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The School Transport Bill

Bill 162 of 2003-04

The *School Transport Bill* seeks to enable local education authorities in England and Wales to develop new arrangements for school transport through school travel schemes. Initially pilot schemes will be introduced. The schemes will be tailored to local needs, and may include charging. They will apply to children who are of compulsory school age or below. If the pilots are successful the local scheme approach will continue and may be extended to other LEAs on a voluntary basis.

The underlying aim of the proposals is to reduce car use on the home-school journey.

The Bill was presented on 14 October 2004, and is due to be considered on second reading in the House of Commons on 28 October 2004.

This paper outlines the current statutory provisions on home-school transport, notes the main issues relating to the current arrangements and the pressures for change, summarises the Government's proposals and identifies the key issues that have been raised.

Christine Gillie

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Summary of main points

The current duties and powers of LEAs to provide home-to-school transport are governed by the *Education Act 1996*, which was a consolidation Act; the provisions date back to the *Education Act 1944*, and the legislation has been largely unchanged although there have been dramatic changes in education, transport and attitudes.

In recent years there has been growing pressure for change. Local government and other bodies argue that the arrangements are out of date. There is concern about the environmental and health problems associated with increased car use for school journeys, and about the cost, fairness and safety of the arrangements. The Local Government Association, the Audit Commission and the Social Exclusion Unit have urged the Government to try alternatives to the current arrangements.

The *School Transport Bill*, which applies to England and Wales, was presented in the House of Commons on 14 October 2004, and was accompanied by a *School Travel Schemes Prospectus* outlining how the Government expected the arrangements to work. The Bill was published in draft form on 8 March 2004. At the same time a consultation paper, *School Travel Schemes - Draft Bill and Prospectus*, was issued jointly by the Department for Education and Skills and the Welsh Office. The draft Bill and associated documents were scrutinised by the Education and Skills Committee, and also considered by the Transport Committee.

The main aim of the Bill is to reduce car use on the home-school journey. It seeks to enable local education authorities (LEAs) in England and Wales to pilot new arrangements for school transport – school travel schemes – which are tailored to the needs of their area. The schemes will apply to children who are of compulsory school age or below. LEAs will continue to be required to make transport arrangements for any child who attends a school that is beyond the statutory walking distances unless suitable arrangements have been made for boarding at or near the school or for the child to become a pupil at a school nearer to the child's home. Under home-school travel schemes LEAs would be able to make charges for school travel although children from very low-income families who attend their nearest suitable school would be exempt.

The Secretary of State for Education and Skills and the National Assembly for Wales will separately approve schemes, and separately decide whether or not the approach should continue and be extended to other LEAs. The intention is that initially up to twenty LEAs in England, and up to six areas in Wales, will be approved. If the pilot approach is successful it will be extended to other LEAs on a voluntary basis; if it is not successful the pilot authorities will return to the existing legislative framework. The Secretary of State has emphasised that the Bill is permissive. It provides an opportunity for LEAs to provide transport arrangements tailored to their area, and no LEA will be compelled to participate.

The Bill, which consists of seven clauses, seeks to provide the framework for school travel schemes, and replaces LEAs' current powers and duties contained in the *Education Act 1996*, section 509 (1) and (3), in relation to children covered by the schemes.

Conservative and Liberal Democrat Front-Bench spokesmen are strongly opposed to charging parents for school transport that is currently provided free.

The Education and Skills Committee confirmed that that home-school transport is clearly in need of attention but expressed surprise that more had not been made of the opportunity to legislate, and argued for a more radical overhaul of the legislation. The draft Bill's central proposal to pilot schemes tailored to local circumstances, which may include charging, was welcomed. However, the Committee also noted that Government policies to increase diversity and allow greater parental choice of school would encourage longer home-school journeys, and did not sit easily with objectives to encourage more children to walk, cycle or use public transport to get to their local schools. The Committee pointed out that, although the pilot schemes will be required to reduce traffic congestion, no quantified target formed part of the proposals, and that no mention was made of the health, environmental and educational benefits that improved home to school transport could bring. In addition, the Committee found that there was no evidence that reliable monitoring and evaluation systems are in place to assess the results of the pilots.

The Government's response to the Education and Skills Committee's report on the draft Bill commented on the issues raised, noting that many of the concerns would be addressed through adjustments to the draft prospectus.

The Bill does not change the legislation relating to safety on school buses although the Education and Skills Committee and the Transport Committee said that safety should be a prominent part of the Government's school transport initiatives. The Government agree that safety is a key issue for many parents, and it wants safety for all pupils on the home-school journey to be a key area for travel plans.

CONTENTS

I	Statutory provisions governing LEAs' current duties and powers	10
II	An outline of the main problems associated with the current arrangements	12
	A. Traffic congestion, environmental and health problems	12
	B. Costs	13
	C. Fairness, equity, and parental choices	14
	D. Safety	15
	1. Vehicle safety	15
	2. Seat belts and overcrowding	16
	3. Supervision	17
III	Pressure for change	18
	A. The School Travel Advisory Group report	18
	B. The Audit Commission report: <i>Going Places</i>	18
	C. The Social Exclusion Unit report: <i>Making the Connections</i>	18
	D. The Steer Davies Cleave evaluation of the “yellow bus” pilot schemes	19
	E. The Local Government Association review: <i>Children on the move – accessing excellence</i>	20
	F. DfES action plan and good practice guide, <i>Travelling to School</i>	20
IV	The draft Bill	22
V	The pre-legislative scrutiny of the draft Bill and the Government's response	23
	1. Innovation and the main focus of the school travel schemes	25
	2. Walking distances	25
	3. Funding of pilots	26

4. Monitoring and evaluation	26
5. Draft Partial Regulatory Impact Assessment	27
6. Timetable for change	27
7. Charging and means-tests	27
8. Charging, parental choice and diversity of school provision and other policies	28
9. Pupils with special educational needs (SEN)	28
10. Safety	29
11. Human Rights issues	30
VI Public consultation on the draft Bill	32
VII Reaction from Opposition Parties	33
A. Conservatives	33
B. Liberal Democrats	35
C. The Secretary of State's comments	36
VIII The Bill:	36
A. Introduction	36
B. The Bill compared with the draft proposals: highlights	38
C. An outline of the Bill and the proposed school travel schemes	40
IX Statistical Appendix (<i>David Knott, Social & General Statistics Section</i>)	45

I Statutory provisions governing LEAs' current duties and powers

The duties and powers of local education authorities (LEAs) to provide home to school transport are governed by sections 509 and 444 of the *Education Act 1996*, as amended. The 1996 Act was a consolidation Act; the provisions date back to the *Education Act 1944*, and the legislation has been largely unchanged although there have been dramatic changes in education, transport and attitudes. There is a considerable amount of case law on the interpretation of the provisions.

Under section 509(1) LEAs must provide free school transport if they consider it necessary to enable a pupil to attend school, and they have discretionary powers under section 509(3) to pay the whole or part of a pupil's travelling expenses. When deciding whether or not free transport is necessary the LEA must take account of the pupil's age, the nature of the possible routes to school and any parental wish for denominational education provided that is the denomination to which the parent adheres. Section 509 is linked to section 444, which provides a statutory defence for non-attendance at school if a child lives beyond the statutory walking distance to the nearest school and the authority has not made provision for free school transport. The statutory walking distance, which has remained the same since 1944, is two miles for pupils aged up to eight and three miles for those aged eight and over.

The courts have ruled that free transport must be provided for a pupil of compulsory school age (five to sixteen years) who attends the nearest suitable school if it is beyond the statutory walking distance. The statutory walking distance is measured by the shortest route along which a child, accompanied as necessary, may walk with reasonable safety. The courts have held that a route does not cease to be available because of the dangers that would arise if the child were unaccompanied.

LEAs do not have a duty to provide free transport for a pupil whose parents have chosen to send their child to a school that is not the nearest suitable school and is beyond the statutory walking distance. Statutory school transport is provided to ensure that children can attend school. Ministers have stressed that it is not, and never was, intended to be an all-inclusive transport service providing free travel for those who could reasonably walk or who have chosen not to attend the nearest suitable school.¹ However, LEAs have broad discretionary powers and some LEAs provide transport over and above the minimum statutory requirements.

Where a denominational school has been designated as the nearest suitable school and it is beyond the statutory walking distance the LEA must provide free transport. Where a

¹ For example, speech by Ivan Lewis, Parliamentary Under-Secretary of State, Department for Education and Skills, HC Deb 2 December 2001, cc 123 - 130WH

pupil lives closer to a non-denominational school, the LEA will provide free transport to a denominational school if they consider that transport is necessary, and they may otherwise provide assistance with travel costs. This is an area where LEAs exercise local discretion, taking into account the religious beliefs of parents and local circumstances.² Practices vary significantly from authority to authority. The *Full Regulatory Impact Assessment* on the Bill notes that a growing number of LEAs have introduced school transport charges for pupils attending denominational schools – from £94 a year in Rutland to £565 a year in Windsor and Maidenhead. Some LEAs have withdrawn, or are consulting on a complete withdrawal of home-school transport to denominational schools. Others have withdrawn more generous walking distances than the statutory minimum.³

LEAs arrange free school transport for children with special educational needs (SEN) for whom transport is necessary. The *Special Educational Needs Code of Practice* provides guidance to LEAs about the home-school transport for children with SEN.⁴ Where a parent wants their child to attend a school further away from the child's home than a nearer school that can meet the child's special educational needs, the LEA may name the nearer school if that would be compatible with the efficient use of the LEA's resources. However, it would also be open to the LEA to name the school preferred by the child's parents on condition that the parents agreed to meet all or part of the transport costs. The Code explains that transport need only be recorded in part 6 of a statement of SEN 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. Where the LEA names a residential provision which is some distance from the parents' home the LEA should provide transport or travel assistance. The Code recommends that LEAs have clear general policies relating to transport for children with SEN.

It is for each authority to decide whether and how to exercise its discretionary powers to offer free or subsidised transport to pupils not entitled to statutory free transport. The authority may pay all or part of the pupil's travelling costs, and may take account of parental income in deciding whether or not to do so. The authority may offer spare seats on school buses arranged for pupils that are entitled to free transport. A charge may be made for spare seats. However, the increasing cost of statutory provision has meant that discretionary provision has been decreasing.

