EXPLANATORY MEMORANDUM TO

THE EDUCATION (SCHOOL INFORMATION) (ENGLAND) (AMENDMENT) REGULATIONS 2007

2007 No. 1365

THE SCHOOL TRAVEL (PILOTING OF SCHEMES) (ENGLAND) REGULATIONS 2007

2007 No. 1366

THE SCHOOL TRAVEL (PUPILS WITH DUAL REGISTRATION) (ENGLAND) REGULATIONS 2007

2007 No. 1367

1. This explanatory memorandum has been prepared by the Department for Education and Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 These three instruments are linked. They relate to the school travel provisions in the Education and Inspections Act 2006 (EIA 2006).

2.2 The Education (School Information) (England) (Amendment) Regulations 2007 amend The Education (School Information) (England) Regulations 2002 (S.I. 2002/2897). They require local authorities (LAs) to publish certain information about:

- their sustainable modes of travel strategies,
- their school travel arrangements, and
- their school travel schemes.

2.3 The School Travel (Piloting Of Schemes) (England) Regulations 2007 regulate the piloting of school travel schemes. In particular: they require an application to the Secretary of State for his approval of a pilot scheme to contain certain information, they limit the number of pilot schemes which can be in force during the pilot period, and they provide an end date for the pilot period.

2.4 The School Travel (Pupils with Dual Registration) (England) Regulations 2007 modify the duty on LAs to ensure suitable home to school

travel arrangements are made in relation to children who are registered pupils at more than one school (other than a pupil referral unit), and in relation to children who are registered at more than one school and are of no fixed abode.

3. Matters of special interest to the Joint Committee on Statutory Instruments.

3.1 None.

4. Legislative Background

4.1 Substantial changes are made to legislation relating to school transport by EIA 2006 which, inter alia, inserts sections 508A – 508E, and Schedules 35B and 35C, into the Education Act 1996 (EA 1996).

4.2 Section 508A places a duty on all LAs to promote sustainable modes of travel, and a duty to prepare and publish a "sustainable modes of travel strategy".

4.3 Sections 508B and 508C place duties on LAs to ensure that such home to school "travel arrangements" as the authority consider necessary to facilitate their attendance at school, are made for children in their area. In relation to certain classes of children ("eligible children") such arrangements must be provided free of charge.

4.4 Section 508E and Schedule 35C will enable a number of LAs to run "school travel schemes". In relation to "eligible children", school travel schemes must include such home to school "travel arrangements" as the authority consider necessary to facilitate the child's attendance at school. Section 79 of EIA 2006 makes provision for school travel schemes to be piloted in accordance with Regulations.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The main purpose of school transport is, and will continue to be, to enable pupils to attend school. School transport provisions currently set out in section 509 of EA 1996 have however remained largely unchanged since the Education Act 1944. The school travel provisions in EIA 2006 extend the role of local authorities in supporting access to schools through improved travel

and transport arrangements, particularly for children from the most disadvantaged families. Specifically they will widen access to transport for pupils from low-income families; encourage local authorities to adopt a more strategic approach to travel and transport arrangements on the journey to school, and publish this information; and enable local authorities to develop and run innovative school travel schemes tailored to the needs of their area.

7.2 The Audit Commission report '*Going Places – Taking people to and from education, social services and healthcare'* published in 2001 suggested that higher income households are more likely to be able to bear the costs of sending children to schools, other than the 'nearest suitable' school. Options such as moving house or driving their children to a preferred school may not be available for lower income groups, or might cause financial difficulty if they are, raising issues of equity and fairness. Evidence suggests that choice of school, particularly for low income groups, is often restricted by parental concerns about the cost and availability of transport. DfES commissioned research '*The Cost of Schooling'* published in November 2004 suggested that nearly two thirds of pupils arriving at school by bus or taxi, had their fares paid for by their families, not the local authority, and that less well-off families were more likely to pay than their wealthier counterparts. The Department for Transport's National Travel Survey states that the proportion of pupils travelling to school by car has doubled over the past twenty years. This increase in car journeys has an environmental cost in terms of pollution and increased congestion – especially around schools.

7.3 The Department consulted local authorities and other key stakeholders on the duties and powers relating to school travel for children of compulsory school age and below in December 2006. In parallel to this, the Department also consulted on the piloting of school travel schemes. The Department received over 90 responses to the consultation from a range of stakeholders. There were no major issues arising from the consultation. The main issue was that a number of respondents sought clarification of the terminology used i.e. 'discretionary', 'where necessary' and 'reasonable'. We decided not to provide further guidance on these terms as it would have detracted from the intention to allow authorities to use their initiative to manage and develop sustainable travel programmes. It would also have been difficult to develop a 'one size fits all' definition of each term without being able to take account of the diverse needs of the authorities.

7.4 The Department believes the changes set out in these regulations are politically and legally important as they will support the extension of free transport to the most disadvantaged pupils, thus removing transport as a barrier to school choice and access.

8. Impact

8.1 A Regulatory Impact Assessment has been prepared for this instrument and is attached to this Explanatory Memorandum.

9. Contact

John Britton at the Department for Education and Skills Tel: 01325 391170 or email: John.Britton@dfes.gsi.gov.uk can answer any queries regarding the instruments.

SCHOOL TRANSPORT AND TRAVEL ARRANGEMENTS

PURPOSE AND INTENDED EFFECT

Objective

1. To extend the role of local authorities in supporting access to schools through improved travel and transport arrangements, particularly for children from the most disadvantaged families.

2. These reforms are 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 entitled to free school meals and for those whose parents are entitled to their maximum level of Working Tax Credit; and,

- enable local authorities to develop and run innovative school travel schemes that are tailored to the needs of their area.

3. In particular, the provisions will:

- require local authorities to assess the travel and transport needs of all pupils, and promote safe and sustainable methods of travel to school;

- extend a right to free transport to the most disadvantaged pupils of secondary school age (those entitled to free school meals and those whose parents are in receipt of their maximum level of Working Tax Credit) to include transport to any one of their three nearest schools between 2 and 6 miles from their home, and to the nearest suitable school preferred on grounds of religion or belief up to a distance of 15 miles from their home;

- extend a right to free transport to the most disadvantaged primary school pupils aged 8 and over (those entitled to free school meals and those whose parents are in receipt of their maximum level of Working Tax Credit) to include transport to their nearest suitable school more than 2 miles from their home (the current cut off is 3 miles); and,

- allow a series of Pathfinders that extend the minimum offer of transport to one of three schools between two and six miles from their home to all secondary aged pupils. Unlike other authorities, Pathfinder authorities will be able to make reasonable charges for transport arrangements they make. Pathfinders will signal the Government's intent to support parental preference more widely and will test reactions to co-funding.

4. Local authorities should publish their home to school transport policies along

with their admissions booklets – usually around 16 months before pupils will be taking up their place in school. The Government therefore anticipates that the new arrangements for home to school transport will not come into effect before September 2008.

Background

Legislative

5. The main purpose of school transport is, and will continue to be, to enable pupils to attend school.

6. School transport is currently provided by local authorities under Sections 509 and 444 of the Education Act 1996. These provisions have remained largely unchanged since the Education Act 1944.

Section 509

7. Section 509(1) of the 1996 Act obliges local authorities to make transport arrangements if they consider it necessary to facilitate a pupil's attendance at school. It applies to all pupils, including those below compulsory school age, or, who have special educational needs. Section 509(2) states that if a local authority considers transport to be necessary, then it must be provided free of charge.

