

25. Health, Safety and Welfare

This chapter explains health and safety responsibilities in schools, and matters which are relevant to pupil health, safety and welfare, as follows:

- pupil health and safety;
- enforcement;
- the Disability Discrimination Act;
- educational visits and off-site activities;
- home to school travel and transport;
- First Aid;
- litter;
- curricular implications: Key Stage 4 use of low-level radioactive substances;
- managing medicines;
- school food and milk;
- school uniform;
- safeguarding and promoting the welfare of pupils;
- playground supervision; and
- duty to report incidents.

Pupil Health and Safety

1. Health and safety responsibilities derive from the Health and Safety at Work Act 1974 and the associated Management of Health and Safety at Work Regulations 1999. Pupils are protected by the duties imposed because they are affected by an employer's undertaking or are using school premises. The legislation requires employers to assess and manage risk and is usually enforced by the Health and Safety Executive (HSE) in respect of schools.

Who is Responsible for Pupil Health and Safety?

2. Responsibility for the health and safety of pupils lies with the governing body of the school, either as the employer of school staff or because it controls school premises (or both). Where the governing body does not employ school staff, the LA has responsibilities as the employer.

3. It should also be borne in mind that under the general law of negligence school teachers are required to take care of children under the age of 18 as if they were the parent. They are under an obligation to treat and take care of a pupil as a careful parent would (*Williams v Eady [1893] 10 TLR 41, CA*).

Employers

4. Who the employer is varies with the type of school. The employer is:
 - the LA in community schools, special schools, voluntary controlled schools, maintained nursery schools and pupil referral units; or
 - the governing body in foundation schools, foundation special schools and voluntary aided schools.

5. The employer must ensure, as far as is reasonably practicable, that pupils are not exposed to risks to their health and safety in school and during off-site visits. The employer must have a health and safety policy and arrangements to implement it. Key elements of a policy are listed in *Health and Safety: Responsibilities and Powers*. The employer must assess the risks of all activities, introduce measures to manage those risks and tell their employees about the measures.

6. The employer, whether the LA or the governing body, has the power to ensure that its health and safety policy is carried out. It must provide health and safety guidance to the school and ensure that staff members who are delegated tasks such as risk assessment and risk management, are competent to carry them out. If risk assessment shows training is needed the employer must make sure this takes place. The employer cannot fulfil its statutory duty unless it monitors how well its schools are complying with its policy.

7. A LA has no responsibility for, and no power to intervene in, pupil health and safety in schools where the governing body is the employer, except where safety (not health) is threatened by, for example, a breakdown in discipline. See *Health and Safety: Responsibilities and Powers*.

Governing Bodies

8. In all schools, the governing body controls the school premises (subject, in some cases, to the direction of the LA). Even if they do not employ school staff, governing bodies, to the extent that they control school premises, must take all reasonable measures to ensure that the premises and equipment on the premises are safe and do not put the health of pupils at risk while they are on the premises. The governing body (and head teacher) of a community, voluntary controlled, community special and maintained nursery school must comply with any directions given by the LA concerning the health and safety of persons in school, or on school activities elsewhere.

Employees

9. Employees have responsibilities too. The Health and Safety at Work Act 1974 and the associated Management of Health and Safety at Work Regulations 1999 also apply to them. Employees in any kind of school must:

- take reasonable care of their own and others' health and safety;
- co-operate with their employer and the governing body so far as is necessary to enable compliance with the above duties;
- carry out activities in accordance with training and instructions; and
- inform the employer of any serious risk.

Enforcement

Duty to Report Incidents

10. It is important that schools have arrangements for recording and reporting to the police and LA incidents of crime and loss (where appropriate). Under the RIDDOR, injuries to a person at work, such as a teacher or self-employed person working on the premises, must be reported to the HSE.

11. Under the Health and Safety at Work Act 1974, the HSE will normally consider action against the employer when something has gone seriously wrong as a result of neglect. However, in some circumstances, for example where an employee failed to take notice of the employer's policy or directions in respect of health and safety, the HSE may take action against the employee as well as or instead of the employer.

