

CHILDREN'S SERVICES SCRUTINY COMMITTEE
8th MARCH 2007

THE EDUCATION AND INSPECTIONS ACT 2006:
IMPACT ON PASSENGER TRANSPORT

Purpose of Report

1. To update Members on new measures to be introduced in the Education and Inspections Act 2006 and to set out how these will impact on school/college transport provided by the Council.

Background

2. The Education and Inspections Act 2006 (the Act) received Royal Assent on 8th November, 2006. The Act had been subject to many revisions since it was first introduced as the Education and Inspections Bill prior to the last election. Authorities are now working through the implications of the Act on the services provided. At the end of last year draft guidance on this was provided by the Department for Education and Skills (DfES) in a consultation document which is available in the **Members' Room**. Final guidance to authorities will be available later this year.
3. According to the Guidance document, the transport issues which the Government sought to address in the Act are:
 - (i) **Inequalities in access**
 - 'Nationally, 41% of parents in social housing say travel convenience is a major factor influencing a choice of school (whilst for owner occupiers, only 33% cite this)
 - Only 10% of pupils entitled to free school meals (FSM) travel more than three miles to school (this figure rises to 18% for pupils not entitled to FSM) and
 - The duration of the journey affects school enjoyment.'
 - (ii) **Inefficient use of resources**
 - 'Rising car use, with health and environmental impacts and
 - Publicly-funded school transport costs in excess of £750 million, although only 8% of pupils receive free school transport' (NB the figure in Wiltshire is twice this (16.3%) because it is a rural county).

(iii) **Transport inequalities**

- 'Nearly two-thirds of pupils travelling by bus pay for themselves (nationally)
- Low income groups are the ones who are more likely to have to pay and
- The availability of transport is variable nationally.'

4. The reforms are therefore intended to:

- 'Encourage local authorities to adopt a more strategic approach to travel and transport arrangements on the journey to school
- Widen access to transport for pupils from disadvantaged families, and
- Through the establishment of 'pathfinder' schemes, enable local authorities to develop and run innovative school travel schemes that are tailored to the needs of their area.'

5. Following from this, there are three main strands to the Act:

- 'To introduce a new overarching duty on authorities to assess travel needs and promote sustainable travel
- To extend rights to free transport for low income groups (i.e. those entitled to free school meals and for those whose parents are entitled to their maximum level of working tax credit) in all local authorities, and
- To allow for Pathfinder authorities to test alternative solutions.'

However, in addition the Act and its accompanying guidance seek to re-write and clarify existing legislation and case law, and they also include much that is not new. This report identifies only those elements that are new and which will require a change in the Council's current policies and practices.

6. Transport for Children with Special Educational Needs is also not explored in this report and will be considered separately by the Director of the Department for Children and Education who manages the budget for that function.

Main Considerations for the Council

7. The elements of the Act which affect Passenger Transport are detailed in the following appendices:

Appendix 1 Changes to statutory school/college transport provision (entitlement to free transport)

Appendix 2 Changes relating to the provision of statutory travel arrangements (including definition of 'suitable arrangements')

Appendix 3 New general duty to promote sustainable school travel

Appendix 4 Pathfinder provisions (although it is not proposed that Wiltshire should apply to be a Pathfinder for the reasons given in paragraph 23, the main features of the Pathfinder provisions are identified for information)

The main considerations in respect of the Council's passenger transport policies and practices are identified in the paragraphs below.

8. There will be a significant (but hard to estimate) financial implication from the extensions of rights to free transport that are described in **Appendix 1**. This is discussed further in paragraphs 19-21 below.
9. It will be necessary to update the Council's education transport policies to include the new extended requirements to provide free transport. As a part of this it will also be necessary to decide whether, as suggested as good practice in the draft guidance, the Council will continue to provide free or assisted transport to a child from a low income family if the family ceases to be eligible at some point after the decision to attend a particular school has been made (see **Appendix 1** paragraph 1(b)).
10. A decision will need to be taken whether to continue to publish the Council's Education Transport Policy as a separate document, or (as recommended in the guidance) to integrate it into the new Sustainable School Travel Strategy when this is published. It will also be important to consider how best to draw to the attention of parents relevant information on transport, including what information should be included into the Schools' Admissions Prospectus.
11. The Council's passenger transport policies relating to non-eligible children and young people will need to be reviewed as part of the development of the new Sustainable School Travel Strategy. The guidance makes it clear that there is no requirement on the Council to provide transport except for those who are eligible. However, there will be tension between the expectations of parents (fuelled by the existence of the Act and the extended rights to free transport that will apply to low income families) and the reality that to further extend availability of transport for other groups would be a very costly move for which no additional Government funding is available.
12. If it is agreed to adopt a policy not to extend transport provision beyond the new statutory requirements, this would have to be clearly stated and parents made to understand at the time of choosing a school the transport implications of their choice. Schools would also need to be made aware of the implications for their admissions policies and for the advice they should give to prospective parents.
13. Careful consideration would also be needed of how certain aspects of the existing transport policy, which seeks to help parents of non-eligible children with transport where this can be undertaken at no additional cost to the Council, would operate in the new situation once the 'extended rights' provisions have come into effect. In particular, it will be necessary to review current policies that allow spare capacity on transport to be made available to non-entitled children, or even created if there is no additional cost to the

Council Tax payer. Experience of the current policy shows that, although it benefits at least some non-eligible children and represents an effective way of maximising the benefits from the use of resources, if circumstances change and the extra transport can no longer be provided at no additional cost, it can be very difficult and a source of considerable friction with parents and schools to withdraw the arrangements so as to stay within the policy of not incurring extra cost to the Council. Serious consideration would need to be given to whether to continue this policy in a situation where the likelihood of such difficulties occurring was increased.