8. In cases where pupils do not qualify for free transport, Section 509(3) provides a discretionary power for local authorities to provide assistance by paying all or part of the pupil's reasonable travelling expenses. They may take account of parental means in deciding whether or not to do so. It is for each authority to decide whether and how to exercise these powers.

9. Section 509(4) gives examples of factors which local authorities should take into account in deciding whether transport is necessary. These include the age of the child, the nature of the route, and any wish of a child's parent for provision of education at a school or institution in which the religious education provided is that of the religion or denomination to which the parents adhere.

Section 444

10. Section 444(4) of the 1996 Act describes the circumstances in which a parent of a pupil of compulsory school age will have a defence to the charge of failing to secure that child's regular attendance at school. Under that provision, a parent has a defence if they can prove that their child lives outside the statutory walking distance from school, and that no suitable arrangements have been made for one of the following:

- the child's transport to and from school;
- boarding accommodation; or,
- enabling the child to be registered at a nearer school.

11. Section 444(5) defines walking distance as 2 miles for pupils under 8, and 3 miles for older pupils, in both cases measured by the nearest available route. The Courts have held that a route is available if a child, accompanied as necessary, can walk along it with reasonable safety to school. It does not fail to qualify as 'available' because of dangers which would arise if the child is unaccompanied, but local authorities may take account of parents' capacity to accompany their child. Local authorities can also adopt lower walking distances than the statutory ones, if they so wish.

12. The Courts have held that the provisions of section 444 of the 1996 Act are relevant in determining whether in a particular case free school transport should be provided under Section 509(1).

13. 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.

14. In addition, the Transport Act 1985 permits local authorities outside London, to allow pupils not eligible for free school transport to occupy spare seats on school buses, either free or at a subsidised rate.

15. In London, Transport for London provides free bus passes for children under 16, and intend to extend this to under-18s in full time education from September 2006.

Special Educational Needs (SEN)

16. The SEN Code of Practice[1] explains the issues to be considered by local authorities when providing transport for pupils with statements. It recommends that local authorities have clear general policies relating to transport for children with SEN that should be made available to parents. Transport need only be recorded in Part 6 of a statement in exceptional circumstances where a child has particular transport needs. Where transport is recorded in Part 6 of a statement, it must be provided free of charge.

Post-16 arrangements

17. Section 509AA of the Education Act 1996 (inserted by Education Act 2002) places a duty on local authorities and their partners to plan and publish annual transport policy statements locally for pupils over the age of 16. They are required to follow clear criteria about the transport support they will offer to further education (FE) students aged 16-19, to ensure that no student is prevented from accessing or participating in FE due to lack of transport services or support.

<u>Practice</u>

18. Statutory school transport is provided to ensure that children can attend

[1] Special Educational Needs Code of Practice, Paragraphs 8:87 to 8:90, DfES (2001)

school. It is not, and never was, intended to be an all-inclusive transport service. Local authorities have broad powers to provide transport in a range of circumstances, but it is for each individual authority to meet its statutory obligations and then determine how it should exercise discretion locally.

19. Other than where it is the 'nearest suitable school', there is no statutory duty requiring local authorities to provide transport to denominational schools. However, many denominational schools were sited by agreement between dioceses and local authorities, on the basis that pupils would continue to receive free transport. Current DfES guidance to local authorities on the provision of denominational transport states that the Secretary of State for Education and Skills hopes that local authorities will not disturb well-established arrangements for denominational transport, particularly where they are associated with local agreements or understandings about the siting of denominational schools. The guidance emphasises that DfES continues to attach importance to the opportunity that many parents exercise to choose a school or college in accordance with their religious convictions.

20. A joint DfES/Confed/NAO survey of home to school transport[2] showed that in England 120 local authorities (approximately 80%) provide free transport to denominational schools, although many ask for proof that pupils' parents adhere to the relevant faith and/or limit the provision by setting limits to the distance travelled (for example, transport provided for a distance of up to 5 miles) or travel time (transport provided up to a radius of 75 minutes from the school). In recent years, there have been a number of cases where local authorities have withdrawn, or reduced the level of support for transport to denominational schools, or introduced charges for what had previously been provided free of charge.

21. Local authorities may also provide transport for pupils who live closer to school than the statutory walking distances – the above survey showed that 22 local authorities in England (approximately 15%) had policies providing for lower walking distances for primary aged pupils, and one that provided for shorter walking distances to secondary schools.

22. There are several other areas where local authorities may use their discretionary powers and provide transport over and above the minimum statutory requirements, including transport to single sex schools, and to young people above compulsory school age who remain in full time education.

23. Other than transport to denominational schools, we are not aware of any areas outside London where free home to school transport is made available to pupils attending a school of parental preference.

Rationale for government intervention

24. Under current arrangements, children are only entitled to free school transport to their nearest suitable school where this is more than three miles from their home (two miles for under 8s).

[2] The results of the 2004 **DfES/Confed/Audit Commission survey are** available at: www.dfes.gov.uk/leagateway/nao

25. As the Audit Commission[3] amongst others suggests, higher income households are more likely to be able to bear the costs of sending children to schools other than the 'nearest suitable' school. Wealthier families might move home to secure a place for their children in a preferred school, alternatively they might drive their children to school – adding to pressures on the environment. These options may not be available for lower income groups, or might cause severe financial difficulty if they are, raising issues of equity and fairness.

26. Evidence suggests that choice of school, particularly for low income groups, is often restricted by parental concerns about the cost and availability of transport. For example, 41% of parents living in social housing cite travel convenience as the most important reason for choosing a school, compared with only 33% of owner occupiers[4], and there is a real inequity in how far children are able to travel to school. Only around 10% of children entitled to free school meals travel 3 or more miles to school compared to 18% of children not entitled to free school meals**.**

27. Current school transport legislation was framed at a time when few people owned cars and long journeys on foot or by bicycle were commonplace. Very few pupils are now prepared to walk three miles to and from school, which means that pupils living beyond what they consider a reasonable distance to walk, but within the statutory walking distance from the school they attend, either pay bus fares themselves, or are driven to school by car. In terms of bus use, DfES commissioned research[5] suggests that nearly two thirds of pupils arriving at school by bus or taxi have their fares paid by their family, not their local authority, and that less well-off families are more likely to pay than their wealthier counterparts. Average fares are £7.29 per week per child – which is likely to be particularly burdensome for low income groups. As far as car use is concerned, the Department for Transport's National Travel Survey (NTS)[6] shows that the proportion of pupils travelling to school by car has doubled over the past 20 years. It also shows that the majority of car journeys are less than three miles at secondary level, with the highest proportion of journeys by car being between two and three miles. This increase in car journeys has an environmental cost in terms of pollution and increased congestion – especially around schools.

28. Although local authorities have wide discretionary powers under current legislation, a combination of factors constrain their capacity to address the problems associated with home to school transport in a systematic manner. These factors include both the inability to target existing resources, and an overall lack of funding. The Local Government Association (LGA)[7] have argued that the sharp divide between free provision of transport for children living beyond statutory walking distance (and attending their nearest suitable school), and full cost provision for other pupils, of itself inhibits efficiency, and the capacity for local authorities to target

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[3] *Going Places – Taking people to and from education, social services and healthcare*, Audit Commission, 2001.
[4] *Parents' experiences of the process of choosing a secondary school*, RR278, Department for Education and Skills, June 2001
[5] *The Cost of Schooling*, RR588, Department for Education and Skills, November 2004
[6] The National Travel Survey can be downloaded from the Department for Transport's website at www.dft.gov.uk
[7] *Children on the move – accessing excellence*, Local Government Association, September 2003

resources to where they are most needed. For example, pupils living three miles from their nearest school might live in an area well served by affordable, good quality, and reliable public transport; whilst pupils in another area, and living 2.9 miles from their nearest school may have poor or even no public transport options available - in effect forcing them into private cars. However, the impact of current legislation is that the former group have to be provided with free home to school transport, whilst the latter are unlikely to get any assistance from the local authority. There is anecdotal evidence of a number of innovative local authority projects targeting pupils not entitled to free school transport that have been abandoned because the authorities have been unable to either raise additional funding to support them, or divert existing spend from arguably less important, but statutory obligations.

