completed appropriate training about safety on learner transport and working with children. The regulations may prescribe the kinds of training that need to be undertaken and specify standards that must be met.
14. Subsection (2) of section 14E allows the training and standards to be prescribed by reference to a document published by the Welsh Ministers.

### ***Section 6 - Supervisors on learner transport***

15. This section empowers the Welsh Ministers to make regulations concerning the provision of supervisors on learner transport by a relevant body and the provision of relevant training for such supervisors.

### ***Section 7 - Civil sanctions***

16. This section introduces the Schedule which inserts Schedule A1 into the Learner Travel (Wales) Measure 2008.

### ***Section 8 - Enforcement authority***

17. This section empowers the Welsh Ministers to appoint a person or body as an enforcement authority. Regulations may confer powers or duties on an enforcement authority for the purpose of enforcing provision made by section 14A and by regulations under section 14B, 14C and Schedule A1. This would include (among other things) the power to authorise persons to appoint “inspectors” to exercise the powers of entry and inspection set out in sections 9 and 10 (inserting section 14I and 14J respectively).

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<sup>1</sup> Paragraph 52, Schedule 11 Government of Wales Act 2006.

### ***Section 9 - Powers of entry***

18. This section sets out a power of entry which is exercisable by a person authorised to exercise it by an enforcement authority under regulations made under section 14H(3) (a). A person authorised in this way is referred to in the Measure as an “inspector”. An inspector may, at a reasonable time, enter a vehicle or premises –
- owned or controlled by a local authority or the governing body of a maintained school; or
  - used or proposed to be used by any person in connection with the provision of learner transport.

An inspector may also detain a vehicle. The power of entry does not include the power to enter premises used wholly or mainly as a private dwelling.

### ***Section 10 - Powers of inspection***

19. This section provides that an inspector who detains a vehicle or enters a vehicle or premises 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; and inspect any other item and remove it from the vehicle or premises.
20. A person who obstructs an inspector without reasonable excuse is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale (currently £2,500).

### ***Section 11 - Power to require provision of information***

21. This section empowers the Welsh Ministers to make regulations, empowering an enforcement authority to require a local authority or governing body of a school or a person who provides learner transport to provide information, documents, records and other items which relate to learner transport and are considered by the enforcement authority to be necessary or expedient for the purpose of its functions.
22. A person who without reasonable excuse fails to provide information, documents, records and other items is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale (currently £2,500).

### ***Section 12 - Offences: liability of officers and partners***

23. This section empowers the Welsh Ministers to make regulations whereby an officer of a body corporate or a partner of a partnership may be personally liable for offences committed under sections 14A, 14B or 14C by the body corporate or partnership, as well as the body corporate or partnership itself.
24. Personal liability arises where the offence is proved to have been committed with the consent or connivance, or is attributable to any neglect on the part of an officer of the body corporate or partner of a partnership.

### ***Section 13 - Regulations: Consultation***

25. **Section 13** provides that before making any regulations under sections 14B to 14F, section 14H or 14L or Schedule A1 of the Learner Travel (Wales) Measure 2008 (as amended by the Measure), the Welsh Ministers must consult each local authority and such other persons as they consider appropriate.

### ***Section 14 – Interpretation***

26. One of the key elements of this section is the provision at 14N(6) enabling Welsh Ministers to amend, by order, the definition of “learner transport” in subsection (3) by removing those words that currently restrict it to home to school transport.

### ***Section 15 - General provisions about orders and regulations***

27. This section amends section 27 of the Learner Travel (Wales) Measure 2008 which makes provision for orders and regulations to be made by statutory instrument, ancillary powers to make provision by order or regulations and Assembly scrutiny procedures.
28. [Section 15\(2\)](#) amends section 27(2) of the 2008 Measure to expand the scope of the powers to make orders and regulations under the 2008 Measure to include:
  - making different provision for different classes of case or different purposes,
  - making provision subject to specified exemption or exceptions, and
  - making provision in relation to specific classes of case.
29. The purpose of section 15(3) is to provide that all of the powers to make regulations under the Measure include the power to make consequential amendments. And the purpose of subsection (4) is to provide that the power to make incidental, supplementary, transitional, saving or consequential provision under the powers includes power to amend or repeal provisions of Assembly Measures, UK Acts and subordinate legislation passed or made before the passing of the Measure. Subsection (5) is the provision which applies an affirmative resolution procedure to all regulations made under the Measure and to any order made under section 14N(6).

