

## **HOME TO SCHOOL AND COLLEGE TRANSPORT**

A summary of the duties placed on a local authority

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## **1 Introduction**

- 1.1 This document has been drafted in response to a request from the Yorkshire and Humberside Association of Directors of Children's Services to provide a summary of the legal framework relating to home to school transport. Officers from six local authorities (Barnsley, East Riding of Yorkshire, Hartlepool, North Yorkshire, Rotherham and Wakefield) met to draft the following summary of the duties local authorities have to carry out to discharge their statutory obligations to provide transport and support for the costs of transport to help children and young people travel to and from schools or colleges.
- 1.2 Practices vary significantly from one local authority to another. Those practices can be affected by structural, organisational, geographical and financial considerations which lead to different aspects of transport provision being grouped by different local authorities under the heading of home to school and college transport. The following document describes the consensus view of local authority officers on what constitutes local authorities' legal obligations to provide home to school and college transport.

## **2 Purpose of the document**

- 2.1 Local authorities' duties to provide transport to help children of compulsory school age and students in further education to get to and from their places of learning are determined by legislation and case law. Local authorities also must have regard to statutory guidance issued by the Department for Education.
- 2.2 Financial pressures, both national and local, have led to local authorities increasingly reviewing their arrangements for the provision of home to school and college transport to identify efficiencies and savings. Rationalising transport services through more efficient planning of routes and changes in tendering arrangements can significantly increase efficiency and reduce costs. Reducing the range of children and students entitled to receive support for transport can also reduce local authority costs.

2.3 Given the different practices in place in different authorities, it is not always clear what transport provision is a legal obligation on a council and what is at the council's discretion. The aim of this document is therefore to provide a summary of local authorities' legal obligations and discretionary powers to provide home to school and college transport. The document is not formal legal advice but is a summary of the agreed views of the local authority representatives who contributed to its drafting. A list of the local authority officers who have contributed to the drafting of this document is shown in Appendix 1.

### 3 Legislation

3.1 The legislation which places a duty on the local authority to provide free home to school transport is contained principally in the Education Act 1996 as amended by later legislation including the Education Act 2002 and the Education and Inspections Act 2006.

3.2 Local authorities have a duty to provide free home to school transport for eligible children of compulsory school age living in the local authority's area. There is no legal obligation to provide free transport for children who are below or above compulsory school age. Compulsory school age is defined in section 8 of the Education Act 1996 and in associated regulations<sup>1</sup>. The table below shows the dates on which children reach compulsory school age.

Child's fifth birthday (inclusive dates)		Child reaches compulsory school age
From	To	
1 September	31 December	1 January
1 January	31 March	1 April
1 April	31 August	1 September

3.3 A child reaches the end of compulsory school age on the last Friday in June in the school year in which the child reaches sixteen years of age.

3.4 The principal legal reason for the duty to provide home to school transport is to ensure that the local authority can enforce school attendance. Parents are responsible for

<sup>1</sup> The Education (Start of Compulsory School Age) Order 1998 (SI 1998/1607)  
The Education (School Leaving Date) Order 1997 (SI 1997/1970)

ensuring that their child attends school regularly. However, Section 444(3B) of the 1996 Act states that the child shall not be taken to have failed to attend regularly at the school if the parent proves that:

*“... the local authority has a duty to make travel arrangements in relation to the child under Section 508(1) for the purpose of facilitating a child’s attendance at the school and have failed to discharge that duty.”*

- 3.5 Section 508B of the 1996 Act sets out the duty to provide free travel arrangements for ‘eligible children’ to ‘qualifying schools’ (see below). Where a child is eligible to free transport, no charge can be made in connection with free travel arrangements in any respect.
- 3.6 Home to school transport only has to be provided to get the child to and from their registered school for the beginning and end of the normal school day. Local authorities are not responsible for providing transport for journeys during the course of the day between educational institutions, to a work placement or to help a child attend a course outside the times of the normal school day.