Accidents and Diseases: Reporting and Recording

12. Schools must report to the HSE and record any injury that leads to a pupil being taken from the site of the accident to hospital, no matter by whom. This includes injury resulting from acts of violence or in connection with work. See Guidance on the DCELLS Health and Safety webpage and also The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) apply. RIDDOR Explained is available, with a report form, from the HSE.

13. A record of any reportable death, injury, disease or dangerous occurrence must be kept for three years after the date on which it happened. This must include the date and method of reporting; the date, time and place of the event; personal details of those involved; and a brief description of the nature of the injury, event or disease (see HSE fact sheet 'Incident-reporting in schools (accidents, diseases and dangerous occurrences)').

14. With regard to the Health and Safety at Work Act 1974 and related Regulations, the DDA does not require governors to place employees or pupils at an inappropriate risk if a health and safety issue arises. However,

changes to policies and procedures and/or the provision of training may mitigate any health and safety risks that arise in relation to disabled people or pupils. The risk assessment process carried out to comply with health and safety legislation may provide an opportunity to consider adjustments required by the Disability Discrimination Act 1995.

Disability Discrimination Act (DDA) 1995 (As Amended)

15. Under Part 4 of the DDA 1995 it is unlawful for the body responsible for the school to discriminate against disabled pupils:

- in the arrangements it makes for determining admissions;
- in the terms it offers to admit pupils;
- by refusing or deliberately omitting to accept an application for admission;
- in the education or associated services offered to disabled pupils; or
- by excluding the pupil, whether permanently or temporarily from the school.

16. In addition, the body responsible for the school must take such steps as is reasonable in relation to its admission arrangements and the education and associated services it offers to disabled pupils, to ensure disabled pupils are not placed at a substantial disadvantage. This requirement, however, does not require the governing body to remove or alter a physical feature or provide auxiliary aids or services.

17. LAs are required to:

- not discriminate against disabled people in the exercise of its education functions; and
- prepare an accessibility strategy. This is a strategy to increase the extent disabled pupils participate in the curriculum, and improve the physical environment of the schools to enable disabled pupils to take advantage of the education and associated services offered by the school.

18. Nothing in the DDA takes precedence over any other statutory duties that responsible bodies (such as the governing body of a school) might have. In carrying out their duties under Part 4 of the DDA 1995, governors must ensure that they comply with all other legal requirements upon them. However, the existence of other legislation does not provide an automatic defence in a case under Part 4 of the DDA 1995. Governors are expected to take whatever action is necessary to ensure that they fulfil their responsibilities both under the DDA and under any other legislation that applies to them.

19. With regard to the Health and Safety at Work Act 1974 and related Regulations, the DDA does not require governors to place employees or pupils at an inappropriate risk if a health and safety issue arises. However, changes to policies and procedures and/or the provision of training may mitigate any health and safety risks that arise in relation to disabled people or pupils. The risk assessment process carried out to comply with health and safety legislation may provide an opportunity to consider adjustments required by the DDA.

Educational Visits and Off-Site Activities including Adventure Activities

20. Detailed information on planning and preparing for off-site activities can be found in the Educational Visits Guidance. Details and a range of documents about planning all off-site activities can be found in the Educational Visits Guidance. However additional assistance can be found on the Health and Safety on Educational Visits section of the TeacherNet website. Governing bodies that are employers have an equivalent role to that of the LA.

Transport

Seats Belts in Buses

21. Department of Transport safety regulations (The Road Vehicles (Construction and Use) Regulations 1986) require minibuses and coaches used to transport children to have seat belts.

22. Schools should check with coach operators that seat belts will be available. Since 1 May 1996 the 3:2 concession of the Public Services Vehicles (Carrying Capacity) Regulations 1984 (allowing three children under the age of 14 to share a double seat) has been withdrawn where seat belts are fitted. Since 10 February 1998, irrespective of age, all coaches and minibuses must have seat belts fitted.

Home to School Travel and Transport

School Travel Plans (STPs)

23. Whilst there is no statutory requirement for STPs, their introduction is encouraged. The development and implementation of a robust travel plan – which aims to cut car use on the school run by encouraging and enabling more walking, cycling and use of public transport in safety – is a straightforward and effective way for schools to demonstrate a strong commitment to the health of their pupils.

24. Work arising out of STPs on, for example, pedestrian or cycle training can also help to demonstrate a school's commitment towards pupils staying safe.