LEAs must publish annually their policies on free and discretionary transport. A survey of LEAs carried out in 2003 by the DFES and Confederation of Education Service Managers (ConfEd) found that 22 LEAs in England (approximately 15%) had policies providing for lower walking distances for primary-aged children. The survey also showed that 120 LEAs (approximately 80%) provided free transport to denominational

² HC Deb 21 October 2003, c501W

³ *Full Regulatory Impact Assessment for the School Transport Bill*, available electronically at: <http://www.dfes.gov.uk/schooltransport/docs/RIA.docf>

⁴ DFES, November 2001, paragraphs 8.87 to 8.90: http://www.teachernet.gov.uk/_doc/3724/SENCodeOfPractice.pdf

schools although some attached restrictions to this. In Wales, 13 LEAs (approximately 60%) provided free transport for at least some pupils who attended denominational schools, with two more providing transport on a discretionary basis.⁵

The *Education Act 2002* introduced new duties in relation to transport for post-16 year old students. Every LEA must draw up and publish a policy statement setting out the provision of, and support for, transport for 16 to 19 year olds. The policy statement should include the arrangements that the authority considers necessary for the provision of financial assistance for *reasonable* travelling expenses of persons of sixth form age receiving education or training. The provisions were brought into force in England on 20 January 2003 for implementation of transport policies from the beginning of the 2003/04 academic year. In Wales the provisions were brought into force on 1 September 2003 for implementation in the 2004/05 academic year.

II An outline of the main problems associated with the current arrangements

Generally speaking, the main issues relating to the current arrangements concern environmental and health problems associated with increased car use for school journeys, costs to LEAs of home-school transport, fairness, equity and choice, and safety. However, the issues may vary from authority to authority and particularly between urban and rural areas.

A. Traffic congestion, environmental and health problems

The Government's primary concern is with traffic congestion at peak periods in the school day. Over the past 20 years the number of children being driven to school has almost doubled. Now almost 40% of primary school children and more than 20% of secondary school children are being driven to school each day, and most of the journeys are less than 2 miles.⁶ At 8.50 in the morning during term time, about one in five cars on urban roads is taking children to school.⁷ There is concern about the road congestion and pollution this creates, the safety implications of having more cars near schools, and the health and fitness of children as fewer children are walking or cycling to school.

⁵ Out of 150 LEAs, 129 participated fully or in part, and 4 submitted incomplete returns. The survey is on line at: <http://www.dfes.gov.uk/leagateway/subPage.cfm?action=nao.default&ID=70> Summary comments on the findings are given in the *Full Regulatory Impact Assessment for the School Transport Bill*

⁶ DfES Press Notice, *Beating the traffic - a new approach to the school run* - Clarke/ Darling, 17 September 2003 http://www.dfes.gov.uk/pns/DisplayPN.cgi?pn_id=2003_0178

⁷ See the table in the Statistical Appendix to this Research Paper

It is argued that the statutory walking distances are out-of-date, because it is unreasonable nowadays to expect children to walk so far, especially if they have much to carry. It is also argued that there is now much more road traffic than when the walking distance rule was introduced, and it is often unsafe for children to walk two or three miles.

B. Costs

LEAs' expenditure on home-school transport has been rising steadily. Between 2000-01 and 2002-03 the cost of providing home to school transport in England increased by over 18% from £560 million in 2000-01 to £662 million in 2002-03.⁸ The cost of transport for children with special educational needs can be particularly expensive. Almost half of the total spent on home to school transport in 2001-02 (around £254 million) was spent on transport to special schools. When transport for children with SEN to mainstream schools is included about 65% of the total school transport budget is used to support children with SEN.⁹ A breakdown by LEA of expenditure on, and pupils numbers receiving, free or assisted home-schools transport to special schools is given in the DfES evidence to the Education and Skills Committee in the pre-legislative scrutiny of the draft School Transport Bill.¹⁰

The DFES and Confederation of Education Service Managers (ConfEd) recently published a joint survey of the cost of school transport in England. It showed marked differences between LEAs, reflecting local practices.¹¹

Information on the trends in home-school transport, including modes of travel, length of journey, the cost of bus services, and LEA expenditure on school transport, is summarised in the *Full Regulatory Impact Assessment for the School Transport Bill*.¹²

For some authorities school transport is a substantial demand on available funding. There is almost 100% take-up of free school transport. Over the past 20 years discretionary provision has been eroded as LEAs have sought to manage their school transport budgets. The requirement on LEAs in England to delegate most of their budgets to the "schools budget" may accentuate the financial pressures on LEAs for school transport.

Responsibility for negotiating contracts for the provision of home school transport rests with the LEA, which is required to secure "best value" when doing so. The Audit Commission report, *Going Places*, noted that tender prices for home-school transport have increased at above inflation rates across the country in recent years. The

⁸ Local Government Association, *Children on the move – accessing excellence*, September 2003, p 7

⁹ DfES *Travelling to School: a good practice guide*, p 33

¹⁰ Education and Skills Committee, Third Report of Session 2003-04, *The Draft School Transport Bill*, HC Paper 509-II, Ev 19 to 25, available electronically at: <http://pubs1.tso.parliament.uk/pa/cm200304/cmselect/cmmeduski/509/50902.htm#evidence>

¹¹ <http://www.dfes.gov.uk/leagateway/subPage.cfm?action=nao.default&ID=70>

¹² *Full Regulatory Impact Assessment for the School Transport Bill*, pp 5 to 8

Association of Transport Co-ordinating Officers reported in November 2001 that re-tendered school bus contract prices were over 11% higher than the contracts they replaced. The increase in costs was examined by the Select Committee on the Environment, Transport and the Regions in 1999.¹³

Legislation on public bus services may affect home-school travel. If contracted home-school transport services also carry fare-paying passengers (for example, where the authority sells spare seats to pupils who are not entitled to free travel) they have to register as local bus services, even though they are not available to the general public. Local bus service contracts are subject to different, more stringent, regulations than school bus contracts. This may act as a disincentive for the authority to sell spare places on school buses.

C. Fairness, equity, and parental choices

A child from a low-income family who lives just short of the statutory walking distance may receive no help whereas a child from an affluent family who lives just beyond the statutory walking distance to school will be entitled to free school transport.

The *Full Regulatory Impact Assessment for the School Transport Bill* notes that there is anecdotal evidence that bus fares cause serious financial strains on low income families who are not entitled to free transport, particularly where there are several children. It also refers to unpublished research commissioned by the DfES which suggests that, under the current legislative framework, parents/carers on higher incomes are less likely to pay for their child's travel to school than those on lower incomes. Larger families are likely to be disproportionately burdened under existing arrangements as the amount paid is per child rather than per family.¹⁴

LEAs exercise discretion about whether to provide free or subsidised travel to pupils who do not have a statutory entitlement. Some authorities provide free or assisted travel for journeys within the statutory walking distance; some provide support to schools other than the nearest. As a result the arrangements vary widely across the country.

Parents who want their children to attend denominational schools may find that they are not entitled to free transport and that there is no bus service available.

Some commentators have pointed out that the Government's policies to promote diversity in school education, and its stated commitment to encourage greater parental choice, may lead to children travelling greater distances. There is a corresponding expectation that LEAs should support travel to facilitate choice, otherwise only those who can afford

¹³ Environment, Transport and Regional Affairs Committee, Eighteenth Report of Session 1998-99, *Tendered Bus Services*, HC Paper 429

¹⁴ *Full Regulatory Impact Assessment for the School Transport Bill*, pp 35 and 36

travel can benefit. The relationship between school transport, parental choice and the Government's policies to promote diversity in school provision was highlighted by the Education and Skills Committee in its pre-legislative scrutiny of the draft School Transport Bill.¹⁵ The lack of travel arrangements can affect the ability of pupils to participate in out-of-school hours activities (which the Government wish to promote).

Other parental choices may also lie behind increased car use and longer journeys to school. Parents may choose, when they can, to send their children to selective schools, where admissions criteria countenance attendance by children who do not live nearby. Other parents may choose car use because it fits in with their own journeys to work, and the site of the workplace may make the selection (when possible) of a school nearer the workplace than the home relatively attractive.

D. Safety

Concerns about the safety of children travelling to and from school, including fears about "stranger danger", may lead parents to choose to take their children to school by car. Parents may also be worried about safety on school buses.

Some LEAs have their own school transport buses. However, most LEAs contract out at least some of their home-school transport to private providers. Children may be transported by bus, coach or taxi, and season tickets may be provided for public transport. There is concern about safety issues on school buses in particular relating to seat belts, overcrowding and supervision. There is also concern about the age of some of the buses used. Pupils' behaviour and vandalism on buses is another issue.

These matters were examined recently by the Transport Committee, which was concerned about various issues of safety that are not covered by the Bill.¹⁶ These may lead parents to choose to take their children to school by car rather than use a school bus. The following three sections¹⁷ provide background on the main issues related to safety.

1. Vehicle safety

The Transport Committee considered the government should set national minimum standards for LEA school bus contracts. It was concerned that when considering tenders many local authorities were interpreting 'best value' as 'lowest cost'.

The government responded:

¹⁵ Education and Skills Committee, Third Report of Session 2003-04, *The Draft School Transport Bill*, HC Paper 509-I, 7 July 2004

¹⁶ Transport Committee, Eighth Report 2003-04, *School Transport*, HC 318-I, 31 March 2004 <http://www.parliament.the-stationery-office.co.uk/pa/cm200304/cmselect/cmtran/318/318.pdf> [The evidence has not yet been published]

¹⁷ written by Fiona Poole, Business & Transport Section, House of Commons Library

The rules for local authorities on public bus service contracts do not specify that they must accept the lowest tender. In line with best value principles, section 152 of the *Transport Act 2000* states that authorities, in deciding whether or not to accept a tender for a contract, should have regard to a combination of economy, efficiency and effectiveness, the requirements of their bus strategy and the reduction or limitation of traffic congestion, noise or air pollution. DfT is currently revising its good practice guidance to tendering authorities, last revised in 1999, giving advice on procedures and strategies for maximising value for money from contracts. However, it is of course for each authority to make its own decisions on which tenders to accept in each particular case.