29. Failure to address these issues would have restrict the capacity of parents to express a preference for a school that best suits the talents, needs and aspirations of their children – particularly those from low income families. Failure to reduce the distance that pupils are expected to walk, and failure to explore innovative solutions to transport issues would result in more children being driven to school, with corresponding heath and environmental impacts, and/or potential financial difficulties for low income groups[8].

CONSULTATION

Within government

30. In September 2003, the Department for Education and Skills and the Department for Transport jointly published *Travelling to School: an action plan.* This included a proposal to change existing legislation to allow local authorities to develop innovative schemes.

31. This proposal was developed jointly with DfT. DEFRA supported it and expressed a desire for at least one 'pilot' in a rural setting.

32. A draft School Transport Bill and prospectus[9], which provided for a duty for local authorities to consider the travel and transport needs of all pupils, and for a series of pilots to trial innovative approaches to home to school transport was subject to pre-legislative scrutiny by the Education and Skills Select Committee, which reported in July 2004[10]. The report made a number of recommendations many of which are being taken forward by the transport provisions of the Education and Inspections Act 2006.

33. The school transport proposals in this Act build on those included in the School Transport Bill, and have been developed in close cooperation with the Cabinet Office.

Public Consultation

[8] See *Making the Connections: Final Report on Transport and Social Exclusion*, Office of the Deputy Prime Minister, February 2003
[9] *Draft School Transport Bill and Prospectus*, Department for Education and Skills, March 2004 (Cm 6156)
[10] *The Draft School Transport Bill: Third Report of Session 2003-04, Volume 1*, House of Commons, Education and Skills Committee, July 2004.

34. A *Draft School Transport Bill and Prospectus* was published for public consultation in March 2004.

35. Shortly after publication of the consultation document, the DfES in conjunction with the Confederation of Education Service Managers (Confed) and the Local Government Association (LGA) held two seminars on the draft Bill aimed at local authority transport and education officers, local authority members, and a small number of headteachers. These seminars were attended by a combined audience of around 240 people.

36. Additional consultation meetings were held with groups representing parents with children with SEN and/or disabilities.

37. The main consultation was conducted on-line and was placed on the DfES consultation website. Hard copies were available on request. Copies of the consultation document were sent to all Local Authority Chief Executives, Chief Education Officers and to heads of Transportation & Highways Authorities. Copies were also sent to the teacher associations, governors' and parents' representative bodies, and representative bodies of denominational schools. A request to participate in the consultation was sent to a sample of 500 schools.

38. The closing date for the consultation was 25 June 2004. 70 responses were received, broken down as follows:

Category of respondent	**Number in this category**	**Proportion of total**
Local Authority	27	39
Governors/Governing Body	7	10
Parents	5	7
Schools	3	4
Religious/Faith Bodies	2	3
Other (inc. 9 organisations that represent children with SEN and/or disabilities; 9 organisations [e.g. LGA, ATCO] representing various key stakeholders; and 4 teacher unions/associations)	26	37

39. Overall, respondents were supportive of the proposals contained within the consultation document. However, some stated that responses to some of the questions are of necessity speculative in nature as they concern the piloting of new arrangements replacing a school transport regime that has remained largely intact for 60 years.

40. A very large majority (94%) stated that a review of existing school transport arrangements was essential if rising levels of car use were to be tackled and that the new school travel schemes should be based on the travel needs of **all** pupils. It was also agreed that local authorities required the widest possible discretion in designing schemes to meet the needs of their pupils. It was widely recognised that such

flexibility was required to meet the varying needs of pupils in widely varying circumstances and that central proscription was not appropriate.

41. Given the size and complexity of the task to be accomplished, the piloting approach, and the timetable presented was generally positively received, though most respondents felt that piloting could not realistically be expected to start for at least two years after the enactment of legislation.

42. The majority of respondents accepted the principle that affordable fares could be charged, if this secured more comprehensive and higher quality school transport, though there was some debate as to what might be considered affordable and local authorities were much more likely to accept the principle than other respondents were. In general, respondents thought that some seed funding would be required for local authorities wishing to become pilots.

43. Many respondents felt that the prospectus accompanying the draft Bill could be improved with stronger references to walking and cycling, stronger links between compulsory school age transport provision and post-16 provision, and the inclusion of pupils with SEN and/or disabilities as a group of pupils for whom schemes may seek to improve provision. These comments have been taken into account in the revised prospectus.

44. In addition to the public consultation, the School Transport Bill underwent scrutiny in the House of Commons, and completed committee stage in the House of Lords shortly before Parliament was prorogued for the General Election in 2005. During its passage, the Government moved a number of amendments to the original Bill, all of which feature in this Bill.

OPTIONS

Do nothing

45. If no changes are made to the current legislative framework, it is anticipated that the barrier lack of transport poses to parents from low income groups accessing schools that best suit the talents, needs and aspirations of their children will remain, with life long adverse consequences for the individuals concerned, for wider society, and for the economy.

46. The trends towards increased car use on the school run will continue[11], with consequential impacts on levels of congestion, pollution, and health.

47. In addition, local authority provision of home to school transport will be affected in a number of ways. The core areas of statutory provision will remain, but faced with continued budgetary pressures, local authorities are likely to examine areas of their existing provision where they have discretion to provide a service or not.

48. For most authorities this is likely to mean a re-examination of their policy for transport to denominational schools. The existing trend for local authorities to introduce charges for denominational transport could be expected to continue and

[11] See *Travelling to School: an action plan*, Department for Education and Skills/Department for Transport, September 2003

possibly gather pace. Local authorities that have already introduced low-level charges may move towards full cost recovery, or alternatively, complete withdrawal of transport services. In such circumstances, lower income families who might wish to express a preference for a denominational education might be expected not to exercise that choice. Denominational schools with a wide catchment area may suffer falling roles. Alternatively, they are likely to become more socially exclusive, with only those parents who can afford to pay high bus fares, or to drive their children to school able to access the schools.

49. Case law requires local authorities to make transport arrangements where there is no 'available' walking route. However, faced with budgetary pressures, they may re-examine routes currently considered unsafe for children to walk along, and withdraw transport arrangements, without putting in the safety measures required to make the routes safe. Parents would then have a choice between mounting a potentially expensive legal challenge, or, accepting the consequences of the local authority's action. Assuming acceptance, where they can, parents might drive their children to school, leading to increased car use on the school run. Where service buses are available, low income families may be faced with a choice between compromising the safety of their children, or financial hardship. Child pedestrian casualties might be expected to rise.

50. Similarly, DfES guidance[12] states that local authorities should make arrangements for free home to school transport for pupils with SEN and/or disabilities, who because of their SEN and/or disability, cannot reasonably be expected to walk to school. There is evidence of some local authorities seeking to reduce expenditure on special needs transport by not providing transport in such circumstances, with detriment to some of the most vulnerable children in society, and their families.