Environmental Impact of the Proposal

14. By encouraging and promoting the availability of choice, the provisions of the Act will have a negative environmental impact by encouraging longer journeys to school and more dispersed journey patterns, that are less suitable for sustainable means of travel such as walking and cycling and more costly to serve by Passenger Transport. The Government's view is that these impacts are outweighed by the social benefits it believes will result from the new measures.
15. The Act also seeks to reduce the environmental impacts by requiring more effort to be devoted to planning and promoting sustainable travel alternatives. However, the extent to which the Council will be able to deliver any real benefits on the ground will be limited by the lack of any additional resources to provide new infrastructure or services, other than the statutory extension of free school transport.

Risk Assessment

16. There is significant risk that, as mentioned in Paragraph 11, the Act will raise parents' expectations that the Council will, and should, be able to assist their choice of school by making transport available. This risk will need to be managed by ensuring that the Council's transport policies are clearly stated and explained at every possible opportunity, and that all parents are made fully aware of their responsibilities in respect of transport and the extent to which the Council may or may not be able to assist, before they choose which school their child will attend. However, experience to date has shown that it is very difficult to get this message across and many will still expect transport to be available.
17. There is also a risk that some schools may challenge the policy if they believe it is denying them the opportunity to promote their school as a preferred choice to children living outside their designated area for transport. However, the Act makes it clear that the duty to provide transport only extends to eligible children.
18. There have been several occasions in recent years where transport previously provided for non-entitled children at no extra cost to the Council, has had to be withdrawn following a change in circumstances (see Paragraph 13). This has caused considerable friction with parents. There is a high risk that the frequency of such instances will increase if the spare capacity that will

at first be available on any new buses required for 'extended rights' children is made available to non-eligible children, as some or all of these may subsequently have their seat withdrawn as the numbers of eligible children increase year by year. This risk will need to be managed by reviewing the existing policy and developing and communicating a clear protocol for use and withdrawal of seats. However, it is likely that there will still be disputes as experience has shown that the withdrawal of transport, even if clearly given on a 'privileged' basis, is still very contentious.

Financial Implications

19. There will be a significant extra cost to the Council from implementing the extended rights to free transport described in **Appendix 1**. However, it is very difficult to estimate in advance what this cost is likely to be and, as the number of children taking advantage of the opportunity to attend a more distant school will increase year by year, how quickly the additional costs will increase over time. The extra costs from primary school extended rights would begin to be felt in 2007-08, whilst the more significant costs from secondary school provision would begin in 2008-09.
20. **Appendix 5** seeks to estimate the number of children who may be eligible for transport under the extended rights provision. There are probably around 7,000 pupils who might qualify under the low income criteria. However, it is not known what proportion of these live within the eligible distance band, or how many will choose to attend a different school (this proportion might increase over time as more parents begin to see choice as an option). The actual cost of transport will then depend on how many of the extra children could be accommodated on existing transport, and how many extra vehicles – and of what type – will be needed. More work will be undertaken to develop estimates for the Medium Term Financial Plan, but these will inevitably be subject to a range of risks. At the current time officers believe the increased costs will be between £110,000 and £310,000 in 2008-09, rising to between £240,000 and £720,000 in 2009-10 and eventually to between £540,000 and £1.8 million by 2013-14.
21. The Government has said that it will make £40 million per annum available nationally to fund the new provision, although it has not yet said how this will be distributed. In Wiltshire's case, as the Council is a 'floor' authority the extra allocation through the grant calculation may well not lead to any increase in the amount of money the Council actually receives.

Options Considered

22. There is no alternative to implementing the majority of the changes identified in this report as they are now statutory duties under the terms of the Act.
23. The option of applying for Pathfinder status has been considered but is not intended to be pursued for the following reasons:

- In a rural county the cost of providing additional transport to support parental preference would be very high and it is very unlikely that the income generated from charging would be sufficient to pay for this – particularly given the low level of charge that is permitted and the many exceptions that would have to be made. To hire additional school transport vehicles would be likely to cost around £180–£200 per bus per day, which, even if every seat is taken, works out at between £3.60 and £4.00 per child, compared to the maximum charge of £1.00.
 - To impose any charge would be likely to result in more parents deciding to drive their children to school and this would offset the benefits of extending transport to others (either attending parental choice schools or living within the statutory walking distance) who might choose to stop using the car and travel by bus instead. It would be difficult to demonstrate convincingly that there would be a net reduction in car use, as is required by the Pathfinder guidance.
 - To impose a charge for transport where a significant proportion of children are currently entitled to free transport to the designated school would be very unpopular, particularly in a rural County. It could also create hardship unless special arrangements are made for reduced charges to those just above the threshold and in large families – this is encouraged by the Pathfinder guidance but would further reduce the potential income and hence the financial viability of a scheme.
24. The option of extending transport provision beyond the new statutory requirements but without taking up the Pathfinder opportunity to impose charges on existing pupils would (except for offering spare seats on existing services, subject to availability) be very costly and, for that reason, is not recommended.

Proposal

25. That the implications of the Act which will be taken into account by officers in drawing up policy revisions and implementation plans during 2007-08 be noted.

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The following unpublished documents have been relied on in the preparation of this Report:

None