25. The STP process is also well placed to help schools when completing their Self-Evaluation Form. The results of STP work can help to demonstrate that a school is considering both the personal well-being and the development of learners, and that the views of learners, parents, carers and other stakeholders have been taken into account.

Learner Travel

26. The Learner Travel (Wales) Measure 2008 (hereafter called The Measure) has received assent. The various provisions in the measure came into force in the period from April 2009 until the early part of 2010. The measure places a duty on LAs to promote the use of sustainable modes of travel.

Duty to Assess Learner Travel Needs

27. The Measure places a duty on a LA to assess the travel needs of Learners who are persons under the age of 19 who receive education or training, or persons who have attained the age of 19 who started a course of education or training when under 19 and continue to attend that course, and who are ordinarily resident in the authority's area.

28. 'Learner travel needs' are the needs of learners for suitable travel arrangements each day between home and schools or other places where they receive education and training (known as 'relevant places'). In practice, this means that pupils of compulsory school age, of sixth form age, and children of nursery education age in provision funded by the authority, are in the scope of the assessment required by section 2 of the Measure.

29. The WAG can make regulations specifying other learners if they wish so that the scope of the assessment could be changed. The assessment will include learners who travel to relevant places in other authority areas. An authority must make this assessment every academic year in preparation for the following academic year. The assessment will give a LA an overview of the travel needs of learners and that information will help them make travel arrangements for learners in an efficient and effective manner.

30. The assessment is to cover the travel needs of a learner who attends different 'relevant places' on different days, to take account of the fact that some learners attend a different school or a further education institution for part of their education or training or they undertake work experience elsewhere, or are enrolled on work based learning. The duties imposed by the Measure to make travel arrangements relate to travel from home to school (or other relevant place) and back home again.

LA Duty to Make Transport Arrangements

31. The Measure places a duty on a LA to make transport arrangements for children of compulsory school age in specified circumstances and subject to specified conditions, as set out in the Measure. The provision is for a system of entitlement to free transport defined by reference to whether children are receiving primary or secondary education and whether they live at or further than set distances from the places at which they receive education or training. This approach is similar to the system created by the conjoined working of sections 444 and 509 of the Education Act 1996.

32. The Measure states that 'the local authority must make suitable travel arrangements to facilitate the attendance of the child each day at the relevant places where the child receives education or training'. Care must be exercised to ensure that all learners under the age of 19 who are normally resident within the local authority area have their travel needs assessed by these travel arrangements. This may include young learners at, for example, Gypsy Traveller sites.

Limits of Learner Travel Duties

33. The duty on a LA does not extend to travel during the day or to travel for purposes other than for attendance at a relevant place for education and training, the LA is not required to take account of travel needs that might arise during the day. School trips and residential visits are also outside the scope of the duties.

Sustainable Modes of Travel

34. Section 11 of the Measure places a duty on a LA and the WAG to promote sustainable modes of travel when exercising their functions under The Measure. This means that a LA should consider sustainability when assessing learner travel needs under section 2(2). Sustainability must also be considered and promoted when travel arrangements are made by a LA or the WAG. For example, this could mean encouraging learners to travel by bus rather than by car.

Travel Behaviour Code

35. Section 12 requires the WAG to make and periodically review a travel behaviour code which sets out the standards of behaviour required of learners while travelling to and from their place of learning. The Code will apply to all learners under the age of 19 and those who have attained the age of 19 and started a course of education or training when under 19 and continue to attend that course.

Enforcement of Travel Behaviour Code: Pupils at Relevant Schools

36. Section 13 of the Measure amends section 89 of the Education and Inspections Act 2006, which requires a head teacher to determine a school's behaviour policy. Subsection (2) of that section requires a head teacher when determining the measures for children's behaviour to follow a governing body's statement or guidance on school discipline. The new subsection of section 89, inserted by the Measure, places a duty on a head teacher to determine disciplinary measures to require their pupils to comply with the travel behaviour code.

Enforcement of Travel Behaviour Code: Withdrawal of Travel Arrangements

37. A LA is permitted to withdraw transport arrangements for a learner who does not comply with the behaviour code.

Co-operation: Information and Other Assistance

38. Section 17 of the Measure outlines the information and other assistance required between the parties involved, as outlined in paragraphs 37 and 38.