51. Whilst some innovation will undoubtedly continue, it is unlikely that provision will cater for the 14-19 agenda, for the extended school day, or for pupils travelling to anywhere other than their nearest school. Local authorities will be unable to address systematically their local priorities for school travel and transport. A shortage of revenue funding, might be expected to restrict the expansion of other initiatives, such as cycle training, school crossing patrols and walking buses.

52. Local authorities might be expected to contract the cheapest transport providers, rather than secure best value. With older vehicles being used, the customer's image of buses might be expected to deteriorate. This has long term consequences in terms of increased car use more generally, as it is thought that long-term travel habits tend to be formed early in people's lives.

Legislation

53. This will:

- place a duty on local authorities to assess the travel and transport needs of all pupils and promote sustainable means of travel to school;

[12] Available at www.teachernet.gov.uk/wholeschool/sen/sentransport/

- extend transport rights for low income groups; and,

- set up 'voluntary' pathfinder schemes to test out approaches to wider roll out of extended travel and transport arrangements for all pupils.

Statutory duty

54. The Government will underpin the extended transport offer (below) with a general duty on all local authorities in England to support choice and flexibility of educational provision, particularly for children from low income families. There will also be an overarching duty on local authorities to assess the travel and transport needs of all pupils, and to promote safe and sustainable methods of travel to school.

55. This overarching duty would require local authorities to conduct audits of bus, cycle and walking routes; and of the travel and transport needs and wants of pupils and parents. Authorities will be required to develop, and review as necessary, a travel and transport strategy so that local transport infrastructures are developed to meet the aspirations of parents pupils and schools.

56. The Department for Education and Skills and Department for Transport already support the development of school travel plans, which aim to promote sustainable travel to school, through the Travelling to School action plan[13], which recommends that local authorities:

> *'use capital investment available through the Local Transport Planning process to make infrastructure changes identified in school travel plans as quickly as possible. These might include new footpaths and cycle routes; changes to road layouts; new one-way systems; traffic calming; and new road crossings. Local authorities might also consider putting in place 20mph speed limit zones around schools and on heavily used walking routes to school in order to reduce child pedestrian casualties and address parental concerns about traffic risk. They should also conduct regular reviews of 'safe routes to school', in line with Child Safety Audit Guidelines.'*

57. Mode share (e.g. car/van, walking, cycling, rail, etc) of journeys to school is now a mandatory indicator for Local Transport Plans[14], and the Department for Education and Skills has put in place a mechanism for local authorities to be able to accurately monitor pupils' mode of travel to school[15].

58. Since April 2004, local authorities receive additional funding through the action plan to employ school travel advisers to support schools developing and implementing travel plans. As a matter of good practice, local authorities are also asked to develop a strategy to engage all schools in travel planning by the end of the decade (to date 40% have done so). However, in reviewing these strategies, the

[13] *Travelling to School: an action plan*, DfES/DfT, September 2003
[14] See *Full Guidance on Local Transport Plans – second edition*, Department for Transport, December 2004
[15] From January 2007, the annual School Census will include a question on usual mode of travel to school at pupil level. Data will be collected by schools in the term preceding the Census return.

Government is aware that progress is far from even, and not all authorities are addressing issues associated with school travel and transport in a systematic manner.

59. The new statutory duty will help local authorities focus their attention on this issue, and give further impetus to the integration of publicly funded transport planning at a local level. Specifically, it will require local authorities to adopt the kind of user-focussed service recommended by the Audit Commission's report on education, social service and non-emergency health transport[16].

Extending rights to free transport

60. The right of parents to express a preference for the school they would like their child to attend was introduced in the Education Act 1980. However, this did not extend local authorities' duties to support choice through transport arrangements, and 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[17].

61. Transport arrangements that only serve the nearest suitable school beyond statutory walking distance lead to restricted parental preference, particularly for low income groups[18]. Whilst higher income groups may be able to secure a place in a school of their choice by moving house, or choosing to pay for a private education, these options unlikely to be available for lower income groups. With little or no transport arranged by local authorities to schools other than the nearest suitable one, and an expectation of pupils over the age of eight walking up to 3 miles each way to school, many parents will either pay full rates on public transport, or drive their children to school by car. The cost of public transport can be prohibitive for low income groups[19], and over the past 20 years or so, the proportion of pupils arriving at school by car has doubled – contributing to localised congestion and pollution around schools, and a lack of exercise that is seriously damaging the health of our children[20].

62. Extending rights to free home to school transport for low income groups of secondary school age (pupils entitled to free school meals, and those whose families are in receipt of their maximum level of working tax credit) to any of the three suitable schools closest to their home between two and six miles away, and to the nearest school preferred on grounds of religion or belief up to a maximum of 15 miles away, would increase effective choice, and relieve the financial burden on those families currently paying full fares on public transport. Where these parents currently drive their children to school, this offer should also lead to a reduction in car use.

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[16] See *Going Places: Taking People to and from education, social services and healthcare*, Audit Commission, November 2001

[17] See **R. v. East Sussex CC, ex parte D** [1991] COD 374; **R. v. Essex CC, ex parte** C [1994]

[18] See *Making the Connections; Final Report on Transport and Social Exclusion*, Office of the Deputy Prime Minister, February 2003.

[19] See *The Cost of Schooling*, RR588, Department for Education and Skills, November 2004

[20] The Department for Transport (DfT's) National Travel Survey (NTS) shows that during term time, between 8am and 9am, about one car in ten on the road in urban areas is on the school run, rising to nearly one in five at 8.50am, the peak time for school travel. It also shows that the proportion of children of compulsory school age (5-16) travelling by car has approximately doubled over the past two decades, while the percentage of children walking has decreased.

63. Currently, primary aged pupils over age 8 only receive transport to their nearest school more than three miles from their home, too far for them to be expected to walk. The Government proposes to extend free transport to pupils eligible for FSM/maximum WTC in this age group and living more than two miles from their nearest school.

Pathfinder authorities

64. In addition to the new statutory duties outlined above, the Education and Inspections Act allows for a series of Pathfinders that will extend the minimum offer to all pupils. Unlike other authorities, Pathfinder authorities will be able to make reasonable charges for transport arrangements they make. Pathfinders will signal the Government's intent to support parental preference more widely and will test local authority capacity to deliver the extended offer more widely, and the impact of co-funding on parental preference, and mode of travel to school. Pathfinder authorities will receive pump-priming funds to help design schemes.

65. Factors such as the availability of public transport networks, population density, and distribution of schools will all have an impact on what travel and transport solutions are best suited to a particular area, and the Government wishes to examine the impact of freeing a small number of local authorities from legislative constraints, so that they can run local schemes to meet local conditions and priorities before rolling out changes to home to school transport arrangements more widely[21].

66. The approach would be 'voluntary' in the sense that local authorities that so wished would put together bids to run innovative school transport arrangements in their areas. Bids would be considered for approval by the Secretary of State. This approach would allow the Government to explore the capacity of the transport system to meet increased demands placed on it by more children travelling to school by bus. It would also allow an assessment of whether co-funding of school transport (i.e. transport arrangements funded mainly by local authorities, with a reasonable contribution from families other than those with low incomes) could deliver enhanced transport arrangements that facilitated access to schools of parental preference for all pupils living within the authority.

67. local authorities will have to consult widely on their proposals before detailing the new arrangements in admissions booklets 15-16 months before the September in which they came into force. It is expected that such schemes will not commence until at least September 2008, with September 2009 a more likely start date.

