



Department  
for Education

# School attendance

Statutory guidance and departmental advice

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# Summary

## About this advice

This document has been produced to help schools and local authorities maintain high levels of school attendance and plan the school day and year. The document also provides information about the interventions available to address pupils' poor attendance and behaviour at school.

## Expiry or review date

This advice will next be reviewed in July 2014.

## What legislation does this advice refer to?

Section one – pupil registers and attendance codes:

- The Education Act 1996; and
- The Education (Pupil Registration) (England) Regulations 2006 and amendments.

Section two – school day and year:

- The Education Act 1996;
- The Education (School Day and School Year) (England) Regulations 1999;
- The Education Act 2002; and  
The Changing of School Session Times (England) (Revocation) Regulations 2011.

Section three – statutory guidance on parental responsibility measures:

- The Education Act 1996;
- Crime and Disorder Act 1998;
- The Anti-social Behaviour Act 2003;
- The Education Act 2005;
- The Education and Inspections Act 2006;
- The Education (Parenting Contracts and Parenting Orders) (England) Regulations 2007;
- The Education (Penalty Notices) (England) Regulations 2007 and amendments;  
and
- The Education and Skills Act 2008.

## Who is this advice for?

This advice is for:

- Local authorities;
- All school<sup>1</sup> staff, head teachers, governors, alternative provision providers;
- The police for penalty notices; and,
- Independent schools for pupil registers.
- This advice may also be useful for parents and carers.

## What has changed?

This document replaces previous advice on pupils' registration, school day and year, guidance on *Ensuring Children's Right to Education*, and statutory guidance on *Education-related parenting contracts, parenting orders and penalty notices* published in September 2007. It outlines in one place the Government's approach to school attendance and the use of parental responsibility measures. This advice is made up of:

- Section one - pupil registers and attendance codes;
- Section two - school day and year; and,
- Section three - statutory guidance on education-related parenting contracts, parenting orders and penalty notices.

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<sup>1</sup> In all types of state funded schools, including state maintained nurseries, independent schools, schools with 6<sup>th</sup> forms, academies, free schools, pupil referral units and alternative provision providers.

# Section One: Advice on Pupil Registers and Attendance Codes

## School Attendance

Central to raising standards in education and ensuring all pupils can fulfil their potential is an assumption so widely understood that it is insufficiently stated – pupils need to attend school regularly to benefit from their education. Missing out on lessons leaves children vulnerable to falling behind. Children with poor attendance tend to achieve less in both primary and secondary school.

The Government expects:

- Schools and local authorities to:
  - promote good attendance and reduce absence, including persistent absence;
  - ensure every pupil has access to full-time education to which they are entitled; and,
  - act early to address patterns of absence.
- Parents to perform their legal duty by ensuring their children of compulsory school age who are registered at school attend regularly.
- All pupils to be punctual to their lessons.

## What does the law say and what do I have to do?

This advice summarises the legal powers and duties that govern school attendance and explains how they apply to local authorities, head teachers, school staff, governing bodies, pupils and parents.

These requirements are contained in:

- The Education Act 1996 - sections 434(1)(3)(4)&(6) and 458(4)&(5);
- The Education (Pupil Registration) (England) Regulations 2006;
- The Education (Pupil Registration) (England) (Amendment) Regulations 2010;
- The Education (Pupil Registration) (England) (Amendment) Regulations 2011; and
- The Education (Pupil Registration) (England) (Amendment) Regulations 2013.

## The Admission and Attendance Registers

The law requires all schools including independent schools to have an admission register and, with the exception of schools where all pupils are boarders, an attendance register. All pupils (regardless of their age) must be placed on both registers. The proprietor of a school who fails to comply with these regulations is guilty of an offence and can be fined<sup>2</sup>.

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<sup>2</sup> Section 434(6) of the Education Act 1996.

## Contents of Admission Register

The admission register must contain the personal details of every pupil in the school, along with the date of admission or re-admission to the school, information regarding parents and carers and details of the school last attended.

### Expected First Day of Attendance

Schools must enter pupils on the admission register and attendance register from the beginning of the first day on which the school has agreed, or been notified, that the pupil will attend the school. For most pupils the expected first day of attendance is the first day of the school year.