We do not agree that it is necessary for the government to set minimum standards for LEA school bus contracts.¹⁸

Although it is illegal for anyone to use a vehicle on the road if it does not meet at least the minimum roadworthiness standards prescribed in legislation, the Committee considered that some school buses were demonstrably dangerous.¹⁹ The government accepted that a minority of operators may not meet the highest standards and in these cases anyone either hiring or using the vehicles should report the matter to the Vehicle and Operator Services Agency (VOSA) or the police.²⁰ It also accepted that in some areas, operators of buses and coaches used to transport school children are concerned about vandalism, so they may choose to operate older vehicles on these journeys.²¹

2. Seat belts and overcrowding

All forward facing seats in a minibus (defined as having more than 8 but not more than 16 passenger seats) or coach (defined as having more than 16 passenger seats, weighing more than 7.5t gross and capable of exceeding 60 mph) used to take children on organised trips, must be fitted with a seat belt for each child aged 3 or more but under 16.²² However although the regulations explicitly include home-to-school transport, they exclude scheduled services. Nor do they cover buses (i.e. vehicles with more than 16 passenger seats but incapable of exceeding 60 mph), even when used for a school trip. All new coaches, minibuses and buses except "urban buses" have had to be fitted with seat belts since 1 October 2001.²³

¹⁸ *The Government's Response to the Transport Committee's Report on School Transport*, June 2004, Cm 6254,

http://www.dft.gov.uk/stellent/groups/dft_sustravel/documents/pdf/dft_sustravel_pdf_029335.pdf

¹⁹ Transport Committee *School Transport*, paras 33-34

²⁰ *The Government's Response to the Transport Committee*, para 10

²¹ *The Government's Response to the Transport Committee*, para 11

²² *Road Vehicles (Construction and Use) (Amendment) (No. 2) Regulations 1996*, SI 1996/163. More information is given in Library Standard Note SN/BT/542, *Seat belts in buses*.

²³ *Road Vehicles (Construction & Use) (Amendment) (No 2) Regulations 2001* SI 2001/1043

Thus the seat belt regulations still do not apply to what is normally considered an ordinary bus, even when used as a school bus. Furthermore the regulations only cover the fitting of seat belts, not the wearing of them. The compulsory wearing of seat belts is limited to requiring belts to be used in rear, as well as front, seats of smaller minibuses; and requiring belts to be worn in the driving and specified passenger seats of minibuses and coaches.²⁴ In practice parents and schools are likely to insist that seat belts are worn where fitted.

Concern has been expressed that the rules leave children at risk, particularly on journeys to and from school. The government's view is that ultimately it is for the schools and local education authorities to ensure the vehicles are appropriate for the type of journey planned, including whether they are fitted with seat belts.²⁵

The number of passengers that can be carried on a bus is governed by the *Public Passenger Vehicles Act 1981* and the *Public Service Vehicles (Carrying Capacity) Regulations 1984*.²⁶ Both seating and standing capacities must be marked clearly on the vehicle. Under regulation 5(1) seating capacity is on the basis of one person per seat, but regulation 5(2) allows three seated children under 14 years to count as two passengers. The "3 for 2" concession was ended on 1 May 1996.²⁷ However the scrapping of the 3 to 2 rule is compulsory only in vehicles where seatbelts are fitted.

3. Supervision

The responsibility for providing suitable home to school transport for children rests with the local education authority and they are responsible for ensuring that they use an appropriate bus or coach company. The operator of the public service vehicle (PSV) is legally responsible for ensuring passenger safety. In its report, *School journeys - blueprint for greater safety and choice*, published in January 2000, the School Transport Advisory Group (STAG) recommended that all drivers, professional and voluntary, transporting children to school should receive specific initial and in-service training, including safety issues and dealing with child passengers. The DfT issued practical advice to bus drivers and operators on how to minimise unruly behaviour and the risk of assault.²⁸

The Transport Committee recommended the use of escorts on school buses.²⁹ The DfT agreed that more schools might provide them but did not consider it was its responsibility to provide them.³⁰

²⁴ *Motor Vehicles (Wearing of Seat Belts) Regulations 1993*, SI 1993/176

²⁵ PQ HC Deb 26 February 2001, c 315W

²⁶ *Public Service Vehicles (Carrying Capacity) Regulations 1984*, SI 1984/140

²⁷ *Public Service Vehicles (Carrying Capacity) (Amendment) Regulations 1996*, SI 1996/167

²⁸ DfT *Protecting Bus and Coach Crews*, December 2003

²⁹ Transport Committee *School Transport*, para 37

³⁰ *The Government's Response to the Transport Committee*, para 12

III Pressure for change

Several reports have examined problems related to home-school transport, and have proposed changes.

A. The School Travel Advisory Group report

The 1998-99 School Travel Advisory Group (STAG) report highlighted an increase in the proportion of journeys to school by car, an increase in primary-aged pupils being accompanied to school, and an increase in the average length of the journey to school for secondary pupils.³¹ The group's aim was to make it possible for every child to walk, cycle or take the bus or train to school so that by 2010 the level of walking, cycling and bus use is returned to that of the mid 1980s. The group acknowledged that this would not be possible without addressing issues related to traffic safety, improvements in school facilities, and the availability of affordable public transport. The report called for, amongst other things, better use of the resources devoted to statutory school transport. It said that further work should be undertaken including pilots to test the level of supply and take-up at different prices of additional school transport by children who are not entitled to free school transport.

B. The Audit Commission report: *Going Places*

The Audit Commission report, *Going Places*, published in November 2001, suggested that the Government should more fully align the provision of free home-school transport with its wider environmental, transport, school travel and health and fitness policies.³² It recognised that the Government could build on existing initiatives and the data from the "yellow bus" pilots (see section D below), and recommended that it should also review the legislation on free home-school transport. The options it proposed included amending the statutory walking distance criteria; making it easier for authorities to provide bus services that can be used by children travelling free and by those paying fares; setting core standards for home-school travel; and transferring responsibilities, wholly or partly, from LEAs to local transport authorities.

C. The Social Exclusion Unit report: *Making the Connections*

The Social Exclusion Unit report, *Making the Connections*, published in February 2003, also recommended that LEAs should have greater freedom in the way they manage home to school transport.³³ The report highlighted the relationship between education and the drive to increase participation and achievement in education. It noted the negative impact

³¹ School Travel Advisory Group Report 1998-99, January 2000, http://www.dft.gov.uk/stellent/groups/dft_sustravel/documents/page/dft_sustravel_504066.pdf

³² <http://www.audit-commission.gov.uk/>

³³ http://www.socialexclusionunit.gov.uk/publications/reports/pdfs/SEU-Transport_Main.pdf

the current school transport arrangements can have on low-income families by restricting parental choice of school and access to learning outside school hours if transport is not available. The report said that the Government intended to introduce a number of measures to address this problem. These included encouraging LEAs to introduce pilot schemes to test wider free home-school transport entitlements, which could enable children to benefit from education in specialist or faith schools, or those offering alternative ways of learning through a more flexible 14 to 19-year-old curriculum.³⁴

D. The Steer Davies Cleave evaluation of the “yellow bus” pilot schemes

There has been growing interest in the US yellow bus scheme, where the school buses are all coloured mustard yellow, and each bus has the same driver every day and each child has an allocated seat. When children are alighting or boarding, large red lights at the front and rear of the bus flash, and all other traffic must stop. In February 2001 the Government announced a series of yellow bus pilot schemes. The pilots do not include all the characteristics of the US scheme, such as the law forbidding vehicles to overtake stationary school buses.³⁵

The Government commissioned Steer Davies Cleave to examine the pilots and its evaluation report was published in November 2003.³⁶ The research sets out the potential advantages of well-designed dedicated bus schemes, and the features that have been most highly valued. It found evidence that such schemes could reduce car dependency on the journey to school. However, it also found that a dedicated bus service can sometimes discourage children from walking and cycling; and it may have negative impacts on commercial bus services, although these impacts could be mitigated through careful scheme design.

The research identified practical issues that might create barriers to future expansion of the scheme beyond the pilots, including the effect yellow buses may have on the local bus network, the availability of specifically trained drivers, the impact of the buses on congestion, and the cost.

Views on the affordability of the pilot schemes varied. Where services are being introduced to attract car users to buses, parents appeared unwilling to pay more than £1 a day – a charging level which does not cover the full cost of the service. Other factors were also relevant, such as the lack of co-ordinated school times and parental preference for schools other than the nearest school.

³⁴ paragraphs 10.16 to 10.20

³⁵ for further background see Library Standard Note SN/BT/2778

³⁶ *Evaluation of the First yellow bus pilots schemes*, October 2003, prepared by Steer Davies Gleave for the Department for Transport

E. The Local Government Association review: *Children on the move – accessing excellence*

The Local Government Association (LGA) carried out an independent review of the problems associated with home-to-school transport and published its report *Children on the move – accessing excellence* in September 2003.³⁷ This reviewed the current arrangements and identified the major issues facing LEAs.

The LGA put the case for LEAs being given greater legislative flexibility to respond to the current challenges in the context of their accessibly planning. Stressing the need for local problems to be addressed by local solutions, it recommended that LEAs should be given the flexibility to charge for school transport according to local criteria, and that there should be pilots in a number of LEAs to explore different ways of providing home-school transport.

The report noted that changes may be needed to the *Transport Act 1995*. Other recommendations included: increasing the number of LEA school travel plan co-ordinators, to build on the current innovative work being done under the safe routes to school programme; requiring all schools to have a school travel plan; disseminating good practice, survey and other evaluation findings; giving LEAs power over school hours (currently determined by school governing bodies) to facilitate widening the traffic peak times and making more efficient use of buses; raising the awareness of pupils about the impact of their choices of travel on the environment and their health; allowing schools or clusters of schools, with their LEA, to pilot schemes where the school organises all or part of its home school transport; and, setting a minimum level of secure cycle parking in schools' asset management plans.

F. DfES action plan and good practice guide, *Travelling to School*

On 17 September 2003 the Government published *Travelling to School: an action plan* and an accompanying document *Travelling to School: a good practice guide*.³⁸ The action plan proposed measures intended to reduce car use on the home-to-school journey, and to get as many children as possible to walk, cycle or use public transport to get to school. The plan announced that the Government was considering whether to change the law to allow some LEAs to pilot new arrangements for school transport that would take account of the particular needs of their area in the light of local consultation. It was envisaged that the scheme would supersede the statutory walking distances, and that authorities would be permitted to make small charges for school transport where parents could afford to pay. Any income raised by charges would be invested to improve school transport. The primary aim of any local scheme would be to reduce car use.

³⁷ <http://www.lga.gov.uk/Documents/Publication/childrenonthemove.pdf>

³⁸ http://www.teachernet.gov.uk/_doc/5166/School%20Travel-A4-Flyer.pdf

The action plan said that it wanted all schools over the next few years to have travel plans. These are packages of measures to promote walking, cycling, use of public transport and car-sharing for the journey to school. The measures may include improved pavements or crossings, 'walking buses' (where pupils are collected from an agreed location and walk together escorted by volunteers), secure cycle parking and lockers, and improvements to the dedicated school bus services. At least 2,000 school travel plans are already in place, and the Government is funding local authority based school travel advisers to help schools draw up travel plans. Funding is being provided to schools for capital works such as providing secure cycle parking, lockers and bus bays. (The allocations are about £10,000 for a typical secondary school and £5,000 for a typical primary school).

