

Appendix 4: Legislation for Home to School Transport

The Education Act 1996 sets out various statutory duties and powers in relation to travel arrangements for attendance at school and other educational institutions.

- Duty to promote sustainable modes of travel to meet school travel needs (sustainable modes of travel strategy), requires prior assessment of school travel needs and facilities and services for sustainable modes – s.508A;
- Duty to make such travel arrangements as the local authority considers necessary to secure suitable home to school travel arrangements for eligible children – these must be provided free of charge. Eligibility includes distance to school, disability and safe walking routes - S.508B;
- Power to make school travel arrangements as the local authority necessary for other children – LA may pay in whole or in part for such arrangements – s.508C;
- Duty to have regard to statutory guidance on s.508B and s.508C– s.508D;
- Power to provide a child with travel assistance or reasonable travel expenses for purpose of child attending early years education otherwise than at school – s.509A;
- Duty to prepare transport policy statement for persons of sixth form age, setting out transport provision and financial assistance in respect of reasonable travelling expenses, to facilitate attendance of persons of sixth form age at educational institutions – s.509AA (must include to what extent arrangements are for facilitating attendance by disabled persons and persons with learning disabilities – s.509AB);
- Duty to have regard to statutory guidance on S.509AA – s.509AB(5);
- Duty to consult on transport policy statement made under s.509AA – s.509(6) and (7);
- Duty to have regard, in exercising their travel functions, to wish of parents to be provided with faith based education – s.509AD;

Our duty to make travel arrangements for eligible children – s.508B

Section 508B of the Act deals with the duty on local authorities to make such travel arrangements as they consider necessary to facilitate attendance at school for eligible children. Schedule 35B of the Act defines eligible children – those categories of children of compulsory school age (5-16) in an authority's area for whom free travel arrangements will be required. These are set out below. Reference is made to qualifying school, which means a maintained school, including a special school, an academy, city colleges, a special school approved under section 342 of the Education Act 1996, a pupil referral unit or alternative provision academy, an independent school where this is the only school named in the EHC plan maintained for a child with SEN or whether it is the closest school to the child's home if more than one school is named.

Statutory walking distances eligibility

Provide free transport for all pupils of compulsory school age (5-16) if:

- (1) they are a registered pupil at a qualifying school which is:
 - Beyond 2 miles (if below the age of 8); or
 - Beyond 3 miles (if aged between 8 and 16); and
- (2) no suitable arrangements have been made by the Council for boarding accommodation for the child; and
- (3) no suitable arrangements have been made by the Council for enabling him to become a registered pupil at a qualifying school nearer to his home.

Children will also be eligible under this criteria if they are receiving education at a place other than a school pursuant to arrangements under s.19(1) of the Education Act 1996 and a child who is temporarily receiving education at a place other than the school where they are a registered pupil during a period of exclusion.

Special educational needs, a disability or mobility problems eligibility

Make transport arrangements for children who (1) have special educational needs or a disability or mobility problems, (2) are a registered pupil at a qualifying school which is within walking distance, (3) no suitable arrangements have been made by the Council to enable the child to become a registered pupil at a qualifying school nearer to his/her home and (4) having regard to their SEN, disability or mobility problems, the child cannot reasonably be expected to walk to school. Children will also be eligible under this criteria if they are receiving education at a place other than a school pursuant to arrangements under s.19(1) of the Education Act 1996.

Unsafe route eligibility

Make transport arrangements for

- (1) registered pupils at a school which is within the statutory walking distance,
- (2) when no suitable arrangements have been made by the Council for enabling the child to become a registered pupil at a qualifying school nearer to his/her home, and
- (3) by having regard to the nature of the routes which the child could reasonably be expected to take, he/she cannot reasonably be expected to walk to the school.

Children will also be eligible under this criteria if they are receiving education at a place other than a school pursuant to arrangements under s.19(1) of the Education Act 1996.