### ***Section 16 - Commencement***

30. [Section 1](#) comes into force on 1 October 2014.
31. The remaining provisions of the Measure come into force at the end of a period of 2 months beginning on the day on which the Measure is approved by Her Majesty in Council. But no operative change is made to the provision of learner transport until regulations are made under the Measure and come into force.

### ***Section 17 – Short title***

32. This section establishes the Measure’s title as the Safety on Learner Transport (Wales) Measure 2011.

### ***Schedule – Civil Sanctions***

33. Schedule A1 is introduced by section 7 of the Measure.
34. The provisions of the Schedule enable the Welsh Ministers to make provision by regulations for civil sanctions for breaches of regulations under sections 14A or 14B (referred to in Schedule A1 as “safety regulations”). Breaches of safety regulations for the purposes of the Schedule include failure to comply with a requirement of the regulations and obstruction or failure to assist an enforcement authority (see section 7 for provision about enforcement authorities). All powers to impose civil sanctions must be conferred on the enforcement authority.
35. Regulations may provide for 4 different kinds of civil sanction:
  - fixed monetary penalties,
  - discretionary requirements,
  - stop notices, and
  - enforcement undertakings.

### **Fixed monetary penalties (paragraphs 2 and 3 of Schedule A1)**

36. A “fixed monetary penalty” is a requirement to pay to an enforcement authority a penalty of an amount specified in the regulations. The maximum penalty that may be imposed is £5,000. Regulations may only confer a power to impose a fixed monetary penalty where the enforcement authority is satisfied on the balance of probabilities that the breach has occurred.
37. Paragraph 3 of Schedule A1 sets out the procedure for imposing fixed monetary penalties including the issue of a notice of intent, an opportunity to discharge the liability, the process of making representations and objections, a final notice, the appeals process for the person on whom the fixed monetary penalty has been imposed and the grounds of appeal.
38. The regulations should also specify the circumstances in which an enforcement authority may not decide to impose a fixed monetary penalty for example for exceptional operational reasons such as inclement weather, vehicle failure, or an emergency where pupils may not otherwise be able to get home.

### **Discretionary requirements (paragraphs 4, 5 and 6 of Schedule A1)**

39. Regulations may provide for an enforcement authority to impose one or more discretionary requirements on a person who breaches safety regulations. Again the enforcement authority must be satisfied on the balance of probabilities that the breach has occurred.
40. A discretionary requirement may include a requirement to pay a penalty of an amount determined by an enforcement authority; or a requirement to take such steps specified by the enforcement authority to secure that the breach does not continue or recur.
41. A discretionary requirement cannot be imposed on a person for the same act or omission on more than one occasion.
42. Paragraph 5 of Schedule A1 sets out the procedure for discretionary requirements including a notice of intent, the process of making representations and objections, the payment of penalties in the case of a variable monetary penalty and the appeals process, grounds of appeal and the consequences of non-compliance.
43. Provision may also be made in regulations to allow an enforcement authority to impose a monetary penalty (‘a non-compliance penalty’) on a person who fails to comply with a discretionary requirement to take step to secure that a breach does not continue or recur (paragraph 6 of Schedule A1).