### **3.7 Categories of eligible children**

Schedule 35B of the 1996 Act defines ‘eligible’ children. The following categories of children of compulsory school age are entitled to free transport to help them to get to and from school:

***Children with special education needs, a disability or mobility problem.*** These are children who are within the statutory walking distance to school, however the nature of their difficulties prevents them from walking to school.

***Children who live within the statutory walking distance to school, however there is no suitable available route.***

The statutory walking distances are set out in Section 444(5) of the 1996 Act:

- (a) for a child under the age of 8 years - 2 miles;
- (b) for a child aged 8 years and over - 3 miles.

Statutory guidance issued in 2007 (see below) states that, if a local authority assumes that a child is accompanied by a parent on the walk to and from school, any disability a parent may have which prevents them accompanying their child

must be taken into account when assessing whether or not the route is suitable.

***Children who live outside the statutory walking distances and no suitable school place is available nearer to their home.***

***Children entitled to free school meals, or whose parents are in receipt of their maximum level of Working Tax Credit.***

The following categories of children from low income families are entitled to free transport:

- (a) children aged 8, but under the age of 11 who are attending their nearest school and the distance to that school is more than 2 miles;
- (b) children who are 11 or over who attend one of their three nearest secondary schools and the school they attend is over 2 miles but under 6 miles from where they live;
- (c) secondary school children whose parents have expressed a preference for the nearest suitable school based on their religion or belief, where they live over 2 miles but less than 15 miles from that school.

### **3.8 Qualifying schools**

An eligible child must be attending a qualifying school to have a statutory entitlement to free transport. Under Schedule 35B of the 1996 Act qualifying schools are:

- community
- foundation
- voluntary
- community special
- foundation special
- approved under section 342 (non-maintained special school)
- pupil referral unit
- maintained nursery school
- city technical college
- city college for the technology of the arts
- academy

Additionally, section 444 of the Education Act 1996, as amended by the Education and Inspections Act 2006, includes provision for the parents of a child attending an independent school to have grounds for not sending their child to the school if they can show that the school is not

within walking distance and the local authority has not made arrangements for the child to become a registered pupil at a qualifying school nearer to the home. In these circumstances, the local authority would have a liability to provide free home to school transport.

### **3.9 Travel arrangements for other children**

Local authorities have discretionary powers to provide home to school and college transport. Section 509C of the 1996 Act provides a local authority with the following power to:

*“... make such school travel arrangements as they consider necessary, in relation to any child..... for the purpose of facilitating the child’s attendance at any relevant educational establishment...”*

This section of the Act gives a general power to a local authority to make travel arrangements for any child or groups of children who are not within any of the categories of ‘eligible child.’ In other words, a local authority can fund any travel arrangements it wishes for children who are not entitled to receive it under the legislation. Such transport is therefore discretionary and can be discontinued. Transport provided as a discretionary provision does not have to be free of charge. Any fares or charges made should be reasonable and equitable.

## **4 Statutory Guidance**

- 4.1 In 2007, the Secretary of State issued guidance to which local authorities have a statutory duty to have regard. This guidance has not been updated but remains in force. The guidance outlines statutory provisions and gives recommendations on good practice. Guidance is also issued by the Young People’s Learning Agency on provision for students of sixth form age.

## **5 Early Years**

- 5.1 A local authority is not under any statutory duty to provide free travel assistance for pupils below compulsory school age who are attending an early years setting. Parents have a right for their child to access early years education. This

does not have to be provided in a school and can be accessed through a number of different means including nurseries and childminders in the maintained, private, voluntary or independent sectors. In certain cases, a local authority may determine that free travel should be provided because, if it was not provided, the child would be prevented from accessing their statutory entitlement to early years education. Additionally, a child with a statement of special educational needs whose educational needs can only be catered for at a special school or at an early years setting with special facilities, may also be provided with free transport to that school or setting if they would otherwise be denied access to their entitlement to early years education.

- 5.2 A local authority is not under a statutory duty to provide free transport for a child below compulsory school age who is on roll in the Reception year group and is attending full time at a school. The obligation to provide free transport for eligible children only takes effect when the child reaches compulsory school age.