If a pupil fails to attend on the agreed or notified date, the school must establish the reason for the absence and mark the attendance register accordingly.

### Deletions from the Admission Register

A pupil can lawfully be deleted from the admission register on the grounds prescribed in regulation 8 of the Education (Pupil Registration) (England) Regulations 2006.

### Deletions due to Unpaid Boarding Fees<sup>3</sup>

A maintained boarding school or boarding academy may, additionally, delete a pupil from its admission register where the boarding fees remain unpaid at the end of the school term for which they were due to be paid. Where fees are unpaid, the school or academy should, before the grounds for removing the pupil from the register are met, consider whether:

- The relevant local authority, in the case of a maintained school, has considered whether a case exists for paying some or all of the child's boarding fees<sup>4</sup>;
- Removing the child from school would have a significant negative effect on his or her education and whether it can be mitigated, for example by transferring to a school closer to home;
- Parents/carers have been informed of any charitable or other voluntary sector assistance or benefits that may be available to help meet the cost of boarding fees; and,
- The school has given timely notice to the relevant local authority and the parents/carers, to assist school transfer.

### Amendments to the Admission Register and Attendance Register

Every amendment made to the admission register and the attendance register must include: the original entry; the amended entry; the reason for the amendment; the date on which the amendment was made; and the name and position of the person who made the amendment.

### Preservation of the Admission Register and Attendance Register

Every entry in the admission register and attendance register must be preserved for a period of three years after the date on which the entry was made.

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<sup>3</sup> The Education (Pupil Registration) (England) (Amendment) Regulations 2011.

<sup>4</sup> Under section 458(4) and (5) of the Education Act 1996.

## Children at Risk of Missing Education

All schools (including academies) must inform their local authority of any pupil who is going to be deleted from the admission register where they:

- Have been taken out of school by their parents and are being educated outside the school system e.g. home education (see below on home educated children);
- Have ceased to attend school and no longer live within reasonable distance of the school at which they are registered;
- Have a medical condition certified by the school medical officer that the pupil is unlikely to be in a fit state of health to attend school;
- Are in custody for a period of more than four months due to a final court order and the proprietor does not reasonably believe they will be returning to the school at the end of that period; or,
- Have been permanently excluded.

The local authority should be notified in advance of the deletion, when the school becomes aware that the deletion will be made.

All schools (including academies) must agree with the relevant local authority, the regular interval that the school will inform the local authority of any pupil who fails to attend school regularly, or has been absent without the school's permission for a continuous period of 10 days or more. Local authorities have a duty<sup>5</sup> to put in place arrangements for identifying (as far as it is possible) those children of compulsory school age in their area who are not school registered or receiving education otherwise than at a school. Local authorities should trace those children and ensure that they receive full-time education.

## Home Educated Children

On receipt of written notification to home educate, schools must inform the pupil's local authority that the pupil is to be deleted from the admission register. Schools should not seek to persuade parents to educate their children at home as a way of avoiding excluding the pupil or because the pupil has a poor attendance record.

Schools and local authorities should not seek to prevent parents from educating their children outside the school system. There is no requirement for parents to obtain the school or local authority's agreement to educate their child at home.

Parents have a duty to ensure their child of compulsory school age receives suitable full time education but this does not have to be at a school<sup>6</sup>.

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<sup>5</sup> Under section 436A of the Education Act 1996 (as amended by section 4 of the Education and Inspections Act 2006). There is separate statutory guidance for local authorities on how to carry out this duty – see <https://www.education.gov.uk/publications/standard/Integratedworking/Page1/STATUTORY-LA-GUIDE>.

<sup>6</sup> Section 7 of the Education Act 1996.



## Contents of Attendance Register

Schools must take the attendance register at the start of the first session of each school day and once during the second session. On each occasion they must record whether every pupil is:

- Present;
- Attending an approved educational activity;
- Absent; or,
- Unable to attend due to exceptional circumstances.