### **Stop notices**

44. The regulations may confer on an enforcement authority the power to serve a stop notice. A stop notice prohibits a person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice. Before issuing a stop notice an inspector must be satisfied that the activity presents a significant risk of causing serious harm to human health and involves a breach of the regulations concerning the description of vehicles used for learner transport.
45. Regulations must make provision about compensation for loss suffered as the result of the service of a notice. But they may provide for compensation only in cases specified in the regulations or only in relation to descriptions of loss specified in the regulations. The regulations must also provide for appeals against decisions not to award compensation or in relation to the amount.
46. Where a person on whom a notice is served does not comply with a stop notice the person is guilty of an offence and liable -

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale (currently £5,000), or imprisonment for a term not exceeding six months, or both, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.
47. When section 154(1) of the Criminal Justice Act 2003 is commenced the maximum term of imprisonment on summary conviction will be extended to twelve months (see paragraph 10 of Schedule A1).

#### **Enforcement undertakings (paragraph 11 of Schedule A1)**

48. The regulations may confer on an enforcement authority the power to accept an enforcement undertaking from a person where the enforcement authority has reasonable grounds to suspect that the person has breached the safety regulations. An enforcement undertaking is an undertaking to take such action as may be specified in the undertaking within a specified time period. The effect of the undertaking is that as long as there is compliance with the undertaking other kinds of enforcement action cannot be taken in respect of the act or omission to which the undertaking relates. The actions that cannot be taken during the operation of an enforcement undertaking are: proceedings for a criminal offence, a fixed monetary penalty or a discretionary requirement. Paragraph 11 of Schedule A1 also sets out the power by regulations to make provision for the procedure for enforcement undertakings, their terms, publication and variation and provision about compliance, monitoring and appeals.

#### **Combination of sanctions (paragraph 12 of Schedule A1)**

49. [Paragraph 12](#) makes provision to ensure that a combination of a fixed monetary penalty, a discretionary requirement and a stop notice cannot be used in relation to the same breach of safety regulations.

#### **Ancillary matters**

50. In the case of monetary penalties the regulations may include provision for early payment discounts, the payment of interest or other financial penalties for late payment, and the recovery of penalties, interest and penalties for late payment as civil debts (paragraph 13 of Schedule A1).
51. Provision in the regulations may also provide for the payment of costs incurred by an enforcement authority; in particular, investigation costs, administration costs and the cost of obtaining expert advice (paragraph 14 of Schedule A1).
52. Provision for appeals in the regulations under Schedule A1 must provide for appeals to be made to the First-tier Tribunal or to another tribunal created under an enactment (paragraph 15 of Schedule A1).
53. The regulations may make provision to enable the enforcement authority to require the person on whom the sanction has been imposed to publicise the fact (paragraph 16 of Schedule A1).
54. The regulations may provide for officers of a body corporate or a partnership to be personally liable to civil sanctions as well as the body corporate or partnership itself (paragraph 17 of Schedule A1).
55. Where a power is conferred on an enforcement authority, that enforcement authority must publish guidance about the enforcement authority's use of civil sanctions including the circumstances in which the penalty is likely to be imposed, the circumstances in which it may not be imposed, the amount of the penalty, how liability

for the penalty may be discharged and the effect of discharge, and rights to make representations and objections and rights of appeal (paragraph 18 of Schedule A1).

56. Regulations conferring powers on an enforcement authority to impose civil sanctions must secure that an enforcement authority from time to time publishes reports specifying the cases where civil sanctions have been imposed (paragraph 18 of Schedule A1).
57. An enforcement authority must act in accordance with the principle that all regulatory activities should be carried out in a way that is transparent, accountable, proportionate and consistent and that regulatory activities should only be targeted at cases where action is needed (paragraph 20 of Schedule A1).
58. The Welsh Ministers must review the operation of any provisions they make which confer power on an enforcement authority to impose civil sanctions. The review must happen as soon as practicable after the end of three years from the date that the provision comes into force (paragraph 21 of Schedule A1).
59. The Welsh Ministers may be appointed as the enforcement authority in regulations, in which case any receipts from civil sanctions will be paid into the Welsh Consolidated Fund by effect of section 120 of the Government of Wales Act 2006. Paragraph 22 of Schedule A1 makes provision about the payment of receipts from civil sanctions into the Welsh Consolidated Fund where the enforcement authority is a person or body other than the Welsh Ministers.