## 6 Transport to a Denominational School

- 6.1 Section 509AD of the 1996 Act places a duty on local authorities in fulfilling their duties in relation to travel, to have regard to the wish of the parent for their child to attend a school on the grounds of the parent's religion or belief. Although Section 509AD states that "*a local authority in England must have regard, amongst other things ..... to the parents' religion or belief based on preference,*" arrangements for transport under this section are discretionary and need not be implemented or can be discontinued.
- 6.2 There is a statutory duty to make travel arrangements for secondary school children from low income families who are attending the nearest suitable school preferred on the grounds of religion or belief, where they live more than 2 miles, but not more than 15 miles from that school (see paragraph 3.7).

## 7 Post 16 Transport

- 7.1 There is no statutory requirement to provide free transport for students who are beyond compulsory school age, including students with special educational needs. As noted in paragraph 3.3, a student reaches the end of compulsory school education in the school year in which they reach sixteen years of age. There is a statutory duty to ensure that students are not denied access to education because of a lack of transport. If a local authority identifies a need to provide transport for post 16 students, it does not have to be provided free of charge. If charges are to be made, they should be reasonable and applied equitably.
- 7.2 Section 509AA of the 1996 Act requires a local authority to prepare and publish for each academic year, a transport policy statement specifying what arrangements are in place for facilitating the attendance of young people of sixth form age receiving education or training:
- (a) at schools;
  - (b) at institutions of further education and higher education maintained and assisted by the local authority;
  - (c) at any institution within the further education sector;
  - (d) at institutions provided for persons aged 19 to 25 with a learning difficulty assessment.
- 7.3 Unlike the travel arrangements for children of compulsory school age, the legislation does not specify what must be provided. The decision to determine what is necessary falls to the local authority. In determining what transport or support should be provided, local authorities should note the following points:
- that the education or training a student is undertaking must be full time;
  - that the arrangements apply equally to students attending maintained schools and those attending other establishments, e.g. colleges; and
  - students of sixth form age have access to transport and financial support for transport from other sources, including the school, college or other establishment they attend.

## 8 Legislation into Policy



8.1 When determining home to school and college transport policies, local authorities have to consider and address a number of issues which are extraneous to the statutory provisions. These include definitions of terms and practices, such as: how home to school and college distances are measured; identifying the home address; how hazardous routes are assessed; journey times; and what sort of transport will be provided. A more detailed list of some of the issues and factors local authorities need to take into account is shown in Appendix 2. For many of these issues there is no single, clear answer. Each authority will need to take into account case law, guidance, best practice and their own legal advice.

## 9 Duty to Consult on Changes and to Publish Policy

### 9.1 Consultation

Local authorities have to consult on significant changes to their policies, particularly if entitlement to transport is being withdrawn. Guidance on best practice indicates that any consultation period should be at least 28 days during term time. A longer period should be considered depending on the extent and nature of the changes being proposed. Guidance also states that “all interested parties” should be consulted and legislation<sup>2</sup> requires that local authorities consult students where changes are proposed to the policy provisions for students of sixth form age.

### 9.2 Publishing Policy

Home to school transport policies for children of compulsory school age must be determined in time to be included in the information made available for parents applying for school places in the normal admissions round<sup>3</sup>. This means that the home to school transport policy for a given school year must be determined and published at least a year before the start of the school year in which the policy takes effect. For example, policies to be implemented in the 2013/2014 school year must be included in the information for the normal admissions round which is published and disseminated in September 2012. Given the lead-in time to the drafting and printing of composite prospectuses, the 2013/2014 transport policy would normally have to be determined in May 2012, with consultation having been conducted in the spring term 2012. Information about the support available for transport for students of sixth form age has to be published by the end of the May preceding the academic year to which the information relates.

### 9.3 Implementing Policy Changes

The 2007 guidance from the Department for Education suggests that policy changes should be phased in, with the changes implemented for pupils as they start at the relevant schools. However, this is not a legal requirement.