The main action points from the action plan were:

SCHOOLS

- put in place a travel plan setting out what schools, local authorities and others will do to support pupils' home/school journeys;
- work with others to implement school travel plan measures;
- develop pupils' road safety skills through practical pedestrian and cycle training;
- promote positive behaviour by pupils on their journey to and from school;
- ensure transport supports the extended school day;
- consider whether staggered school opening hours can allow pupils access to a wider range of school based activities;
- provide secure cycle storage and lockers as well as adequate cloakroom facilities;
- check whether uniform and timetabling policies support walking and cycling;
- incorporate travel planning into the curriculum;
- work with children with special educational needs to prepare them for independent travel wherever possible.

LOCAL EDUCATION AUTHORITY/TRANSPORT AUTHORITY

- support walking, cycling and car sharing by providing expert support for schools in investigating and designing safe routes to school;
- give schools applying for planning permission priority help from school travel advisers;
- use capital investment from Local Transport Plans to make infrastructure changes identified in school travel plans as quickly as possible;
- promote school bus use, investigating whether better integration with health, social services, post-16 provision and the public bus network/taxi provision would provide higher quality, more responsive services for all users as well as cutting costs;
- develop inclusive policies and practices so that children with SEN use the same transport as mainstream pupils;
- encourage commercial or tendered bus services which meet pupils' needs.

DEPARTMENT FOR EDUCATION AND SKILLS/DEPARTMENT FOR
TRANSPORT

- promote minimum standards for school travel plans with guidance on reducing car use, together with plans to check annually whether reductions have been achieved;
- provide additional capital grant for schools to spend on measures identified in their travel plans;
- provide around £7.5 million per year for at least two years to fund a strengthened team of local authority school travel advisers, who will support schools and local authorities in preparing and implementing travel plans;
- provide more support and project management from the centre, with help from an expert panel;
- remove the requirement for school buses to register with the Traffic Commissioner;
- support some smaller scale measures, such as funding for the "Walking to School" campaign;
- include measures such as cycle parking, showers and ample locker facilities in our model designs for "Building Schools for the Future".³⁹

IV The draft Bill

The Queen's Speech on 26 November 2003 announced that "A draft bill will be published to enable some local authorities to pilot new arrangements for school transport to reduce road congestion". During the Debate on the Address, the Secretary of State for Education and Skills emphasised that the draft Bill would be a deregulatory measure to allow local government, in consultation with others, to decide how it wants to deal with school transport issues, and that there would be discussion with all interests including the churches to see whether there is a consensus on the best way forward.⁴⁰

Replying to a subsequent adjournment debate on school transport, Ivan Lewis, Parliamentary Under-Secretary of State said that the question of school transport had been avoided for many years because it was too controversial, difficult or sensitive. He added that the Government had not ruled any option in or out, and that it wanted to facilitate and enable solutions at local level – it wanted LEAs to take responsibility for tackling the problem and to have the freedom to innovate and test out new ideas.⁴¹

The draft School Transport Bill with Explanatory Notes and a draft Partial Regulatory Impact Assessment was published on 8 March 2004.⁴² It was also published as part of a

³⁹ Education and Skills Committee, Third Report of Session 2003-04, *The Draft School Transport Bill*, HC Paper 509-II, DfES evidence, 31 March 2004, Ev 7, Memorandum, Annex A

⁴⁰ HC Deb, 3 December 2003, cc 523-4

⁴¹ HC Deb 3 February 2004, cc 740-1

⁴² *School Travel Schemes – Draft Bill*, Cm 6156, March 2004

consultation paper, *School Travel Schemes - Draft Bill and Prospectus*, issued jointly by the Department for Education and Skills and the Welsh Office.⁴³ The draft Prospectus explained the approach that the Government expected LEAs to adopt in drawing up local school travel schemes, and explained how the approval process would work. The draft Bill and associated documents were scrutinised by the Education and Skills Committee, and before that the Transport Committee looked at the wider implications of the Government's proposals (see below).

The draft Bill sought to implement the proposals contained in the DfES action plan *Travelling to School* (see above) to enable LEAs to draw up school travel schemes that will be best suited to their local needs. The proposals contained in the draft Bill and in the draft prospectus were outlined in a Library Standard Note SN/SP/2958, *Draft School Transport Bill: Background Briefing*, dated 12 March 2004.⁴⁴

Initial reaction to the draft Bill concentrated on charging and whether an unintended consequence of charging would be an increase in car use. When the proposals were first announced the National Association of Head Teachers said that parents would question whether the change would seriously undermine free education.⁴⁵ Concern was expressed that the pilots might lead to the general withdrawal of free school transport; however, this suggestion was strongly rejected by Ministers.⁴⁶

V The pre-legislative scrutiny of the draft Bill and the Government's response

The pre-legislative scrutiny of the draft School Transport Bill was undertaken by the Education and Skills Committee.

The proposals were also considered by the Transport Committee.⁴⁷ It noted that "It is clear that there is something wrong with school transport; the legislative framework is outdated; the services provided can be substandard; parents are increasingly choosing to increase congestion by driving their children to school, rather than choosing healthier modes of transport." The Committee concluded that allowing LEAs to try a range of approaches was sensible but that the Government's approach was "seriously flawed"

⁴³ *School Travel schemes – Draft Bill and Prospectus*, DfES/Welsh office, 2004:
<http://www.dfes.gov.uk/consultations/conDetails.cfm?consultationId=1242>

⁴⁴ <http://hcl1.hclibrary.parliament.uk/notes/sps/snsp-02958.pdf>

⁴⁵ http://www.naht.org.uk/news/web_news_view.asp?ID=1596§ionid=1

⁴⁶ David Jamieson's reply to a PQ on 6 January 2004, Adjournment Debate introduced by Matthew Taylor, HC Deb, 3 February 2004, cc 735- 742; HC Deb, c 143; HC Deb 29 April 2004, cc 994-6 (Oral)

⁴⁷ Transport Committee, Eighth Report of Session 2003-04, *School Transport*, HC 318-I, 31 March 2004, <http://www.parliament.the-stationery-office.co.uk/pa/cm200304/cmselect/cmtran/318/318.pdf>
[The evidence has not yet been published]

because the problem was not being treated urgently enough, and the approach failed to consider school transport as part of a wider transport system. In particular the Committee was concerned that the proposals, as originally drafted, would allow future Secretaries of State to determine the school transport system without any further legislative authority. The Government responded to the Transport Committee in June 2004.⁴⁸

The Education and Skills Committee published its report on 7 July 2004 and its formal minutes on 29 July 2004.⁴⁹ The Committee confirmed that home-school transport is clearly in need of attention, expressed surprise that more has not been made of the opportunity to legislate, and argued for a more radical overhaul of the legislation. The Committee said that the draft Bill's central proposal to pilot schemes tailored to local circumstances, which may include charging, was sound. However, the Committee also concluded that the Government's objectives to encourage more children to walk, cycle or use public transport to get to their local school did not sit easily with Government policies to increase diversity in schools and allow greater parental choice of school: an approach, which it argued, encouraged greater mobility. The Committee pointed out that although the pilot schemes would be required to reduce traffic congestion, there was no quantified target, and that no mention was made of health, environmental and educational benefits that improved home to school transport could bring. In addition, the Committee found no evidence that reliable monitoring and evaluation systems were in place to assess the results of the pilots.

The Government published its response to the Education and Skills Committee report on 22 September 2004, and confirmed that it would proceed with the Bill.⁵⁰ The Government did not accept that its objectives were confused, and welcomed the Committee's agreement with the pilot approach, including charging. It responded to some of the Committee's concerns by making adjustments to the revised draft of the *School Travel Scheme Prospectus* that accompanies the Bill. In particular the revised draft prospectus places greater emphasis on the health, environmental and educational benefits improved home to school transport can bring. The Government did not accept that its approach was incompatible with parental preference or its school diversity policies, and expects the pilot authorities to work with schools to tackle school travel issues in their area. It said that there would be a wide-ranging evaluation of all the pilot schemes to gain a clear picture of the successes and failures of different approaches.

⁴⁸ *The Government's Response to the Transport Committee's Report on School Transport*, June 2004, Cm 6254,

http://www.dft.gov.uk/stellent/groups/dft_sustravel/documents/pdf/dft_sustravel_pdf_029335.pdf

⁴⁹ House of Commons Education and Skills Committee, Third Report of Session 2003-04, *The Draft School Transport Bill*, HC Paper 509-I and II, available electronically at:

<http://pubs1.tso.parliament.uk/pa/cm200304/cmselect/cmmeduski/509/50902.htm#evidence>

⁵⁰ *The Government's Response to the Education and Skills Committee's Report on School Transport*, Cm 6331, September 2004

The sections below highlight some of the key issues raised by the Committee, and note the main thrust of the Government's response, contained not only in its formal response to the Committee's report but also in the revised draft *School Travel Scheme Prospectus*. Since the following is not intended to be an exhaustive list of the Committee's recommendations and the Government's response, readers are advised to consult the Government's formal response for further details.

1. Innovation and the main focus of the school travel schemes

Many of the witnesses to the Committee gave examples of a wide range of innovative initiatives that are currently running under existing legislation, and there was some discussion about whether new legislation was needed to promote such innovation (though an important difference is that the Bill amends existing legislation to allow charging – see below). Noting that some witnesses have expressed concern that the pilots under the Bill might focus on bus travel, the Committee recommended that the Government place an expectation on all local authorities, not just the pilot authorities, to promote walking and cycling, and that travel scheme proposals should include the promotion of walking and cycling. The Government's response to the Committee noted the initiatives taken by the Government to promote walking and cycling, including the publication of *Walking and Cycling: An Action Plan* in June 2004.⁵¹ The Government expects the pilot schemes to be designed in such a way that children who currently walk or cycle to school would continue to do so, rather than switching to travel by bus. The Press Notices announcing the Bill highlighted the walking and cycling programmes that the pilots could develop.⁵²

The Committee argued that if basic entitlements to transport are to be retained on the grounds of distance, income or special educational needs they should be explicitly written into the Bill. This would allow innovation while protecting vulnerable groups. The Government's response noted that the draft Bill already contains safeguards.

2. Walking distances

The draft Bill preserved the requirement for LEAs to make transport arrangements for any child who attends a school that is beyond the statutory walking distances unless suitable arrangements have been made for boarding at or near the school or for the child to become a pupil at a school nearer to the child's home. The Committee took evidence both in favour and against the preservation of these walking distances. It recommended that the pilot schemes investigate the setting of local walking distances, and that the department should consider the possibility of setting revised statutory limits, taking into account age, the safety of the route and the time it would take to walk.