39. The governing body of a maintained school or a further education institution is under a duty to co-operate with a LA. They must provide them with information or other assistance necessary for the LA to carry out their duties under the Measure. LAs are required to provide each other with information or assistance that might be reasonably required for them to make assessments and travel arrangements. This will ensure that functions can be carried out effectively when learners travel between authorities or when a child lives in two different authorities.

40. A LA or head teacher is required to provide the information or other assistance that is reasonably required by the other party for the performance of their functions under The Measure.

First Aid

41. The Health and Safety (First Aid) Regulations 1981 set out the requirements relating to employees. It is recommended that schools treat pupils as if they were employees for the purposes of first aid and provide first aid materials and expertise as appropriate based on risk assessment.

Litter

42. Under Section 89 of the Environmental Protection Act 1990 governing bodies must keep land that is under their control and is open to the air free from litter and refuse so far as is practicable.

Curricular Implications: Key Stage 4 Use of Low-Level Radioactive Substances

43. Schools in Wales are required to seek approval to purchase or hold low level radioactive substances with the WAG. The approval form can be accessed on the DCELLS Health and Safety page within the Schools section. Whilst there is no related law, this requirement originated from DfEE (now DCSF) (and consequently through the Welsh Office/Assembly) through the Administrative Memorandum AM 1/92. Whilst the requirement is no longer in action in England since 1 September 2008 the requirement is still relevant in Wales.

Managing Medicines

44. Every school should develop policies to cover its own needs. The governing body has general responsibility for all of the school's policies even when the governing body is not the employer. The governing body should take account of the views of the head teacher, staff and parents in developing a policy on assisting pupils with medical needs. Where the LA is the employer, the school's governing body should follow the health and safety policies and procedures produced by the LA.

School Food and Milk

School Meals

45. The duty to provide free meals and milk to eligible pupils, and to provide paid lunches on request, and to comply with national nutritional standards, rests with the LA, unless an order has been made under section 512A of the Education Act 1996 which has the effect of transferring duties to the governing body.

46. Such orders are made when funding is delegated. When a governing body has such duties they may make provision through arrangements they have negotiated themselves, or by buying back into a LA catering service, this does not shift the legal duty of provision back to the LA.

47. While food suppliers themselves must comply with the various legislation, public sector organisations supplying food have an obligation to complete effective due diligence to ensure the quality and compliance of their suppliers. To assist with this, LAs are encouraged to ensure their food suppliers undergo a food hygiene audit carried out by an independent third party auditor. By law, food businesses operators are required to have in place an adequate food safety management system based on the principles of Hazard Analysis and Critical Control Point system (HACCP). This affects the supply, preparation, packaging, storage and distribution of food.

Provision of meals

48. Section 512 of the Education Act 1996 states that a LA may provide meals or other refreshments to pupils either on the school premises or elsewhere where education is being provided. Section 87 of The Education and Inspections Act 2006 amends the 1996 Act, to give LA's the freedom to offer all pupils free meals, fresh fruit, milk or other refreshments during the school day, regardless of family income. Where a LA exercises the power to charge for such provision it must charge every pupil or other person, the same price for the same quantity of the same item.

49. The governing body of any maintained school shall allow the LA such facilities as it may require with respect to the provision of school meals.

Functions of the Governing Body

50. The governing body of a maintained school shall afford the LA such facilities as it requires for it to perform its functions, as above.

51. Where the governing body of a maintained school with a delegated budget provides pupils, or others receiving education at the site, with milk, meals or other refreshment, they may charge for anything provided. Where the governing body exercise the power to charge, it must charge every person the same price for the same quantity of the same item.

52. From April 2000 funding for school meals was delegated to all secondary schools. Primary and special schools can opt for delegation. Where a school has a delegated budget for meals the governing body takes on the responsibility for their provision. This includes, for example, providing free school meals to eligible pupils, providing 'paid-for' meals where requested, complying with the requirements of the nutritional standards for School Lunches Regulations, and deciding the content and cost of meals.