The school should follow up any absences to:

- Ascertain the reason;
- Ensure the proper safeguarding action is taken;
- Identify whether the absence is approved or not; and,
- Identify the correct code to use before entering it on to the school's electronic register, or management information system which is used to download data to the School Census.

## Boarding Schools

Boarding schools without day-pupils are not required to keep an attendance register. Schools with a mixture of day-pupils and boarders must keep an attendance register for the day-pupils.

## Absence and Attendance Codes

The national codes enable schools to record and monitor attendance and absence in a consistent way which complies with the regulations. They are also used for collecting statistics through the School Census System. The data helps schools, local authorities and the Government to gain a greater understanding of the level of, and the reasons for, absence. The codes are:

### Present at School

Pupils must not be marked present if they were not in school during registration. If a pupil were to leave the school premises after registration they would still be counted as present for statistical purposes.

**Registration Code / \: Present in school / = am \ = pm**

Present in school during registration.

**Code L: Late arrival before the register has closed**

Schools should have a policy on how long registers should be kept open; this should be for a reasonable length of time but not that registers are to be kept open for the whole session. A pupil arriving after the register has closed should be marked absent with code U, or with another absence code if that is more appropriate.

## **Present at an Approved Off-Site Educational Activity**

An approved educational activity is where a pupil is taking part in supervised educational activity such as field trips, educational visits, work experience or alternative provision. Pupils can only be recorded as receiving off-site educational activity if the activity meets the requirements prescribed in regulation 6(4) of the Education (Pupil Registration) (England) Regulations 2006. The activity must be of an educational nature approved by the school and supervised by someone authorised by the school. The activity must take place during the session for which the mark is recorded.

### **Attendance codes for when pupils are present at approved off-site educational activity are as follows:**

#### **Code B: Off-site educational activity**

This code should be used when pupils are present at an off-site educational activity that has been approved by the school. Ultimately schools are responsible for the safeguarding and welfare of pupils educated off-site. Therefore by using code B, schools are certifying that the education is supervised and measures have been taken to safeguard pupils. This code should not be used for any unsupervised educational activity or where a pupil is at home doing school work. Schools should ensure that they have in place arrangements whereby the provider of the alternative activity notifies the school of any absences by individual pupils. The school should record the pupil's absence using the relevant absence code.

#### Consortia Schools

Pupils attending consortia schools as part of their course only need to be placed on the registers of their 'main' school rather than on all of the schools they attend. They should be treated as guest pupils at the other consortia schools. The consortia schools however, must ensure they have suitable systems in place for monitoring and reporting the attendance and absence of the pupils involved, which must be shared with the 'main' school.

#### **Code D: Dual Registered - at another educational establishment**

This code is not counted as a possible attendance in the School Census. The law allows for dual registration of pupils at more than one school. This code is used to indicate that the pupil was not expected to attend the session in question because they were scheduled to attend the other school at which they are registered.

The main examples of dual registration are pupils who are attending a pupil referral unit, a hospital school or a special school on a temporary basis. It can also be used for Gypsy, Roma and Traveller children, but only when the pupil is known to be registered at another school during the session in question.

Each school should only record the pupil's attendance and absence for those sessions that the pupil is scheduled to attend their school. Schools should ensure that they have in place arrangements whereby all unexplained and unexpected absence is followed up in a timely manner.

#### **Code J: At an interview with prospective employers, or another educational establishment**

This code should be used to record time spent in interviews with prospective employers or another educational establishment. Schools should be satisfied that the interview is linked to employment prospects, further education or transfer to another educational

establishment.

### **Code P: Participating in a supervised sporting activity**

This code should be used to record the sessions when a pupil is taking part in a sporting activity that has been approved by the school and supervised by someone authorised by the school.

### **Code V: Educational visit or trip**

This code should be used for attendance at an organised trip or visit, including residential trips organised by the school, or attendance at a supervised trip of a strictly educational nature arranged by an organisation approved by the school.

### **Code W: Work experience**

Work experience is for pupils in the final two years of compulsory education. Schools should ensure that they have in place arrangements whereby the work experience placement provider notifies the school of any absences by individual pupils. Any absence should be recorded using the relevant code.

