

**SUMMARY OF THE CHANGES TO STATUTORY SCHOOL/COLLEGE TRANSPORT
PROVISION (ENTITLEMENT TO FREE TRANSPORT) MADE IN THE ACT**

Extended rights to free transport for lower income families

1. There will be a new duty to provide extended rights to transport for lower income families (entitled to free school meals and also those who are in receipt of their maximum level of Working Tax Credit (WTC)).
 - (a) For Primary age children, there is an entitlement already to free school transport if the child is aged under 8 and lives two miles or more from their school, this distance increases to three miles once the age of 8 is attained. The Act gives extended rights to free transport for lower income families who will be able to receive free transport to their nearest Primary school if above two miles distance, from September 2007, so this will benefit pupils mainly when they reach 8 years of age (this is the age at which the qualifying distance for free transport increases to three miles if the child's family are not on lower income levels).
 - (b) Secondary age pupils aged 11-16 whose families are on the specified lower income levels will qualify for free transport to any of three nearest schools if they live more than two but less than six miles away. (NB. It is suggested by DfES that authorities should consider providing free transport to the end of the year in which the pupil's family comes off benefits and beyond that in certain circumstances if the nearer schools are full. This issue will be considered by Members in due course).
 - (c) For pupils who qualify for transport assistance on denominational grounds i.e. where the parent has expressed a preference for a school, and that preference is based on a parent's religion or belief, then a child aged 11-16 from a lower income family must also have travel arrangements made for them to the nearest suitable school preferred on grounds of religion or belief where they live more than two but less than 15 miles from the school.

NB: The provision of transport on grounds of denomination is a discretionary provision for Local Authorities. It is a provision which some authorities choose to make (if they have the resources to do so) because there are far fewer denominational schools and thus pupils have to travel further in order to attend a school of their chosen faith.

In Wiltshire, denominational transport was reviewed in the light of the budget situation last summer. Following a report to Cabinet in July, an extensive consultation exercise was carried out and a further report to Cabinet in September defined an alternative proposal which comes into place from September 2007. The new scheme provides a phased introduction of subsidised charging which is tiered according to how far a pupil lives from their denominational school. In addition, free travel for lower income denominational families (in line with the Government's anticipated definition of Free School Meals and maximum WTC-recipients) was included in the new scheme for Wiltshire, and so the additional extension of rights to free transport for lower income families who live from 2-15 miles from the school dovetails with this.

2. The Act clarifies that distance is to be measured in the same way as the statutory walking distance i.e. along the 'nearest available route' which might include footpaths, bridleways and other tracks which are not passable by motorised transport. However, where a distance is beyond the statutory walking distance, it is to be measured along road routes. The definition of how 'beyond statutory distance' routes are to be measured provides useful clarification for all to follow now.

Transport for 'eligible children': temporary medical conditions

3. Children with a mobility problem caused, for example, by a temporary medical condition such as a broken leg may be unable to walk to school. Where such children attend their nearest qualifying school and that school is within statutory walking distance, if they are unable to walk to school they will be 'eligible children'. This means that local authorities must make suitable travel arrangements for them if they could not reasonably be expected to walk to school.
4. This confirms the practice which Wiltshire has adopted for many years in its School Transport Policy for children with temporary medical conditions. Confirmation of the medical condition, its likely duration, and the requirement for (and suitability of) transport is sought from the District Health Authority before transport is provided.
5. This part of the Act actually defines 'eligible children' as being those who 'have Special Educational Needs (SEN), a disability, or a temporary medical condition'. As stated in paragraph 6 of the main report, provision of transport for children with SEN will be the subject of a report by the Director of the Department for Children and Education. However, provision of transport for children with temporary medical conditions and longer-term disabilities is already considered under the School Transport Policy so this will not require additional financial provision.

The Local Authority's duty to provide free transport to preferred schools

6. The Courts have held that local authorities do not have a duty to provide free transport for pupils whose parents have chosen to send them to a school other than the nearest suitable one, even if it is beyond statutory walking distance. Local authorities may help in such cases if they wish, but it is for each authority to decide whether or not to do so.
7. This confirms the approach which Wiltshire has taken for some time. Whilst parental choice is cited by many parents, the Authority's responsibilities towards providing free transport for that choice are limited. In law, the County Council is obliged to provide free transport to a preferred school (rather than the designated one) only where that preferred school is NEARER than the designated one, and the pupil must also qualify for free transport under the usual criteria i.e. distance or route safety. Thus, whilst a school may change its admissions catchment area to attract pupils from further areas, the authority is not obliged to provide free transport for the school's choice of action unless the above factors are also met.

Free Transport on Route Safety grounds

8. Children who cannot reasonably be expected to walk to school because of the nature of the routes to school which the children could reasonably be expected to take are 'eligible children'. Where children live within 'statutory walking distance' of their nearest qualifying school, local authorities may, in certain circumstances, be under a duty to make travel arrangements. These include where the nature of the route is such that a child cannot reasonably be expected to walk (accompanied as necessary) in reasonable safety.

9. The Act also defines at this point certain risk factors which local authorities must take account of in judging whether there is a duty to provide free transport. This is helpful because, nationally, the factors which local authorities have taken into account vary considerably. However, in Wiltshire, the prescriptive definitions of the Local Authorities' Road Safety Officers' Association were adopted many years ago and this provides an appropriate and defined way in which routes in a county such as Wiltshire can practicably be assessed.
10. In addition, the Act draws attention to the requirement since December 2006 for the public sector's duty under the Disability Discrimination Act 2005 to promote equality of opportunity for disabled people and to eliminate discrimination. This duty is anticipatory, meaning that local authorities must review their practices accordingly to ensure that they are planned with disabled people's needs in mind. It is the view of the DfES that local authorities are under a duty to amend their home to school transport policy if that policy relied on disabled parents accompanying their children along a walking route. However, there has always been a duty to consider the individual circumstances of any case and, in instances where the child's parents have cited a disability which prevents them from accompanying their child to school, this authority has investigated this with the relevant professionals and provided free transport where it has been necessary to do so. The next edition of the School Transport Policy will include specific reference to this point.

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