## 10 Appeals

<sup>2</sup> Apprenticeships, Skills, Children and Learning Act 2009

<sup>3</sup> The School Information (England) Regulations 2008

10.1 Unlike appeals for admission to school, there is no legislation providing for transport appeals. Statutory guidance states that local authorities should have in place a robust appeals procedure for parents to follow should they have cause for complaint or disagreement concerning eligibility of their child for travel support. Local authorities should be able to show that individual cases can be considered and that decisions on individual cases are rational and reasonable.

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### Non-statutory Factors Which Affect Policy Provision

***Distance Measurement*** – local authorities can define how they measure the distance from the child's home to the school or college they attend, including what routes are acceptable (footpaths, alleyways etc), starting and finishing points (door to door, gate to gate), what measuring systems are used etc. The same method must be used for all cases and the method should be reasonable and justifiable

***Definition of Home Address*** – the arrangements made for a child's care can be complicated and may involve a child being accommodated at more than one address. A policy would need to specify what address is used to determine a child's eligibility for transport.

***Hazardous Route*** – the policy should explain how the suitability of routes are assessed.

***Respite Care*** – local authorities should determine whether transport to and from school for children in respite care will be provided under the home to school transport policy, through other policies or by parents and carers.

***Journey Times*** – the statutory guidance suggests that best practice is for journey times to be limited to 45 minutes each way for primary school children and 75 minutes for those at a secondary school. Shortening the maximum journey times has implications for the costs of providing transport.

***Provision of Passenger Assistants*** – the transport provided by a local authority has to be reasonable and suitable for the children being carried. Local authorities have to make their own assessment of the transport provided and the needs of the children concerned to determine whether or not passenger assistants should be provided.

***Nature of Transport Provided*** – it is for the local authority to determine the most appropriate and cost effective method for transporting children to school. Issues relating to the operation of the transport organised include:

- ***seat belts***, certain forms of transport do not have to have seat belts. Insisting on seat belts being

available on all transport increases the cost of providing or contracting that transport;

- **identification for drivers and passenger assistants**, including the provision of uniforms and identification badges etc can increase costs;
- **provision of child seats in taxis**, the local authority might provide child seats or include the provision in the contract with the operator.

**Session Times** – changes to school session times can significantly increase the costs of providing home to school transport. Current provisions allow local authorities to charge any additional costs resulting from a change in session times at community, foundation, voluntary aided and voluntary controlled schools. The situation with regard to academies is unclear.

***Distances to Pick Up Points*** – local authorities can specify that children are expected to walk a reasonable distance to meet the transport organised for them. The longer the distance, the more flexibility there is in planning and organising transport. However, the distance a child has to walk must be reasonable.

***Attendance at an Establishment other than the Child's Registered School*** – transport normally only has to be provided to a child's registered school. Providing transport to alternative establishments increases costs.

***Federations*** – each of the schools in a federation retains its status as a separate school and a child will normally be a registered pupil at just one of the schools in a federation.

***Split Site Schools*** – the policy should set out how a child's eligibility for transport will be assessed when a child attends a school which is on more than one site.

***Provision of Financial Support and Mileage Rates*** – in certain circumstances, transport costs can be reduced if parents agree to transport eligible children themselves.

***Links to Other Policies and Council Services*** – transport policies have direct and indirect effects on other local authority policies and services, including:

- ***school admissions and school organisation***, home to school and college transport policies can undermine school admission arrangements (including the Fair Access Protocol) and the planned provision of school places
- ***special educational needs***, a child has to be able to attend a school which can cater adequately for their special needs
- ***behaviour management***
- ***Local Transport Plans***, including sustainable travel and transport and the arrangements for public services
- ***school travel plans***
- ***education welfare and attendance***
- ***safeguarding arrangements***
- ***arrangements for Traveller children***
- ***arrangements for other special categories of children***, including schoolgirl mothers, looked after children, asylum seekers etc