⁵¹ Department for Transport

⁵² DfES and DfT Press Notices, 14 October 2004

The Government's response noted that no LEA at present was considering setting a local walking distance, and that the department could not force LEAs to trial alternative walking distances, although the central scheme evaluation will look closely at walking distances in scheme areas.

3. Funding of pilots

Under the proposals LEAs are expected to fund the school travel schemes from resources already committed to school transport, including any revenue raised through charges. In their evidence to the Committee, local authorities pressed for pump-priming money to enable the pilot schemes to be set up. The LGA warned that such funding was fundamental to the success of the approach, and that without it local authorities might not be able to participate. The Committee agreed that there was a good case for pump-priming funding to be provided.

The Government announced in its response to the Committee that there would be pump priming funding of up to £200,000 per scheme, depending on the number of pupils covered.

4. Monitoring and evaluation

The Committee noted that as the main aim of the schemes is to reduce car use in home-school travel, the process of monitoring and evaluating the schemes will be vital in deciding whether the approach is successful. It urged the Government to consider setting targets for the evaluation of the schemes using relative measures, such as a percentage decrease in congestion near schools or in the number of children travelling to school by car. In its response to the Committee, the Government emphasized the importance in distinguishing between national and local scheme objectives. It had decided not to set a firm target for modal shift for the school programme as a whole at national level though it agreed that, in principle, it would be desirable to move over time to targets and objectives as more evidence about modal shifts become available. The Government said that at the local level, it was not possible or appropriate to pre-define quantified objectives for individual schemes. Instead the approach would be to agree local targets with individual scheme LEAs depending upon their priorities.

The Government said that a cost effective way of collecting travel-to-school data (on all maintained schools, not just the pilot LEAs) would be through the Pupil Level Annual School Census (PLASC), and that this would be considered and a decision announced in December 2004. The Government accepted that there would need to be further evaluation covering all the pilot schemes.

The revised draft *School Travel Scheme Prospectus* notes that LEAs with approved schemes will be required to produce an annual report analysing the effect that schemes have had in reducing car use on the school run. It will have to give an account of what has and has not been successful, and the views of key partners in the scheme, as well as providing detailed information about the economics of the scheme.

5. Draft Partial Regulatory Impact Assessment

The *Draft Partial Regulatory Impact Assessment*, which was less than five pages long, was seen by the Committee as a serious weakness of the draft Bill because it did not provide an assessment of the policy options in terms of costs, benefits and risks. The forty-two page *Full Regulatory Impact Assessment* includes an analysis of the costs and benefits of examples of different schemes.

6. Timetable for change

The Committee thought that 2011 (the latest date when a decision will be made by the Government/ Welsh Assembly whether the local travel scheme approach should continue and/or be extended) was too long to wait for solutions to school transport problems to be implemented nationwide. The Committee therefore recommended that the department look into the possibility of running shorter pilots.

The Government said that it intends to commission an evaluation to spread knowledge and best practice, and encourage as many LEAs as possible to explore travel scheme options. It noted that under the Bill the number of pilots could be increased through secondary legislation. It stressed that there is already considerable scope for making improvements in home-school transport, and that non-pilot authorities will be able to learn from existing good practice.

7. Charging and means-tests

As noted above, the Committee thought that the pilot approach, including charging, was sound. It regarded an exemption based on ability to pay as fairer than the present limit based on statutory walking distances. It examined the definition of “protected children” who would be exempted from charges under school travel schemes, and expressed serious reservations about using free school meals entitlement as a definition for the category of “protected children”. It called for a more sophisticated measure to be used such as the working tax credit. Both the original and revised draft *School Travel Scheme Prospectus* said that LEAs would be asked to take account of the circumstances of low-income families and those whose income lies just above the free school meal cut-off. In its response to the Committee, the Government said that the Inland Revenue would be working with the DfES and potential pilot authorities to identify options for using the tax credit system for means-testing.

The Committee also looked at the effect of charging on car use. The evidence presented to the Committee suggested that an improvement in the level and quality of services would be necessary for charging to succeed. The Committee observed that an overnight increase in costs would be likely to cause unacceptable increases in car use. Therefore it recommended that the introduction of charging should be carefully evaluated and monitored to measure the impact on car use.

In its response, the Government said the research evidence was not as clear cut as the Committee suggested. It cited research commissioned and published by the DTLR in 2001 that found that 44% of parents who drove their children to school would consider switching to existing standard buses, whereas 76% would consider switching to an “improved service”. The average daily return fare suggested by parents for existing standard buses was 65p, and the average fare for an “improved service” was 72p.⁵³ However, the *Evaluation of First Yellow Bus Pilot Schemes* (referred to above) found that in some areas £1 was thought to be about right for a daily return fare, whereas in other areas this was considered too expensive for primary-aged children.

The Government agreed that the quality of service would be an important factor for both parents and children, and said that it would be monitoring this aspect of the pilot schemes closely.

8. Charging, parental choice and diversity of school provision and other policies

The Committee highlighted the evidence that the Secretary of State had given to the Transport Committee, to the effect that the main aim of the draft Bill was to encourage people to attend their local neighbourhood school and, therefore, to travel less. As noted earlier, the Committee felt that this interpretation of the Bill’s objectives seemed to conflict with the Government’s other policies on diversity of schools and parental preference, which, it said, would lengthen the journey. Moreover, the Committee said that it was hard to see how the Bill will extend parental choice to low-income families as it made no legal requirement for children on low-income families to receive free transport to any school which was not their nearest school. The Government pointed out that, although the Bill does not make such provision, LEAs could if they chose to do so.

The Committee noted that the Government’s plans to extend the school day and introduce greater flexibility in the school curriculum are complicating factors when planning school transport provision. The Government acknowledged this. The revised draft prospectus makes it clear that account of extended school provision will need to be taken in the pilot application and assessment process.

9. Pupils with special educational needs (SEN)

The Committee said that the provision of transport for pupils with SEN was not given adequate consideration in the draft Bill and the supporting material. It noted that the only mention of SEN transport provision in the (original) draft prospectus was a paragraph encouraging local authorities to place pupils with SEN on “mainstream” transport wherever possible. The Committee was concerned that such a shift to “mainstream” provision should not erode individual provision where it is necessary for pupils, and noted

⁵³ DTLR, *Assessment of attitudes to, and potential take-up of, additional home to school transport*, 2001, <http://www.rmd.dft.gov.uk/project.asp?intProjectID=10682>

that changes to travel arrangements would require careful development and planning. It recommended, amongst other things, that SEN transport should be a priority for school travel schemes, and noted that schemes would have to offer a complex range of transport facilities, and that costs would increase as services get better at providing for pupils with the highest level of need. It concluded that clearer guidance would be needed setting out LEAs' responsibilities to pupils with SEN.

The Government acknowledged that there would always be some SEN pupils who will need individual transport, and that any changes to travel arrangements for pupils with SEN would need to be planned carefully. There will be research to help LEAs improve their SEN transport arrangements, with a view to new guidance being published on the matters that LEAs will need to address in drawing up SEN transport policies.

The revised draft prospectus states that scheme applicants must describe how their proposals cater for pupils with SEN (with and without statements of SEN), disabled pupils and for pupils with medical conditions. The presumption is that wherever possible pupils with SEN will share "mainstream" transport. Where this is not possible, LEAs will be expected to try to identify ways to combine journeys and, if possible, share vehicles and schedules with social services or health service transport. The revised draft prospectus states that transport or other assistance would have to be provided for a child with mobility or other difficulties who is unable to walk 2 or 3 miles. The LEA would have discretion in making these arrangements, and may take into account other forms of assistance for such pupils, such as mobility allowance and provision of a "motability" car.

LEAs will have to provide an analysis of the impact of charging on different groups of pupils.

10. Safety

The Committee received evidence, particularly from parents, about safety and the quality of school transport. Pupil behaviour on school buses was also raised. The Bill does not change the legislation relating to safety on school buses; however, both the Education and Skills Committee and the Transport Committee said that safety should be a prominent part of the Government's school transport initiatives. The Education and Skills Committee made specific recommendations in relation to safety, pupil behaviour on buses and on walking routes to school. The Government agree that safety is a key issue for many parents. In its response to the Education and Skills Committee's report the Government said that the focus on safety would be increased in the pilot scheme areas in the context of encouraging pupils and parents to consider walking and cycling as well as taking the bus. The revised draft prospectus said that scheme authorities will be expected to outline their approach to safety for all pupils on the home-school journey, as this is will be a key area for travel plans.

11. Human Rights issues

The Education and Skills Committee and the Joint Committee on Human Rights considered the human rights implications of the draft bill and its associated draft prospectus.

The Education and Skills Committee said that the guidance in the original draft prospectus was “woefully inadequate”, and that it was unacceptable to simply state that LEAs should take legal advice before submitting their applications for school travel schemes. The committee heard evidence relating to LEAs’ provision of free transport to enable parents to send their children to denominational schools when non-denominational schools were nearer. Also it highlighted the case of a parent who expresses a strong philosophical view that a denominational school would not be appropriate for their child, and noted that such a parent is in a similar legal position to one who expresses a strong preference for a denominational school. The Committee called on the Government to provide clearer guidance to LEAs on those school transport practices which it considers would be discriminatory. It also urged the Government to pay heed to the recommendations of the Joint Committee on Human Rights.

The Joint Committee on Human Rights looked in detail at the implications of the draft Bill.⁵⁴ It identified several human right compatibility issues:

- Whether the replacement of current LEA policies (which provide free or subsidised transport to denominational schools) with school travel schemes under which charges may be levied will interfere with the right of parents to have their children educated in conformity with their own religious convictions, if parents cannot afford to send their children the further distances to denominational schools.
- Whether the continuation in the new school travel schemes of the current policy of many LEAs to provide free or subsidised school transport to children attending denominational schools is in breach of the ECHR because it discriminates, without objective and reasonable justification, against parents who wish their children to attend non-denominational schools.
- Whether school travel schemes which charge parents in Wales who wish their children to attend a Welsh-speaking school but do not charge parents who send their children to an English speaking school would be in breach of the Convention because they discriminate, without objective and reasonable justification, against parents who wish their children to be educated in a minority language.

⁵⁴ House of Lords and House of Commons, Joint Committee on Human Rights, Scrutiny of Bills: seventh progress report, HL Paper 157, HC Paper 999, 4 August 2004 available at: <http://www.publications.parliament.uk/pa/jt200304/jtselect/jtrights/157/15707.htm#n33>

- Whether the continued reliance on "walking distance" as the trigger to the duty to provide free school transport discriminates against children with mobility difficulties without objective and reasonable justification.