## **Authorised Absence from School**

'Authorised absence' means that the school has either given approval in advance for a pupil of compulsory school age to be away, or has accepted an explanation offered afterwards as justification for absence.

## **Absence codes when pupils are not present in school are as follows:**

### **Code C: Leave of absence authorised by the school**

Only exceptional circumstances warrant an authorised leave of absence. Schools should consider each request individually taking into account the circumstances, such as: the nature of the event for which leave is sought; the frequency of the request; whether the parent gave advance notice; and the pupil's attainment, attendance and ability to catch up on missed schooling.

### **Code E: Excluded but no alternative provision made**

If no alternative provision is made for a pupil to continue their education whilst they are excluded but still on the admission register, they should be marked absent in the attendance register using Code E. Alternative provision must be arranged for each excluded pupil from the sixth day of any fixed period or permanent exclusion. Where alternative provision is made they should be marked using the appropriate attendance code.

### **Code H: Holiday authorised by the school**

Head teachers should not grant leave of absence unless in exceptional circumstances. The application must be made in advance and the head teacher must be satisfied that there are exceptional circumstances which warrant the leave. Where a leave of absence is granted, the head teacher will determine the number of days a pupil can be away from school. A leave of absence is granted entirely at the head teacher's discretion.

### **Code I: Illness (not medical or dental appointments)**

Schools should advise parents to notify them on the first day the child is unable to attend due to illness. Schools should authorise absences due to illness unless they have genuine cause for concern about the legitimacy of an illness. If the authenticity of illness is in doubt, schools can request parents to provide medical evidence to support illness.

Schools can record the absence as unauthorised if not satisfied of the authenticity of the illness but should advise parents of their intention. Schools are advised not to request medical evidence unnecessarily. Medical evidence can take the form of prescriptions, appointment cards, etc. rather than doctors' notes.

#### **Code M: Medical or dental appointments**

Missing registration for a medical or dental appointment is counted as an authorised absence. Schools should, however, encourage parents to make appointments out of school hours. Where this is not possible, the pupil should only be out of school for the minimum amount of time necessary for the appointment.

#### **Code R: Religious observance**

Schools must treat absence as authorised when it is due to religious observance. The day must be exclusively set apart for religious observance by the religious body to which the parents belong. Where necessary, schools should seek advice from the parents' religious body about whether it has set the day apart for religious observance.

#### **Code S: Study leave**

Schools must record study leave as authorised absence. Study leave should be used sparingly and only granted to Year 11 pupils during public examinations. Provision should still be made available for those pupils who want to continue to come into school to revise.

#### **Code T: Gypsy, Roma and Traveller absence**

A number of different groups are covered by the generic term Traveller – Roma, English and Welsh Gypsies, Irish and Scottish Travellers, Showmen (fairground people) and Circus people, Bargees (occupational boat dwellers) and New Travellers.

This code should be used when Traveller families are known to be travelling for occupational purposes and have agreed this with the school but it is not known whether the pupil is attending educational provision. It should not be used for any other types of absence by these groups.

To help ensure continuity of education for Traveller children it is expected that the child should attend school elsewhere when their family is travelling and be dual registered at that school and the main school. Children from these groups whose families do not travel are expected to register at a school and attend as normal. They are subject to the same rules as other children in terms of the requirement to attend school regularly once registered at school.

### **Unauthorised Absence from School**

Unauthorised absence is where a school is not satisfied with the reasons given for the absence. Absence codes are as follows:

#### **Code G: Holiday not authorised by the school or in excess of the period determined by the head teacher.**

If a school does not authorise a leave of absence for the purpose of a holiday but the parents still take the child out of school, or the child is kept away for longer than was agreed, the absence is unauthorised. The regulations do not allow schools to give retrospective approval. If the parents did not apply for leave of absence in advance, the absence must be recorded as unauthorised.

**Code N: Reason for absence not yet provided**

Schools should follow up all unexplained and unexpected absences in a timely manner. Every effort should be made to establish the reason for a pupil's absence. When the reason for the pupil's absence has been established the register should be amended. This code should not be left on a pupil's attendance record indefinitely; if no reason for absence is provided after a reasonable amount of time it should be replaced with code O (absent from school without authorisation).