68. Allowing for sufficient time for the innovative arrangements to take effect and for a thorough evaluation, even if successful, it might be expected to be 2012 or later before the approach were rolled out more widely. In the meantime, some of the pressures outlined in the 'do nothing' option would be operating in the large number of local authorities not participating in the new arrangements, with the same potential detriments.

69. Pathfinder authorities will be required to produce an annual report for DfES,

[21] This is similar to the approach taken in the School Transport Bill, which fell when Parliament prorogued at the General Election.

which will contain statistics on home to school travel, analysing the effect that schemes have had in supporting parental preference, increasing travel by sustainable means, and reducing car use on the school run (especially those journeys of between two and three miles which are the highest proportion of journeys undertaken by car[22]). It should also contain an account of what has gone well and badly, and the views of key partners. It must also contain financial annexes, detailing the economics of schemes. DfES will commission and publish an independent evaluation, which will draw together an analysis of each scheme. This will help DfES decide whether to extend the new provisions to all local authorities. Alternatively, it could persuade DfES to revoke the legislation and consider alternative ways of taking the wider aims of the legislation forward.

Innovation

70. Under the proposed arrangements, a small number of local authorities will be free to innovate in a number of areas. The intention is that legislation will serve as an impetus for authorities to rethink school transport provision from first principles and to innovate in the following areas:

- to consider, more systematically, the travel needs of *all* pupils, and support access to a choice of schools. In practice, this might be met in a number of different ways, or, as is more likely, by a combination of scheme features. For example, pathfinder authorities might introduce area-wide concessionary fares, facilitate cycling through connecting schools to cycle routes, use some of the increased funding available to pathfinder authorities to provide cycle training, escorts for walking buses, or measures designed to promote good behaviour on buses;

- to consider how best to make arrangements for travel for all pupils living more than two miles from the school they attend;

- to consider, more fully, a range of modes of travel. Existing legislation requires transport arrangements to be made beyond statutory walking distance. Local authorities make use of bus, and sometimes, taxi services, and occasionally trains to fulfil this obligation. The new arrangements will require Pathfinder authorities to make travel arrangements, which might include transport provision, payment of travel expenses (in whole or in part), as well as arrangements for facilitating or promoting alternative modes of travel such as cycling or 'ride and stride' schemes (transport to a safe point within reasonable walking distance of the school) which might be equally appropriate means of getting to school from beyond walking distances;

- to consider generating supplementary revenue through charging 'affordable' fares for home to school transport. The revenue stream must be reinvested in school travel schemes according to local priorities. These might include investment in, for example, improved bus services, systematic independent travel training for pupils with

[22] See p. 12 of *Improving Mainstream Home-to-School Transport*, Audit Commission, December 2001.

special needs, cycle loan schemes, enhanced cycle training, and escorts for walking buses; and,

- to re-distribute the overall subsidy for school transport more equitably and according to local priorities. This might include supporting pupils attending breakfast clubs and/or after school activities, supporting transport to denominational schools, shifting subsidies based on distance travelled to subsidy based on financial means, providing dedicated bus services to improve behaviour and/or attendance where this is a problem and tackling social exclusion.

Safeguards

71. While encouraging Pathfinder authorities to innovate, the legislation includes the following constraints, intended to safeguard stakeholder interests:

- the legislation prevents Pathfinder authorities charging in respect of children from low income families - pupils eligible for free school meals, and those from families who are in receipt of their maximum level of working tax credit will be protected from charges;

- pupils currently entitled to free school transport under existing legislation will continue to receive free home to school transport under these arrangements. Charges may only be introduced as pupils change schools, in the full knowledge of the impact choice of school may have on transport arrangements;

- the Government expects pathfinder authorities to explain how they propose to manage a charging regime cost effectively, taking into account the needs of low income and large families. Local authorities must also explain why they are confident that charging will not pose a barrier to parental choice of school or increase car use on the school run;

- in addition to arrangements made to a choice of schools between two and six miles from their homes, and the guarantee of transport to the nearest school preferred on grounds of religion or belief up to a maximum of 15 miles, local authorities will have to continue to provide transport to pupils attending their nearest suitable school where this is more than six miles from their home, though this will no longer have to be provided free of charge;

- local authorities must continue to provide free transport for pupils with transport written in to their statement of SEN, and for pupils with SEN and/or disabilities who cannot reasonably be expected to walk even short distances to their school due to that SEN and/or disability. More generally, scheme applicants must describe how their proposals cater for pupils with SEN. The Government's presumption is that wherever possible and appropriate, pupils with SEN will share transport with their peers. Where this is not possible or appropriate, it might be

appropriate for journeys to be combined. Additionally, local authorities should make every effort to coordinate the use of specialist vehicles for education, social services and/or patient transport;

- the legislation also protects children with SEN and/ or disabilities living between two and six miles from their home and attending one of their three nearest suitable schools, and those living more than 6 miles from their nearest suitable school from any charges additional to those that apply to children of the same age living in the same area and attending the same or equivalent school, if special arrangements have to be made to accommodate a child's disability or SEN. Special transport arrangements cover:

- transport provided because of a child's SEN and/or disability, where a pupil cannot avail themselves of transport provided for all pupils;

- transport that has to be provided in order to support education meeting a pupil's SEN, which cannot be accommodated through transport available to other pupils living in the area. This would cover both specialised transport to local schools attended by pupils with SEN and specialised or non-specialised transport to schools further away than those attended by pupils resident in the area;

- local authority proposals for Pathfinder status must be approved by the Secretary of State;

- following appropriate local consultation, Pathfinder authorities may amend schemes with the consent of the Secretary of State. They may revoke schemes unilaterally;

- applications for Pathfinder status must set out local charging policies, making it clear how many pupils will be charged, and the level of any proposed charges. Detailed proposals must be included in local consultations. Any charges must be affordable and pitched at a level that does not present a barrier to parental choice or produce an increase in car journeys to school;

- local authorities must ensure that their charging policies comply with the Human Rights Act 1998 and the European Convention on Human Rights (ECHR). Local authorities should seek legal advice on the impact of their policies before submitting an application to the Department;

- pathfinder schemes must meet local needs and aspirations. Before making a formal application, a local authority must consult: school governors, including governors of all special schools where pupils in the authority are placed; teacher association representatives at local level; parents and prospective parents; school's councils; pupils; the schools forum; the admissions forum; bodies representing any denominations with schools in the area; transport operators; FE

institutions; groups representing parents with children with SEN and/ or disabilities; organisations with an interest in pupil safety such as BUSK and Brake; local councillors; and any other partners with a material interest in school travel schemes, for example, Transport for London in the London area, or Passenger Transport Executives (PTEs) where they exist;

- local transport plans, bus strategies and post-16 policy statements should all support school pupils and provide straightforward and fair pricing and ticketing strategies, as well as a network that takes pupils to school by direct, economic routes. Applications should set out details of the consultation process that has taken place, together with the main findings, and action that has been taken to address concerns; and,

- local authorities have been given autonomy to innovate, but innovation should not become a cost cutting exercise. Existing funds must continue to support school travel, with budgets uprated each year in line with comparable local authorities. All fare income and additional central funding must be invested in improved services.

Pathfinder Schemes

72. Until formal applications are made under the freedoms offered by the Act, it is impossible to say exactly what schemes will look like. However, all schemes must aim to:

- remove transport as a barrier to access to at least the three nearest schools of parental choice;

- make arrangements for travel/transport to one of the three nearest schools more than two miles from a pupil's home; and,

- cut car use on the home to school journey.