Free Meals (Lunches)

53. Section 512 of the Education Act 1996, as amended by the Education Act 2002, states that, where a request by or on behalf of a pupil is made, the LA or the school's governing body (where the budget for school meals is delegated to them) must provide a free meal for pupils whose parents receive:

- Income Support (IS);
- Income-based Jobseeker's Allowance (IBJSA);
- Income-related Employment and Support Allowance;

- support under Part 6 of the Immigration and Asylum Act 1999;
- Child Tax Credit (provided that they are not entitled to Working Tax Credit and have an annual income, assessed by HM Revenue & Customs, that from 6 April 2010 does not exceed £16,190); or
- the guaranteed element of State Pension Credit.

Children who receive Income Support or Income-based Jobseeker's Allowance in their own right are also entitled to free school meals.

Nutritional Standards

54. All school food must meet the minimum standards set out in the Education (Nutritional Standards for School Lunches) (Wales) Regulations 2001. We would encourage schools who wish to set higher standards than the minimum compulsory standards currently in place, to work towards the standards proposed in the [Appetite for Life Action Plan](#).

55. Where a school has a budgetary element for school meals delegated to it, the duty to ensure that all school food provided meets with these standards is transferred to the governing body.

56. Subject to meeting the requirements of the nutritional standards Regulations, the LA or governing body decides the content, presentation and cost of school food, and where there is a cash cafeteria system, sets the standard meals allowance for those entitled to free meals. All other pupils are to be charged the same amount for the same quantity of the same item, although the meals may be subsidised.

Milk

57. Commission Regulations (EC) no 657/2008 require that the European Union school milk subsidy scheme be made available at nurseries, pre-school establishments' primary and secondary schools. The scheme allows a maximum of 0.25 litres of subsidised milk or eligible milk products to be offered per child a day. The EU School Milk Subsidy Scheme is administered by Rural Payments and any claims should be made through the LA. All schools participating in the scheme must display posters bearing the EU flag.

58. Under the Schools Milk (Wales) Regulations 2008, key stage 1 pupils are able to receive milk at no cost to their parents. Children at key stage 2, who are in receipt of milk under the EU School Milk Subsidy Scheme, are able to receive an additional national subsidy on the milk they receive. The subsidy is calculated by the Rural Payments Agency when claims are submitted.

59. Under the Department of Health's Healthy Start Scheme, day carers in the United Kingdom, including pre-schools, nurseries and childminders, may claim reimbursement for providing free milk to children under five in their care for two or more hours a day. Claims for children under five in LA pre-schools and reception classes should be made through the LA.

Drinking water

60. The LA or governing body must ensure that there is easy access at all times to free, fresh drinking water for pupils. Best practice is for this source of drinking water to be physically divorced from the toilet area.

School Uniform

61. There is no legislation that deals specifically with school uniform, dress codes or other aspects of appearance such as hair colour and style, and the wearing of jewellery and make-up. It is for governing bodies to decide whether there should be a school uniform and/or other rules relating to appearance, and if so, what they should be. This flows from their responsibility to oversee the running of the school and their duty to ensure that school policies promote good behaviour and discipline among the pupil body.

62. Information on this is contained in Chapter 16 of this Guide entitled School Uniform and Appearance Policies.

Safeguarding and Promoting the Welfare of Pupils – Including Child Protection

63. Section 175 of the Education Act 2002 came into force in Wales on 1 September 2006 and placed a duty on LAs, the governing bodies of maintained schools, further education institutions and proprietors of independent schools to have arrangements in place to ensure that they:

- exercise their functions with a view to safeguarding and promoting the welfare of children; and
- have regard to any guidance issued by the WAG when drawing up those arrangements.

64. “Safeguarding” covers more than the contribution made to child protection in relation to individual children. It encompasses issues such as pupil health and safety, and bullying, about which there are specific statutory requirements. It also includes a range of other issues, for example: arrangements for meeting the needs of children with medical conditions; sex and relationship education, and drugs and substance misuse, about which the WAG has issued guidance. There may also be other safeguarding issues that are specific to the local area or population.

65. Where there are statutory requirements, governing bodies should ensure their school has policies and procedures in place that satisfy them and comply with any guidance issued by the WAG. Similarly, arrangements about matters on which the WAG has issued guidance should be evidenced by policies and procedures that are in accordance with that guidance or achieve

the same effect. Governing bodies also need to be able to show that they have considered whether children, including individual children in their area or establishment, have any specific safeguarding needs in addition to those covered by guidance and if so, that governing bodies have policies and procedures in place to meet those needs.