In the Joint Committee's view the draft Bill did not "give rise to any significant risk of a breach of any of the substantive guarantees of either the child's right to education, or the right of parents to have their children educated in accordance with their religious or philosophical convictions. It does, however, give rise to a significant risk of discrimination in relation to the enjoyment of both of these rights." The Joint Committee concluded that there was a clear need for departmental guidance making the human rights position clear for at least three reasons:

(1) First, in our view there is clear evidence that LEAs are currently under a misapprehension about there being an obligation to subsidise transport to denominational schools (an impression which will have been reinforced by para. 8 of the Prospectus).[*] We note that the Government does not agree that LEAs are under any misapprehension about their obligations to provide free or subsidised transport to denominational schools but rather understand that this is discretionary. We were persuaded by the evidence of the National Secular Society to the Education Committee that LEAs are in fact under a misapprehension that they are under an obligation to provide free transport to denominational schools, contributed to by the current statutory framework and evidenced in part by the very significant numbers of authorities which provide such transport. This is ultimately a factual question which we are not in a position to resolve, and will no doubt be the subject of further discussion between the National Secular Society and the Government.

(2) Second, the Secretary of State and Welsh Assembly will themselves have to approve schemes put forward by LEAs, and will therefore have to be clear about the compatibility of those schemes with the Convention. It is therefore in the interests of the Secretary of State and the Welsh Assembly that LEAs are properly guided about the Convention compatibility of their schemes before they are submitted for approval.

(3) Third, there is also arguably a positive obligation under Article 14 (to *secure* the enjoyment of Convention rights without discrimination), which requires the State to take steps to ensure that there is no discrimination in the enjoyment of Convention rights, particularly when there is clear evidence of such discrimination taking place on a significant scale, as there appears to be here.

[* The evidence of the National Secular Society, Third Report of the Education and Skills Committee, Session 2003-04]

The Joint Committee wanted the Government to go further than expanding on the guidance in the draft prospectus. It recommended that the Government issue new general guidance for LEAs including specific guidance on how to avoid discriminating in the provision of transport.

The Government responded that it had already told the Joint Committee on Human Rights that it would expand the guidance in the draft prospectus. Also it noted that the evaluation of the pilot schemes would cover human rights aspects and that further guidance would be issued, or existing guidance amended, if it was needed.

The Government confirmed that in respect to school transport a parent who made a strong case against denominational education on demonstrable philosophical convictions was in a similar position to one who expressed a strong preference for denominational education.

More detailed guidance on non-discrimination is now provided in paragraphs 33 to 38 of the revised draft prospectus. This includes the clarification that a child, who has mobility difficulties and is unable to walk, or walk 2 or 3 miles, will have to be provided with transport or appropriate assistance.

VI Public consultation on the draft Bill

Public consultation on the draft Bill took place at the same time as the pre-legislative scrutiny by the Education and Skills Committee, and 70 responses were received. The response to the public consultation on the draft Bill is summarised as follows in the *Full Regulatory Impact Assessment* on the Bill:

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.

A very large majority 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 LEAs 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.

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 before 2007.

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. In general, respondents thought that some seed funding would be required for local authorities wishing to become pilots.

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.⁵⁵

A breakdown of the respondents is included in the *Full Regulatory Impact Assessment*.

VII Reaction from Opposition Parties

A. Conservatives

The Conservative Opposition has said that it opposes the proposal concerning charges:

Shadow Education Secretary Tim Collins has pledged an all out fight against Government plans to make better off parents pay for their children using school buses.

According to press reports, Labour ministers are preparing special legislation giving local authorities powers to charge some families a daily £1 each way for each child - around £400 a year - when they use a school bus.

The move would mean reversing the longstanding 1944 Education Act requirement to offer free transport to any pupil living more than three miles from school, or two miles for those under the age of eight. And the scheme - which would require some form of means-testing - would impact most on families living in rural areas.

Commenting on the plans prior to an expected Government announcement, Mr Collins declared: "The Government is determined to remove a legal right for free school buses which has been available to parents for more than half a century. It is simply scandalous that Ministers who claim to care about school choice and rural areas now are moving ahead with plans which will heavily penalise parents who happen to have exercised choice or who live in the countryside."

He said: "These changes will produce more pollution, more traffic and a deep sense of anger in many communities. Charles Clarke claimed earlier this year that he would only proceed if he had all-party agreement. He most certainly does not have the approval of the Conservative Party for these retrograde and mean-spirited changes. We will fight them tooth and nail."⁵⁶

⁵⁵ p 38,

⁵⁶ Conservatives website dated 21 September 2004,
http://www.conservatives.com/tile.do?def=news.story.page&obj_id=115756

Welsh Conservatives have said:

School transport should be free to all children who live more than half a mile from the classroom, Welsh Conservatives have said.

Under the proposals, only those who live within a short walk of the classroom will not be offered free travel to school.

Welsh Conservatives say the plan will help reduce traffic congestion during the school run by persuading more parents not to take their children by car, the party claimed today.

It would also help less-well-off families who do not have a car but are currently unable to take advantage of free school bus travel.

The Welsh Conservative scheme would be put into action following consultation with local authorities across Wales.

Figures have shown that twice as many children are driven to school than 20 years ago - around 40 per cent of primary pupils and a fifth of secondary pupils.

But the Government's draft School Transport Bill - which will allow some local authorities to pilot new arrangements - has prompted fears of blanket or means tested fares.

Welsh Conservatives oppose the Bill but support moves to improve the quality of school transport through the improvement in vehicles and installation of CCTV cameras.

The party also wants to see the development of 'walking buses' where volunteers escort pupils to school in safe groups and would encourage the development of safe cycle routes, with secure bicycle storage at schools.

The Welsh Conservatives' education spokesman in the National Assembly, Monmouth AM David Davies, said: "The Conservative Party will support public transport and the reduction in congestion caused by the school run.

"We should increase opportunities to use it rather than restricting the rights to public transport - which is what the Government will do with its School Transport Bill."

The leader of the Welsh Conservatives in the National Assembly, Mid and West Wales AM Nick Bourne, said: "The safety of children is our number one priority and we want to ensure safe public transport is provided for them to and from school.

"Our proposals will also massively reduce congestion at peak times and improve safety on the roads around schools."⁵⁷

B. Liberal Democrats

Phil Willis, the Liberal Democrat Shadow Education Secretary, has express his concern about the proposals, and in July asked the Secretary of State not to proceed with the Bill:

On the day that the Education and Skills Select Committee is due to report on the Draft School Transport Bill, the Liberal Democrats are calling on Charles Clarke to save school buses and drop plans that would take the right to a free bus away from up to 600,000 children in England, including 100,000 with Special Educational Needs.

Phil Willis MP, the Liberal Democrat Shadow Education Secretary, who wrote to Charles Clarke to express his concern about the Bill, said:

"All children should have the right to a free education. Charles Clarke puts tens of thousand of children across England at risk of losing that right.

"By taking away the right to free transport the Government is almost giving children an excuse to miss school, be late and play truant.

"We must save free school buses, so that thousands of children are not left behind."⁵⁸

When the *School Transport Bill* was published on 14 October 2004, Phil Willis said:

"All children should have the right to a free quality education. With this Bill Charles Clarke puts tens of thousand of children across England at risk of losing that right.

"Once again the Government's mantra of choice in education has been exposed as an illusion. If the only way pupils can get to school is by private means that limits choice.

"We must save free school buses, so that thousands of children are not left behind."⁵⁹

⁵⁷ Conservatives website dated 3 October 2004,

http://www.conservatives.com/tile.do?def=news.story.page&obj_id=116262

⁵⁸ Liberal Democrat Press Notice, *Lib Dems call on Clarke to save school buses – Willis*, 7 July 2004, available at: <http://www.libdems.org.uk/module/printnews.cfm/article.7111>

⁵⁹ Liberal Democrats Press Notice, *School Transport Bill puts right to free education at risk*, 14 October 2004, available at: <http://www.libdems.org.uk/module/printnews.cfm/article.7603>

C. The Secretary of State's comments

On 1 July 2004 in oral questions and answers in the House of Commons, Charles Clarke accused the Conservative and Liberal Democrat Front-Bench Members of “rubbish-mongering” and telling untruths about the proposals. He said it was worth noting that Liberal Democrat and Conservatives in local government strongly support the Bill.⁶⁰

In evidence to the Education and Skills Committee on 7 July 2004 the Secretary of State commented on the Committee's scrutiny of the draft Bill and suggested that at that time he was in a dilemma as to whether to proceed with it:

Mr Clarke: I read the report very carefully last night because I was very interested in what you had to say, not actually from the point of view of preparation for this session this morning because I did not anticipate we would be giving great attention to this this morning, but because I am in a dilemma as to what to do about the School Transport Bill. To be frank, local government has said it wants it, the opposition parties in Parliament nationally have said they are going to vote against it because they do not think it is the right thing to do, and they are ready to go to the most scurrilous degrees to whip up concerns about it which are entirely unfounded, which I said across the Floor of the House directly. So I have a choice to make as to how to proceed.⁶¹

On 22 September the Secretary of State confirmed that the Government would proceed with the Bill.⁶²

VIII The Bill:

A. Introduction

The Bill, which applies to England and Wales, was presented on 14 October 2004, and is due to be considered on second reading in the House of Commons on 28 October 2004. Explanatory Notes to the Bill [Bill 162-EN],⁶³ have been published. There is also a *Full Regulatory Impact Assessment*, and a (revised draft) *School Travel Schemes Prospectus* outlining how the Government expected the arrangements to work, which is available on the DfES website: <http://www.dfes.gov.uk/schooltransport/>

The Departmental Press Notice announcing the Bill said:

⁶⁰ HC Deb 1 July 2004, c 418

⁶¹ <http://pubs1.tso.parliament.uk/pa/cm200304/cmselect/cmmeduski/uc687-ii/uc68702.htm>

⁶² DfES Press Notice, *Greener, safer, healthier transport to schools, School Transport Bill to proceed*, 22 September 2004, http://www.dfes.gov.uk/pns/DisplayPN.cgi?pn_id=2004_0160

⁶³ <http://www.publications.parliament.uk/pa/cm200304/cmbills/162/en/04162x--.htm>

Mr Clarke confirmed that a School Transport Bill will be introduced to Parliament today to enable up to 20 local education authorities to introduce new schemes to tackle the congestion caused by the traditional ‘school run,’ developing innovative ways for pupils to travel to school tailored to their local circumstances, with up to £200,000 Government funding to kick start each scheme.