73. Beyond these, they must focus on local priorities and may improve provision for one or more of:

- pupils travelling to schools preferred on religious or philosophical grounds;

- pupils travelling along routes which parents consider unsafe;

- pupils participating in extracurricular activities, on or off school premises.

74. They might also trial:

- innovative purchasing arrangements, particularly in collaboration with other forms of publicly funded transport provision, and closer integration between education, health care, and social service transport;

- modern technology in route planning, fare collection and scheme management;

- closer links with post-16 transport policies leading to more consistent provision for older pupils, and provision supporting wider access for the entire 14-19 age group;

- wider use of staggered school opening hours, introduced through collaboration with schools;

- enhanced transport safety – increased use of seat belts, reductions in overcrowding, use of CCTV, use of home-to-school agreements to improve behaviour on the journey to and from school; and,

- transport solutions tailored to rural schools and their communities (e.g. dedicated school buses where appropriate).

75. This list is not exhaustive, and the Government recognises that there could be compelling local circumstances which suggest that a local authority should adopt different priorities: the Government will take a flexible approach provided applicants provide a reasoned explanation of how schemes meet local needs.

COSTS AND BENEFITS

Sectors and groups affected

76. Local authorities; schools; parents and pupils; providers of transport.

Benefits

<u>General duty on local authorities to assess the travel and transport needs of all pupils and promote sustainable means of travel to school</u>

77. For pupils who need to travel by bus, the knowledge of where they need to travel to and from will help local transport authorities and bus providers to plan routes and schedules that meet the needs of the pupils.

78. Benefits will accrue through better coordination of publicly funded transport, especially for the large number of authorities that do not currently coordinate their education, social service, and non-emergency health service transport provision. In particular, for pupils with SEN and/or disabilities, Best Value may be achieved where local authorities consider linking the organisation and procurement of services for pupils with disabilities with those of social services and health, and plan services in conjunction with local passenger transport services, and home to school travel

schemes[23]. For pupils with SEN and/or disabilities who have been assessed as being capable of independent travel, a more strategic approach should also help local authorities and schools to put in place systematic programmes of independent travel training, leading to a range of benefits including enhanced life skills, and health benefits.

79. A more strategic approach to the travel and transport needs of all pupils should also help local authorities prioritise measures designed to promote walking and cycling, for example by using existing capital funds provided through the Local Transport Planning process to link schools to the National Cycle Network, or putting in place 20 mph zones around schools where travel plans reveal a suppressed demand for walking and cycling. Again, pupils will benefit from greater independence, and there will be health benefits from greater physical activity. Schools may also benefit from safer routes around their schools.

80. To the extent that a strategic approach puts in place measures that promote more walking, cycling and bus use, car use on the school run will reduce, with benefits from reduced levels of congestion and pollution around schools, as well as wider health benefits from pupils having a more active lifestyle.

Extending transport rights for low income groups

81. The Government has used information from section 52 data (the annual financial return from Local Authorities showing various aspects of education expenditure) returns to estimate the number of pupils entitled to free school meals who might potentially benefit from the extended offer, along with data provided by DWP on the distribution of families in receipt of their maximum level of working tax credit.

82. It is estimated that around 135,000 pupils entitled to free school meals, or whose family are in receipt of their maximum level of working tax credit outside London[24] would be covered by the extended entitlement for secondary aged pupils, with a further 14,000 covered by the transport guarantee to a school preferred on grounds of religion or belief, giving an overall total of 149,000. Of these, approximately 82,000 (77,000 for the main offer, and 5,000 for the religion belief offer) live in County authorities, which tend to have significantly worse public transport networks than their more urban counterparts.

83. It is estimated that around 30% of newly entitled pupils will take advantage of the new offer (the new entitlement does not guarantee a place in one of their three nearest schools, and will only kick in where pupils actually secure a place through the admissions process; and significant numbers are likely to prefer one of their nearest schools below the two mile limit). This leaves a total of 40,000 pupils who would benefit from the new entitlement (23,000 of these would be in County authorities)[25].

84. The most important benefit will come from removing transport as a barrier to

[23] See *Investigation of SEN Transport Costs*, Department for Education and Skills, May 2004
[24] In London free bus passes are provided to all children under the age of 16 by Transport for London, so there are no additional costs anticipated for pupils living in London.
[25] The guarantee of transport based on religion or belief does not figure in these calculations, as almost all will already be receiving support under local authority discretionary policies.

parents from low income backgrounds being able to express a preference for a school that best meets the needs, aspirations, and talents of their children. In turn, this should contribute to a reduction in social exclusion.

85. As the largest proportion of journeys undertaken by car at secondary age are of between 2 and 3 miles, a further benefit of the extended rights for secondary aged pupils is likely to be a small reduction in the proportion of journeys undertaken by cars, a reduction of localised congestion and pollution around schools, with corresponding health benefits from a more active lifestyle (especially if pupils walk a little way to the bus stop).

86. Financially, those parents from low income backgrounds currently paying full bus fares (at an average of £7.29 per pupil per week) for their children will now benefit from free transport.

87. The main benefits from the extension of transport rights at primary age are reduced car use (with environmental and safety benefits), and a reduction in the financial burden for parents currently paying bus fares.

Pathfinder authorities

88. Pathfinder authorities would have to meet the statutory duties set out above and would receive an appropriate share of the additional revenue provided.

89. Beyond this, the Act is designed to enable local authorities to put in place innovative schemes to make travel/transport arrangements to support parental preference, make travel/transport arrangements for pupils living more than two miles from the school they attend (assuming it is one of the three nearest suitable schools), and to reduce the proportion of pupils travelling to school by car, as well as one or more or the elements outlined in the previous section.

90. A range of benefits can be expected to accrue from Pathfinders. There would be reduced costs for parents currently paying full fare for bus services (mainly travelling between 2 and 3 miles to school, or attending a school other than their nearest school). There would also be reduced costs of journeys by car for those switching from car to bus travel, and corresponding environmental, and safety benefits from a reduction in car use, as well as benefits for other road users from reduced levels of localised congestion.

91. Pathfinders will be expected to address a number of additional areas, such as travel and transport arrangements for facilitate attendance at breakfast clubs, after school activities, extended schools and the wider 14-19 agenda. Arrangements to support these should lead to a range of benefits, including educational benefits for the pupils concerned, and benefits to parents/carers from being able, for example, to take up employment opportunities in times beyond the traditional school day.

92. Additional revenue may also be used to support, for example, walking buses, cycle training, and cycle loan schemes. These will have benefits from increased independence for pupils, and health benefits from a more active lifestyle. Many teachers also report educational benefits for pupils who are more active on their journeys to and from school.

Costs

General duty on local authorities to assess the travel and transport needs of all pupils and promote sustainable means of travel to school

93. The new general duty will require local authorities to take a more strategic approach to assessing the travel and transport needs of pupils. Most of the data required for inputting into this strategic planning will be available from Local Transport Plan data, individual school travel plans, and pupil level data obtained from the annual school census. However, it is envisaged that pulling this together will require additional staff resource in local authorities, and the Department of Education and Skills will provide an additional £4 million per annum to local authorities to cover these costs. The amount of additional resource required will depend on the size of each authority, and we propose to divide the funding according to the number of schools located in each authority. On average, this should be sufficient to fund around one additional full-time equivalent post per authority, though larger authorities will receive sufficient funds for more than one post, and smaller authorities will receive funding for part-time posts. Based on our experience of funding School Travel Advisers in all local authorities in England, this will be sufficient to cover the costs of the additional work required.