Extended rights eligibility

Provide free transport where pupils are entitled to free school meals under s.512ZB(4) of the Education Act 1996 or the parent with whom the child is ordinarily resident is in receipt of maximum Working Tax Credit if:

- they are aged 8 to 10 years and they are a registered pupil at a qualifying school which is beyond 2 miles from their home and no suitable arrangements have been made by the Council for enabling them to become a registered pupil at a qualifying school nearer to their home;
- they are aged 11 or over and they are a registered pupil at a qualifying school which is between 2 and 6 miles and there are not three or more suitable qualifying schools nearer to their home; they are aged 11 or over and they are a registered pupil at a qualifying school which is between 2 and 15 miles and their parent has expressed a wish, based on the parents' religion or belief, for their child to be provided with education at that school and having regard to that wish, there is no suitable qualifying school which is nearer to the child's home;

Children will also be eligible under this criteria if they are receiving education at a place other than a school pursuant to arrangements under s.19(1) of the Education Act 1996.

Guidance on provision of transport arrangements under s.508C

Section 508C of the Act provides Local Authorities with a power to provide transport for children who are not eligible for free transport. The section confirms that the local authority should consider what school transport arrangements are necessary and that such arrangements could include provision of transport and with the consent of a parent, arrangements for a child to be accompanied, arrangements for the payment of the whole or part of a person's reasonable travelling expenses and arrangements for the payment of allowances in respect of particular modes of travel.

The statutory guidance – Home to School Travel and Transport Guidance, July 2014 – confirms that charges can be made, but consideration should be given to whether these should apply to children from low income groups. The guidance emphasises that it is a matter for an individual local authority to determine whether and how to apply their discretion in relation to this power, as it is best placed to determine local need and circumstances and that local authorities will need to balance demand for a broad range of discretionary travel against budget priorities.

Post 16 transport

Section 509AA of the Education Act 1996 requires local authorities to prepare an annual transport policy statement specifying the arrangements for the provision of transport or otherwise that the local authority considers it necessary to make for facilitating the attendance of sixth form age students at schools, including academies, and colleges providing further education and any establishment which the local authority secures the provision of education or training. This statement should specify the arrangements that the local authority considers it necessary to make for the provision of financial assistance in respect of reasonable travelling expenses for these students and should specify the transport arrangements and financial assistance proposed by local schools and further education colleges.

Section 509AB of the Education Act 1996 requires local authorities to include in their statements arrangements for facilitating the attendance of students with disabilities or learning difficulties. The local authority should ensure that any transport arrangements for those attending full time education or training at establishments other than maintained schools are no less favourable, including for students with learning difficulties or disabilities. It should set out the extent to which the arrangements it has put in place pursuant to the transport statement prepared under section 509AA facilitates the attendance of young people with special educational needs and disabilities. In considering what arrangements are necessary to make, the local authority shall have regard to the following:

- The needs of those for whom it would not be reasonably practicable to attend a particular establishment to receive education or training if no arrangements were made;
- The need to secure that persons in their area have reasonable opportunities to choose between different establishments at which education or training is provided;
- Their duties under s.15ZA(1) of the Education Act 1996 in relation to persons of sixth form age (duty to secure that enough suitable education and training) is provided to meet the reasonable needs of persons of sixth form age and persons aged 19 and over with an EHC plan;
- The distances and journey times between the homes of persons of sixth form age and establishments at which education or training suitable to their needs is provided;
- The cost of transport to the establishments and any alternative means of facilitating the attendance of persons receiving education or training there.

The statutory guidance – Post 16 transport and travel support to education and training, January 2019 – confirms that whilst local authorities do not have to provide free or subsidised transport, they must take account of all relevant matters, such as the needs of their population, local transport infrastructure and resources when assessing what is required in terms of transport provision and financial assistance.

The statutory guidance provides further information on what the local authority should have regard to when assessing transport arrangements.

In addition to the statutory duties under the Education Act 1996, there are a number of overarching duties that are relevant to the Post-16 Transport Policy Statement. These include duties under:

- The Education and Skills Act 2008 to encourage, enable and assist participation of young people with SEND up to the age of 25.
- The Children and Families Act 2014 in relation to the local offer.
- The Equality Act 2010 in relation to having due regard to the need to eliminate discrimination, harassment, victimisation and other prohibited conduct, advance equality of opportunity and foster good relations between persons who share a protected characteristic and those who do not.

These statutory duties and the associated statutory guidance have been taken into account in the Council's development of the policy statement.