The School Transport Bill would bring the first changes to school transport legislation in over 60 years, allowing local education authorities to develop innovative solutions to school transport problems, reducing traffic congestion and cutting pollution, through the use of, for example:

- safe cycle routes to schools, plugged into the national cycle network, with secure storage for bicycles at schools;
- ‘walking buses’ where pupils are collected from an agreed location, and then walk together to school escorted in safe groups by volunteers, with other pupils joining them en route;
- ‘park & stride’ schemes where parents drop children off at an agreed location to be escorted into school;
- more high quality school buses catering for more pupils, with features such as CCTV and well-trained drivers; as well as extra buses catering for pupils attending after school activities;
- staggered starting times with different schools in the same area staggering their starting times to reduce the number of cars on the road at any one time.⁶⁴

The *Full Regulatory Impact Assessment* gives examples of current good practice, including examples of the integration of public, school, social services and patient transport; improved school bus services; and staggered school start and finish times.⁶⁵ Given the deregulatory nature of the Bill, overall costs and benefits of schemes have not been provided in advance; however, the *Full Regulatory Impact Assessment* gives hypothetical examples.⁶⁶

How individual pupils will be affected by the proposed change will depend upon whether their LEA is a pilot authority and the nature of its scheme. However, Ministers have stressed that the schemes will cater for all pupils in an area, not just those currently qualifying for free school transport. Although pilot authorities would be able to charge for school transport, except for “protected pupils” (i.e. those eligible for free school meals), charges will have to be set at a level that does not encourage car use and caters for the needs of large and low income families.⁶⁷

⁶⁴ Extract from DfES Press Notice, *Greener, safer, healthier routes to schools – Clarke and Darling*, 14 October 2004, http://www.dfes.gov.uk/pns/DisplayPN.cgi?pn_id=2004_0175

⁶⁵ *Full Regulatory Impact Assessment*, pp 16 to 18

⁶⁶ pp 18 to 33

⁶⁷ HC Deb 19 July 2004, cc 93-4W

B. The Bill compared with the draft proposals: highlights

The Bill is very similar to the draft version. The main differences between the draft proposals and the Bill as presented with the accompanying documents seem to be as follows.

a. School travel schemes

There is a new clause (clause 5) in the Bill on financial provisions. This was added following the Government's decision to provide pump-priming funding for the pilots. There will be pump priming funding of up to £200,000 per scheme, depending on the number of pupils covered.

Clause 3 (4) (see below) has been added to the Bill. Clause 3 (1) and (2) give the Secretary of State and the National Assembly for Wales power to provide by order that the new provisions will cease to have effect. The draft Bill only made provision for the earliest date on which the new provisions could cease to have effect under an order. Subsection (4) adds provision for the latest date that this could be done – 1 August 2013. In effect this would mean that primary legislation would be needed to withdraw the new provisions after this date.

The *Full Regulatory Impact Assessment for the School Transport Bill* is a much more detailed document than the very brief *Partial Regulatory Impact Assessment* published with the draft Bill. The full assessment looks in much more detail at the costs and benefits of the proposals.

The draft prospectus has been revised to take account of a number of the issues raised in the pre-legislative scrutiny.⁶⁸ In particular, the revised draft prospectus

- places greater emphasis on walking and cycling;
- clarifies the position of pupils with mobility difficulties who are unable to walk the statutory walking distance, by making it clear that LEAs will be required to make arrangements for such children;
- adds to the guidance on the arrangements for the evaluation and monitoring of schemes - pilot authorities will be expected to put in place reliable systems for monitoring travel to school patterns, and must also assess the impact of their schemes on vulnerable groups.⁶⁹

⁶⁸ *School Travel Schemes – Prospectus*, <http://www.dfes.gov.uk/schooltransport/docs/prospectus.doc>

⁶⁹ paragraph 48

- expands the guidance on human rights in the draft prospectus.

b. Power to amend transport legislation⁷⁰

Clause 4 allows the Secretary of State to exempt school bus services operating under this legislation from the requirement to register with the Traffic Commissioner.⁷¹

Section 6 of the *Transport Act 1985* requires local services (defined as a service “using one or more public service vehicles, for the carriage of passengers by road at separate fares”) to register with the Traffic Commissioner in their area. Any changes to the service have to be registered and there are rules as to how often these can be made. School buses run by a commercial operator contracted and paid for by a local authority are exempt from registering under section 6 as they do not count as a “local service.” However if a local authority charges some people to use the service (e.g. other members of a family), the service should be registered.

In the draft Bill, the intention was to exclude all school buses from section 6, whether or not some passengers were charged, but the scope of the Bill does not allow for such a general exemption. Clause 4 therefore exempts only those buses provided under a school travel scheme.⁷²

The Transport Committee wanted the LEAs to have more discretion to propose changes to the legal and regulatory framework when they piloted school travel schemes so that school transport could be better integrated with other public transport. It also wanted changes to be made to the tendering rules.⁷³ Such changes were not included in the Bill but in its response to the committee, the Department for Transport (DfT) said it was considering “some further changes to the legal and regulatory framework that governs procurement and operation of bus services, which will have an impact on the provision of school transport services.” Specifically, it will be consulting on an extension to the maximum permitted contract length from five to eight years. This easement would apply both to local bus and school bus contracts that have been competitively tendered under the *Transport Acts*.⁷⁴

No specific mention is made of yellow buses in the Bill. The Transport Committee recommended that if one of the pilot schemes involved yellow buses, any unnecessary

⁷⁰ This section of the Research Paper was written by Fiona Poole, Business & Transport Section

⁷¹ An Order would be subject to the negative procedure.

⁷² The intention is to introduce an Order under the *Regulatory Reform Act 2001* to exclude all school buses from the requirement to register under section 6, probably by the end of the year.

⁷³ House of Commons Transport Committee *School Transport*, 31 March 2004, 8th report 2003-04, HC 318-I, para 44 <http://www.parliament.the-stationery-office.co.uk/pa/cm200304/cmselect/cmtran/318/318.pdf> [The evidence has not been published]

⁷⁴ *The Government’s Response to the Transport Committee’s Report on School Transport*, June 2004, Cm 6254, http://www.dft.gov.uk/stellent/groups/dft_sustravel/documents/pdf/dft_sustravel_pdf_029335.pdf

regulatory obstacles to using them should be removed⁷⁵ but the government did not agree there were any 'unnecessary' regulatory obstacles.⁷⁶ The yellow buses imported from the US have been designed to American standards and so required modification to meet the UK regulations. Limited exemptions were granted to the *Public Service Vehicle (Accessibility) Regulations 2000* to enable the small scale pilot schemes to go ahead but once the vehicles comply with the requirements of the PSVAR, the range of operations the vehicles can undertake will be much greater.⁷⁷

C. An outline of the Bill and the proposed school travel schemes

The following outlines the main provisions of the Bill, and highlights some of the information provided in the (revised draft) *School Travel Schemes Prospectus* on how the arrangements will work. For a description and commentary on the clauses of the Bill, see the Explanatory Notes to the Bill.⁷⁸

The Bill makes provision for England and Wales, and the National Assembly for Wales has the power to make regulations and orders relating to school travel schemes in Wales. The NAW intend to issue a separate version of the prospectus detailing how the new arrangements will work in Wales.⁷⁹ As noted above, DfES and the Welsh Office consulted jointly on the draft Bill and draft prospectus.

a. School travel schemes

The Bill seeks to enable LEAs to pilot new arrangements for school transport – school travel schemes – for children of compulsory school age or below.

Clause 1 inserts a new section 509ZAA into the *Education Act 1996*. Section 509ZAA gives effect to a new Schedule in the Act which allows LEAs to make school travel schemes covering home-to-school travel arrangements for pupils of compulsory school age or below. Where such a scheme is in force the LEA must give effect to it, and the scheme replaces the LEA's powers and duties under section 509(1) and (3) of the *Education Act 1996* in respect of children covered by the scheme. The intention is that initially up to twenty LEAs in England, and up to six areas in Wales, will be approved (see clause 2 below).

⁷⁵ Transport Committee *School Transport*, para 55

⁷⁶ *The Government's Response to the Transport Committee*, para 16

⁷⁷ Details of the yellow bus scheme are given in the evidence from the West Yorkshire PTE and from FirstGroup plc to the House of Commons Education and Skills Committee, *Draft School Transport Bill*, 28 June 2004, 3rd report 2003-04 HC 509-II (Ev 44-47, 159-162)

⁷⁸ Bill 162-EN, <http://www.publications.parliament.uk/pa/cm200304/cmbills/162/en/04162x--.htm>

⁷⁹ Source: official, Welsh Assembly Government

Pupils in areas not covered by the schemes and students who are aged 19 or over in scheme areas will continue to be covered by the existing legislation, which will remain in force.

The new Schedule - Schedule 35 B – makes provision for the content and purpose of school travel schemes. Paragraph 1 of the Schedule allows individual LEAs to make school travel schemes for all or part of their area. Where LEAs collaborate, each must have a separate application approved. A scheme will only come into effect if approved by the “appropriate authority” - the Secretary of State in England, and the National Assembly for Wales in Wales. The new provisions must be piloted in accordance with regulations (see clause 2 below).

School travel schemes will have to set out in general terms the type of travel arrangements the LEA considers appropriate for children attending schools (including pupil referral units), further education institutions, or any other place where exceptional arrangements for education are made. A “child” is defined in section 579 of the *Education Act 1996* as a person not over compulsory school age. Under paragraph 2(2) of the Schedule a school travel scheme may include travel arrangements of any description and may, in particular, include arrangements for the provision of transport, for the payment of the whole or part of a person’s reasonable travel expenses, and arrangements to facilitate or promote the use of different ways of travelling. The Explanatory Notes state that the arrangements could include provisions for complete or partial reimbursement of travelling expenses, for example providing a travelcard on public transport, mileage allowances for parents conveying pupils to school in remote rural areas, or a contribution towards the cost of cycle equipment.

LEAs running schemes will make whatever travel arrangements they consider suitable for their areas, and may make charges. Paragraph 4 of the Schedule requires the scheme to set out its charging policy. Provision is made to exempt children from very low-income families who attend the nearest school. Such “protected children” are defined in England as children who are eligible for free school meals and milk under section 512ZB (4) of the *Education Act 1996*; in Wales the definition may be different but will include children eligible for free school meals and milk. Paragraph 5 allows unpaid charges to be recovered as a civil debt.

LEAs running school travel schemes will still have to make home-school travel arrangements where pupils live beyond the current statutory walking distances⁸⁰ and suitable arrangements have not been made for boarding at or near the school, or for the child to become a pupil at a school nearer the child’s home (paragraph 3 of the Schedule). Charges may be made except for “protected children”.