Extending transport rights for low income groups

94. Based on the current costs of providing free home to school transport, and local authority estimates of the cost of providing dedicated buses for home to school transport, the Government estimates the total cost for the extension of transport rights for low income groups of secondary age to be around £35 million (nearly two thirds of which would be costs incurred in County authorities).

95. Take up of this offer will depend on a number of factors – most importantly on the number of parents who, with the support of choice advisers, state a preference for school other than those they would have done had the extended transport offer not existed; and on the availability of places in the schools they state a preference for. Although there are proposals to facilitate the expansion of popular schools, at this point we can not be sure how many will take up this option. Given these uncertainties, the Government estimates that around 30% of parents (40,000 pupils with 23,000 of these in County authorities) will take advantage of this offer. For illustrative purposes, the equivalent figures for 20% and 60% per cent take ups are: 27,000 pupils (15,000 in Counties) with costs of nearly £30 million; and 80,000 pupils (46,000 in Counties) and costs of £90 million.

96. The full costs will not be realised for a number of years, as the extended rights will only come into operation as pupils change school. For the 30% take up, it is estimated that in the first academic year of the extended rights, costs for that financial year will be around £4.5 million, rising to £11.5 million in the second year, £18.5 million in the third, £25.5 million in the fourth, £32.5 million in the fifth, with the full cost of £35 million being reached only in the sixth financial year.

97. As we already know approximately how many pupils attend schools preferred on grounds of religion or belief, we can be confident about the costings of this offer. The offer is modelled on the proportion of pupils entitled to free school meals

currently attending faith schools (from school census data), with the proportion of pupils whose parents are in receipt of their maximum Working Tax Credit added from survey data supplied by DWP. We are confident that this data is robust, and we will monitor the impact of the policy through a combination of local authority Section 52 returns, and data obtained from the annual schools census (which will have a mode of travel to school attribute added as from January 2007). For modelling purposes, we have assumed that years 8 to 11 will be similar to year 7 and have multiplied the numbers through by 5 to obtain final estimates. Data extracted from PLASC suggests that most pupils entitled to FSMs attending faith schools and living more than two miles from the school (the lower limit for any transport guarantee) live between two and six miles from the school attended, with numbers tapering sharply at 6 to 10 miles, and 10 to 15 miles. Nationally, very few pupils live more than 15 miles from the faith school they attend. A similar distribution can be seen with both FSM pupils and maximum WTC pupils and between different authority types, but the taper as distances increase is not as sharp with WTC pupils, or in County & Unitary authorities when compared to FSM pupils and Metropolitan authorities respectively. The following chart summarises the total numbers of pupils from low income groups attending faith schools in the various distance bands.

	Mets	**Unitaries**	**Counties**	**Total**
2-6 miles	5,025	3,270	5,960	**14,255**
6-10 miles	275	375	1,555	**2,205**
10-15 miles	10	115	315	**440**
Total	**5,310**	**3,760**	**7,830**	**16,900**

Estimated total no. of pupils attending faith schools by authority type at different distance bands – based on Y7 PLASC & DWP survey data.

98. Some of the pupils included in the 2 to 6 mile band will already be catered for in the existing offer, as there will be a faith school that is one of their nearest three schools in the distance criteria. Once these pupils are taken out of the equation, the total number of secondary pupils from low income backgrounds covered in each of the distance bands is as follows:

	Mets	**Unitaries**	**Counties**	**Total**
2-6 miles	4,275	2,750	3,005	**10,030**
6-10 miles	275	375	1,555	**2,205**
10-15 miles	10	115	315	**440**
Total	**4,560**	**3,240**	**4,875**	**12,675**

Estimated total no. of pupils attending faith schools by authority type at different distance bands, with pupils already covered in the existing 3-school offer excluded – based on Y7 PLASC & DWP survey data.

99. For London, where transport arrangements are different, the modelling conducted has been based simply on the numbers living more than 2 miles from the faith school attended, as the cost of provision is likely to be based on the cost of tube, overland rail passes, rather than on distance criteria. We estimate that 1,216 pupils in London attend a faith school that is more than 2 miles from their home. None of these pupils are included in the costing for the original three school offer, as TfL arrangements for free bus travel means that it was assumed that the wider offer would not imply any costs in London.

100. To estimate the potential costs involved, outside London we have estimated the cost per mile by authority type.

	Metropolitan	**Unitary**	**County**	**Total**
2-6 miles	£1, 817,340	£1,942,068	£2,260, 915	**£6,020,324**
6-10 miles	£268,476	£609,899	£2,389,177	**£3,267,552**
10-15	£14,624	£295,430	£808,679	**£1,118,733**
Total	**£2,100,440**	**£2,847,397**	**£5,458,772**	**£10,406,608**

101. For London, in producing estimates of the costs involved, we have assumed that where pupils live up to 3 miles from the faith school they attend, the existing bus passes will be sufficient to meet their travel needs. So for the 733 pupils living less than 3 miles from the faith school attended, there is no additional cost involved. For the remaining 483 pupils who live more than 3 miles from the faith school attended, we have assumed that travel pass would be necessary. The total estimated cost for these pupils would be £376,353.

102. This produces an overall cost of £10,782,961 for the offer capped at 15 miles.

103. In terms of the extended rights to transport at primary age, 100% per cent take up is anticipated, as the extension of rights involves a lowering of the walking distance from 3 miles to 2 miles for pupils aged over 8. The estimated cost of this extension is £5 million per annum, most of which will be accrued to County authorities.

Pathfinder authorities

104. Travel/transport arrangements in Pathfinder authorities will be co-funded. The Government anticipates the maximum contribution from parents would be £1 per day. This proposed limit will be set out in guidance, and if local authorities wish to charge more, they will have to provide compelling evidence to the Department that the additional costs can be borne and that they will not result in a switch to car use. As the Secretary of State will approve individual schemes and material changes to schemes as time goes by, it will not be possible for local authorities to introduce unrealistically high charges. The Government will not allow local authorities to charge for pupils from low income groups, pupils with SEN and/or disabilities requiring transport from within walking distances, pupils travelling along routes assessed as dangerous, or those pupils currently in receipt of free home to school parents (charges will be

introduced as pupils change schools in the full knowledge of the implications of their choice of school).

105. This part of the Act is deregulatory in nature, giving participating local authorities a wide discretion in the precise nature of any scheme, which will be tailored to meet local needs, and conditions. Given its deregulatory nature, and the fact that there is no particular model or number of models from which the Government would want local authorities to choose, it is not possible to identify overall costs and benefits of individual schemes in advance, nor to predict what the precise outcomes will be.

106. Although the Government does not collect information on the number of pupils currently receiving free and assisted home to school transport through regular local authority returns, a joint DfES/Confed/NAO survey published in February 2004[26], suggests between 650,000 and 700,000 pupils receive free or assisted home to school transport each day. It is estimated that of these, around 110-115,000 are pupils with SEN and/or disabilities and of the remainder, 20-25,000 are for pupils below the age of five, 100-120,000 are of primary age, and 420-440,000 are aged 11-16.

107. Assuming a 30% take up rate, it is estimated that the full cost of rolling out travel/transport arrangements for all pupils of secondary age (but not including those covered by the new duty to support low income families) attending one of their three nearest suitable schools to be £179 million per annum. Assuming the parents of 321,000 secondary aged pupils living more than three miles from their school contribute £1 per day, the total parental contribution would be £61 million. In addition, if 147,000 secondary aged pupils living between two and three miles from school and previously not provided with transport contributed £1 per day, revenue of £28 million would accrue. Leaving a requirement for an additional £90 million revenue funding from the Government.