66. Governing bodies are therefore accountable for ensuring their establishment has effective child protection policies and procedures in place that are in accordance with guidance issued by the WAG, any LA guidance and locally agreed inter-agency procedures.

The Welsh Assembly Government has issued more detailed Guidance for Schools in Circular 05/2008 'Safeguarding Children in Education: the role of local authorities and governing bodies under the Education Act 2002'. This supplements the Welsh Assembly Governments earlier guidance in Circular 12/2007 'Safeguarding Children: Working Together Under the Children Act 2004' which outlines additional guidance on safeguarding in Specific Circumstances.

Allegations Against Staff

67. There are specific guidelines to be followed in dealing with allegations against staff. For information on these, please refer to Chapter 10 entitled Staffing.

Safer Recruitment Procedures

68. Governors should ensure that they operate within relevant legislation and guidance when involved in recruitment procedures of school staff. For information on recruitment see also Chapter 10 on Staffing.

Playground Supervision

69. There are no regulations for the number of adults that should be in charge of pupils during lunch and other breaks. Schools are best placed, on behalf of the employer, to assess the local risks and to put in enough competent supervisors to manage the risks. Parents need to be told at what time the school begins to supervise the children at the start of the school day and at what time in the afternoon the supervision ends.

School Security

70. Management of school security is usually shared by the LA as employer with the governing body. Governing bodies as employers have overall responsibility to make the school secure as part of their health and safety duties.

71. Schools have the power to bar troublesome adults from the school premises. A LA, or a governing body, in the case of a foundation, voluntary aided or foundation special school, has the power under Section 547 of the

Education Act 1996 to authorise the removal from school premises of intruders causing a disturbance or nuisance. (In the case of foundation, voluntary aided and foundation special schools, the LA may do this only with the consent of the governing body.)

72. Section 550AA of the Education Act 1996 inserted under Section 45 of the Crime Reduction Act 2006 introduced a power for head teachers and other members of school staff to search, without consent, a pupil whom they reasonably suspect is carrying a knife or other weapon. The WAG is intending to commence this power in Autumn 2010 and issue guidance on its use at the same time.

Use of Force to Control or Restrain Pupils

73. Section 93 of the Education and Inspections Act 2006 allows school staff statutory power to use reasonable force for the purpose of preventing a pupil from doing (or continuing to do) any of the following:

- committing any offence;
- causing personal injury to, or damage to the property of, any person (including the pupil him or her self); or
- prejudicing the maintenance of good order and discipline at the school or among any pupils receiving education at the school, whether during a teaching session or otherwise.

74. The WAG is intending to commence this power, in Autumn 2010 and issue guidance on its use at that time.

Rights of Way

75. The Highways Act 1980 provided for a right of way across school property to be diverted or extinguished where the safety of pupils or staff is placed at risk. Whilst the Department for Environment, Food and Rural Affairs has consulted on giving schools in England, among others, an entitlement to apply for such diversion or closure and a right of appeal on refusal, the entitlement is not in force in Wales at this time.

The Law

The Health and Safety at Work Act 1974
The Health and Safety (First Aid) Regulations 1981
The Environmental Protection Act 1990 Section 89
The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR)
The Disability Discrimination Act (DDA) 1995 (as amended)
The Road Vehicles (Construction and Use) (Amendment) (No 2) Regulations 1996
The Public Services Vehicles (Carrying Capacity) (Amendment) Regulations 1996
The Education Act 1996.
The Management of Health and Safety at Work Regulations 1999
The Special Educational Needs and Disability Act 2001
The Education (Nutritional Standards for School Lunches) (Wales) Regulations 2001
The Education Act 2002
The Crime Reduction Act 2006
The Education and Inspections Act 2006
The Learner Travel (Wales) Measure 2008
The Schools Milk (Wales) Regulations 2008

Guidance

Health and Safety: Responsibilities and Powers DfES/0803/2001
The DCELLS Health and Safety webpage at <http://wales.gov.uk/topics/educationandskills/learningproviders/?lang=en> provides Guidance on the following topics:

Accident and Disease Reporting
Educational Visits Guidance