⁸⁰ 2 miles for pupils under 8, 3 miles for pupils 8 and over

The Government wants LEAs applying to run schemes to consider the needs of all pupils in their area. This will include pupils who walk and cycle to school, as well as those who travel by bus or by car. Each scheme will be tailored to local needs. The prospectus states that the Government wants schemes to offer a range of good quality, cost-effective alternatives to car use, and that it is important for schemes to demonstrate that there is a comprehensive, workable strategy to improve health and the environment rather than simply to expand bus use. All schemes must aim to cut car use, and beyond that they must focus on local priorities, and may improve provision for one or more of:

- pupils travelling to denominational schools;
- pupils in predominantly English speaking areas of Wales travelling to Welsh medium schools;
- pupils travelling along routes that parents consider unsafe;
- pupils participating in extra curricular activities, on or off school premises.

The prospectus goes on to list other priorities that may be tried (the list is not intended to be exhaustive) and includes innovative purchasing agreements; use of modern technology in route planning; fare collection and scheme management; closer links with post-16 transport polices; wider use of staggered school opening hours; new approaches to transport safety issues; and transport in rural areas.

Pilot applicants will be asked to set out how extended school provision is included in the pilot proposals. (The Government is promoting greater community use of schools through the extended schools initiative. The idea is that extended schools will provide a range of services and activities beyond the school day to help meet the needs of its pupils, their families and the wider community. The Government expect at least one school in every local education authority will provide a full range of community services by 2006.)

The prospectus states that before an LEA makes a formal application it will have to carry out a local consultation,⁸¹ including any proposal for charging:

Charging

Scheme applications 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 produce an increase in car journeys to school. Our legislation will protect children from low income families who attend their nearest suitable school, but LEAs must ensure that their charging policies comply with the European Convention on Human Rights (ECHR).

The legislation prevents scheme authorities charging in respect of children from low income families. In England pupils eligible for free school meals will be protected from charges. The legislation allows the National Assembly to use a

⁸¹ Prospectus, paragraphs 14 and 15

different definition for low income families if it chooses to do so. We are concerned that charges could be particularly burdensome for families with incomes that fall just above the free school meal eligibility level, for large families, and possibly for those that have to travel long distances to school in rural areas. We expect scheme LEAs to explain how they propose to manage a charging regime cost effectively, taking into account the needs of low income and large families. LEAs must also explain why they are confident that charging will not increase car use.

Charges may have a differential geographic impact within scheme areas. Some areas may be net losers of public funding, with others gaining overall. Authorities' proposals must provide transparent information about any imbalances between areas generating and absorbing charges.⁸²

The prospectus states that all fare income must be invested in improved services. Schemes are expected to be funded from resources already committed to school transport together with any fare income. However, pump-priming funding will be provided to the "initial tranche of pilot education authorities in England with approved schemes."⁸³ Clause 5 of the Bill contains the necessary financial provisions. The *Full Regulatory Impact Assessment* adds that LEAs are being given the autonomy to innovate but that innovation should not become "a cost-cutting exercise".⁸⁴

The prospectus notes that scheme applicants will have to describe how their proposals cater for pupils with statements of special educational needs, and for disabled students and pupils with medical conditions. The presumption is that wherever possible pupils with SEN will share "mainstream" transport; but where this is not possible LEAs will be expected to try to identify ways to combine journeys and, if possible, share vehicles and schedules with social services or health service transport. The prospectus comments specifically on children with mobility problems (this was added in response to a criticism of the original proposal), and states that transport or other assistance would have to be provided for a child with mobility or other difficulties who is unable to walk 2 or 3 miles. The LEA would have discretion in making these arrangements and may take into account other forms of assistance for these pupils, such as mobility allowance and provision of a "motability" car.

Under paragraph 11 of the Schedule a scheme authority must provide information requested by the Secretary of State or NAW so that the schemes can be evaluated. The prospectus states that the DFES and the NAW will evaluate the schemes annually, making the results available to other interested LEAs. Paragraph 9 of the Schedule makes provision for schemes to be amended or revoked.

⁸² Prospectus paragraphs 29 to 31

⁸³ Prospectus, paragraph 44 and 45

⁸⁴ *Full Regulatory Impact Assessment*, p 15

Clause 2 of the Bill provides that the new provisions must be piloted in accordance with regulations made by the Secretary of State or the National Assembly for Wales, subject to negative resolution in the case of regulations made by the Secretary of State. The prospectus states that the intention is to approve initially up to twenty LEAs in England, and up to six areas to be approved in Wales. (If the demand is high the number may be increased through secondary legislation.) The aim is to get a balanced mix of schemes in both rural and urban areas. As many of the schemes as possible will start in September 2006, subject to Parliamentary approval, and run until the end of July 2010 or a later agreed date. The prospectus states that schemes will also be approved during 2007 and beyond as the DfES and NAW keep the pilots under review.

A decision will be made by 31 July 2011 whether the approach should continue and whether to extend it to other LEAs.⁸⁵

Clause 3 of the Bill empowers the Secretary of State and NAW to provide by order that the new provisions will cease to have effect. An order made by the Secretary of State will be subject to the affirmative procedure. Clause 3(3) and (4) provide that the earliest and latest dates on which the new provisions could cease to have effect are 1 August 2011 and 1 August 2013 respectively. The Explanatory Notes to the Bill envisage that an order under this clause would be made if the piloting of the new provisions is not successful. "If an order is not made the new provisions will continue after the pilot is completed and there will then be no limit on the number of participating LEAs."⁸⁶ Therefore the Bill would allow the school travel scheme approach to be extended on a permanent basis without further primary legislation.

The Secretary of State for Education and Skills has stated that in his view the provisions of the Bill are compatible with the European Convention on Human Rights.

⁸⁵ Prospectus, paragraph 7

⁸⁶ EN, paragraph 19

IX Statistical Appendix (*David Knott, Social & General Statistics Section*)

Average distances travelled (miles) in each year surveyed

	Aged 5-10	Aged 11-16			Sample journeys
		All	Boys	Girls	
1989	1.2	2.8	2.5	3.0	5,536
1990	1.3	2.8	2.7	2.9	5,360
1991	1.3	2.7	2.5	3.0	5,241
1992	1.2	3.1	3.0	3.2	5,090
1993	1.2	3.2	3.3	3.0	5,281
1994	1.2	2.9	2.8	3.1	4,957
1995	1.1	3.0	3.1	3.0	5,288
1996	1.2	2.9	3.3	2.5	5,056
1997	1.5	3.4	3.8	2.9	5,108
Change	0.3	0.6	1.3	-0.1	
% change	25	21	52	-3	

Source: *Factors leading to increased journey length*, DfT,

Cars taking children to school: 1992/1994 to 2003

	Percentage of car trips/number				
	1992/ 1994	1995/ 1997	1998/ 2000	2002	2003
0800 to 0859 hours in urban areas ¹ during term-time	8	10	10	12	12
Peak traffic time (0835) in urban areas ¹ during term-time	10	14	14	16	16
Peak percentage (0850) in urban areas ¹ during term-time	15	20	16	18	18
Sample size of trips at:					
0800-0859	12,309	13,346	12,565	10,406	10,920
0835	3,742	4,112	4,037	3,281	3,609
0850	3,679	3,978	3,633	3,065	3,185

Note:

¹ Data relate to car trips by people living in urban areas

Source: *National Travel Survey 2003 - Final Results*, DfT

Trips to and from school¹ per child by main mode: 1992/1994 to 2003

	Percentage/miles/number											
	Age 5-10			Age 11-16			Age 5-16					
	1992/1994	1998/2000	2002	2003	1992/1994	1998/2000	2002	2003	1992/1994	1998/2000	2002	2003
Walk ²	61	56	51	53	44	43	38	41	53	50	45	46
Bicycle	1	-	1	1	4	2	2	2	2	1	2	1
Car/van	30	36	41	39	16	19	24	23	23	28	32	30
Private bus	4	3	4	3	8	8	8	9	6	5	6	6
Local bus	4	4	2	3	24	24	24	23	13	14	13	14
Rail	-	-	-	-	1	1	1	1	1	1	1	1
Other	1	1	1	1	2	3	2	2	2	2	2	2
All modes	100	100	100	100	100	100	100	100	100	100	100	100
Average length (miles) ¹	1.2	1.4	1.5	1.4	3.0	2.9	3.4	3.2	2.1	2.1	2.5	2.4
% travelling to school alone (main stage)	14	11	11	8	44	40	40	40	28	26	25	25
Sample size: individuals	2,060	1,758	1,337	1,572	1,859	1,668	1,291	1,629	3,919	3,426	2,628	3,201
trips	12,709	10,608	7,885	9,738	11,825	10,862	7,822	10,569	24,534	21,470	15,707	20,307

Notes:

1 Trips of under 50 miles only.

2 Short walks believed to be under-recorded in 2002 and 2003 compared with earlier years

Source: *National Travel Survey 2003 - Final Results*, DfT

Trips and distance per person per year by trip purpose: 1985/1986 to 2003

	Trips/miles/number										
	Trips per person per year					Miles per person per year					% change
	1985/1986	1992/1994	1998/2000	2002	2003	1985/1986	1992/1994	1998/2000	2002	2003	
Commuting	178	158	161	152	149	1,086	1,182	1,351	1,294	1,268	17
Business	32	39	36	34	33	544	691	695	683	680	25
Education	77	67	68	61	68	161	184	198	195	208	29
Escort education	32	43	48	44	50	45	77	96	101	105	131
Shopping	210	225	216	201	193	611	779	897	857	832	36
Other escort	74	86	80	98	92	316	390	412	484	471	49
Other pers. business	97	107	103	111	103	329	442	468	496	439	33
Visiting friends at private home	142	145	134	120	118	959	1,131	1,163	1,101	1,093	14
Visiting friends elsewhere	49	42	46	46	44	206	191	255	263	247	20
Entertainment/ public activity	41	40	38	47	45	245	314	292	356	367	49
Sport: participate	19	22	24	18	20	111	131	149	124	123	11
Holiday: base	9	12	11	11	11	338	507	471	513	565	67
Day trip	17	20	19	24	25	307	374	341	368	396	29
Other inc. just walk	46	47	46	41	40	58	47	52	45	40	-31
All purposes	1,024	1,053	1,029	1,008	990	5,317	6,439	6,840	6,879	6,833	29
Sample size: individuals	25,785	24,671	21,868	16,886	19,467	25,785	24,671	21,868	16,886	19,467	
trips	506,287	498,284	431,728	326,495	369,664	506,287	498,284	431,728	326,495	369,664	

Escort education is defined as journeys solely to take another person to an educational institute; approximately 70% of these journeys were taken by car/van in 1996/98
Source: *National Travel Survey 2003 - Final Results*, DfT; *Characteristics of the escort education journey*, Transport Trends 2000, DETR