108. However, there are many variables to consider, including sparsity, distribution of schools, the balance between existing public transport networks and dedicated school transport, the existence of safe walking and cycling routes, local geography, school start and finish times, levels of deprivation, and so on. Potential Pathfinder authorities will vary in size and may be considering the travel needs of anywhere between 260 and 231,410 pupils (the relative sizes of the smallest and largest local authorities in England), they may have sharply differing issues to address, and various combinations of solutions to these issues.

109. The Government therefore proposes to provide a funding pot of £2.4 million per annum of additional revenue funding to support a series of Pathfinders (building to a maximum of £12 million per annum as additional cohorts are covered by the new arrangements). Under the co-funding arrangements, Pathfinder authorities might expect to receive a total of an additional £2.4 million per annum (building to a maximum of £12 million) from parental contributions.

110. Pathfinders will test the assumptions underlying the wider offer, and in particular will test the impact of co-funding arrangements, and whether the additional support for transport facilitates parental choice and leads to a reduction in car use.

[26] Available at www.dfes.gov.uk/leagateway/nao

111. The Government anticipates that up to 20 local authorities could become Pathfinders - the precise number being dependent of the number of quality bids that can be accommodated within the additional budget.

112. In addition, the Government will provide £4 million in pump priming money to support Pathfinder authorities in setting up their schemes (to cover additional planning capacity, modelling, and consultation).

113. It is anticipated that there will be an additional £1.5 million in central government costs spread over several years to monitor and evaluate the operation of schemes, and in disseminating the lessons learnt.

SMALL FIRMS IMPACT TEST

114. Overall small firms should benefit from an expanded market for bus provision, in both 'pathfinder' and 'non-pathfinder' authorities. The Government will keep the situation under review by monitoring progress annually, and through a detailed evaluation of outcomes within 3 years of the proposals tacking effect.

COMPETITION ASSESSMENT

115. Overall, the market for school bus travel will expand under these proposals and it will operate in much the same way as the existing market, though the mix of bus services could potentially change. The Government will encourage local education and transport authorities to work together closely to minimise the impact of any expansion of subsidised provision on established commercial or tendered arrangements, or to ensure that it is factored into the tendering process. The latter could involve local authorities extending their provision of subsidised seats in buses, or provide additional services catering for early starts and late finishes at school.

ENFORCEMENT, SANCTIONS AND MONITORING

116. Where local authorities act unreasonably in the exercise of their functions, or fail to fulfil their statutory duties, under s.496 and s.497 of the Education Act 1996, the Secretary of State may make an order and give such directions as appear to him to be expedient. The Department considers that these powers are sufficient to ensure that local authorities comply with the new duties relating to home to school transport.

117. The only additional enforcement issue which could apply is where a parent refused to meet the new charges introduced by pathfinder authorities and also refused to take their child to school using alternative means. If a child did not attend school as a result of their parents' refusal to pay bus fares, then the parent(s) could be fined or imprisoned. The key to success here is in setting charges at a reasonable level and ensuring that families with low incomes are still provided with free transport.

118. The Government will carry out annual monitoring of mode of travel to school through existing data returns to the Department from schools and local authorities. The Department will also carry out detailed monitoring of schemes implemented in Pathfinder authorities to assess whether the approaches are working – if they are, the Government will extend the Pathfinder approach to all local authorities in England, and if not end them and provide transport on the basis of the extended duties relating

to all other authorities in England. The Government's assessment will look at the impact of the new arrangements in terms of supporting access to schools of parental preference (especially for disadvantaged groups); the numbers of children travelling to school by different modes of transport (principally walking, cycling, bus and car); the nature of new provision and the need it meets; and the level of charges. The Government will be alert for unintended consequences, particularly a switch from walking to bus use; and bus to car use. The Government will also assess how well provision is meeting the needs of pupils attending before and after school activities, and how it supports the 14-19 strategy (with increasing numbers of children attending more than one educational institution).

IMPLEMENTATION AND DELIVERY PLAN

119. The three main elements to these proposals – the general duty to assess the travel and transport needs of all pupils and promote sustainable means of travel to school; extending transport rights for low income groups; and pathfinder authorities will be implemented to different timetables. The Department is conducting a public consultation on:

- statutory guidance to local authorities on the new duties and powers contained in the Act, and

- on a prospectus/guidance for potential pathfinder authorities.

Following these consultations, in the spring of 2007 the Department will publish final versions of the statutory guidance to all local authorities, and the prospectus/guidance for potential pathfinder authorities.

120. As stated above (paras. 56 -59, and 93), much of the work required to fulfil the new general duty to assess the travel and transport needs of all pupils and promote sustainable means of travel to school is already being undertaken by local authorities, albeit to varying degrees and not necessarily in a fully co-ordinated manner. Given this, as soon as the Department publishes the final guidance and provides the additional funding (para. 93) in the spring of 2007, local authorities should be in a position to begin to draw up and publish the audits and strategies envisaged under this new duty.

121. The implementation of extended transport rights for pupils from low income families will vary depending on the age group covered. The extension of rights for pupils aged 8 and over and who are from low income families involves a right to transport to the nearest suitable school where this is more than 2 miles from their home (i.e. the same as the rights enjoyed by all pupils of compulsory school age under the age of 8). As these pupils will already be known to local authorities, and the routes they take to school will already be catered for, local authorities will be able to implement this aspect of their new duties as from September 2007, and the Department will provide the additional funding required to meet this duty from that date.

122. For secondary aged pupils, the extension of transport rights is aimed at removing transport as a barrier to effective choice for low income groups, and will need to be implemented in line with admissions arrangements as pupils move from

primary to secondary school (see paras. 60-62, and 82-86). As the admissions round for secondary aged pupils starts more than a year before pupils actually start secondary education, and transport arrangements need to be published alongside admissions documentation so that parents can take an informed choice, the extension of rights for this age group will take effect from September 2008. Local authorities will use the time between publication of the Department's guidance in spring 2007, and September 2008 to plan for and secure the additional transport arrangements that will be required to meet this duty.

123. Following public consultation on, and publication of the prospectus and guidance for potential pathfinder authorities, they can start designing school travel schemes that will be consulted on locally (see para. 67) and will form the basis of their bids to the Department for pathfinder status. The prospectus and guidance for potential pathfinder authorities will propose a deadline for initial bids from local authorities of December 2007. The Secretary of State will consider bids, and local authorities will be told the outcome of their bids in early 2008, allowing sufficient time for successful bidders to publicise their home to school transport arrangements along with the admission arrangements in spring/early summer of 2008 for secondary school entry in September 2009. This timetable meets the concerns of local authorities as reported in the Department's public consultation on the School Transport Bill (see para. 59).

POST-IMPLEMENTATION REVIEW

124. As stated above (para. 118) the Government will monitor the impact on travel patterns on the journey to school through existing data returns, and pathfinder authorities will be required to submit detailed annual reports on the progress of their schemes (para. 69). In addition, the Government will conduct and publish a formal evaluation of the impact of the new general duties, and the extension of rights to low income families in 2010, two years after the extension of rights for secondary aged pupils has come into effect. The Department will commission a separate independent evaluation of pathfinder schemes which will draw together an analysis of each scheme, and provide evidence for the decision about whether or not to roll out the school travel scheme approach more widely. This evaluation will be conducted in the third year of operation of pathfinder schemes – academic year 2011/12.