**Code O: Absent from school without authorisation**

If the school is not satisfied with the reason given for absence they should record it as unauthorised.

**Code U: Arrived in school after registration closed**

Schools should actively discourage late arrival, be alert to patterns of late arrival and seek an explanation from the parent.

**Administrative Codes**

The following codes are not counted as a possible attendance in the School Census:

**Code X: Not required to be in school**

This code is used to record sessions that non-compulsory school age children are not expected to attend.

**Code Y: Unable to attend due to exceptional circumstances**

This code can be used where a pupil is unable to attend because:

- The school site, or part of it, is closed due to an unavoidable cause; or
- The transport provided by the school or a local authority is not available and where the pupil's home is not within walking distance; or
- A local or national emergency has resulted in widespread disruption to travel which has prevented the pupil from attending school.

This code can also be used where a pupil is unable to attend because:

- The pupil is in custody; detained for a period of less than four months. If the school has evidence from the place of custody that the pupil is attending educational activities then they can record those sessions as code B (present at approved educational activity).

This code is collected in the School Census for statistical purposes.

**Code Z: Pupil not on admission register**

This code is available to enable schools to set up registers in advance of pupils joining the school to ease administration burdens. Schools must put pupils on the admission register from the first day that the school has agreed, or been notified, that the pupil will attend the school.

**Code #: Planned whole or partial school closure**

This code should be used for whole or partial school closures that are known or planned in advance such as: between terms; half terms; occasional days (for example, bank holidays); weekends (where it is required by the management information system); up to

five non-educational days to be used for curriculum planning/training; and use of schools as polling stations.

### **Different Term Dates for Different Pupils**

Schools and local authorities can agree to set different term dates for different year groups – e.g. for ‘staggered starts’ or ‘induction days’. Code # can be used to record the year group(s) that is not due to attend. This is only acceptable where the school ensures that those pupils not attending on that day are still offered a full education over the school year.

## Section Two: Advice on School Day and School Year

### Setting school term dates and holidays

School employers are required to set the term dates of their school year. Employers are: the local authority in community, voluntary controlled and community special schools and maintained nursery schools; the governing body in foundation and voluntary aided schools; the academy trust in academies and Free Schools.

### School day and school year

The law regulating the school day and school year applies only to schools maintained by a local authority and special schools not maintained by a local authority. This law does not apply to academies and Free Schools.

#### School Day

Every school day must have two sessions divided by a break. The length of each session, break and the school day is determined by the school's governing body. The governing body has the power to revise the length of the school day as it sees fit. There is no requirement to consult parents on revisions to the school day but it can assist parents to do so.

#### School Year

Schools must meet for at least 380 sessions or 190 days during any school year to educate their pupils. If a school is prevented from meeting for one or more sessions because of an unavoidable event, it should find a practical way of holding extra sessions. If it cannot find a practical way of doing this then it is not required to make up the lost sessions.

If schools want to reduce the number of days they have to meet, they can make an application to the Secretary of State asking for a temporary exemption from the requirements of the legislation using the power to innovate<sup>7</sup>.

#### What legislation does the advice in this section relate to?

- The Education Act 2002 - section 32
- The Education Act 1996 – section 551(1)
- The Education (School Day and School Year) (England) Regulations 1999
- The Changing of School Session Times (England) (Revocation) Regulations 2011

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<sup>7</sup> Section 32 of the Education Act 2002. See <http://www.education.gov.uk/schools/leadership/schoolperformance/a0014624/power-to-innovate>.

# Section Three: Statutory Guidance on Education-Related Parenting Contracts, Parenting Orders and Penalty Notices

## Introduction

Local authorities and all schools have legal powers to use parenting contracts, parenting orders and penalty notices to address poor attendance and behaviour in school. In addition to using these powers, local authorities and schools can develop other practices to improve attendance.

Local authorities, police constables, school governing bodies, school head teachers (and staff authorised by the head) and teachers-in-charge of pupil referral units are required by law to have regard to the relevant parts of this guidance when carrying out their functions in relation to parenting contracts, parenting orders and penalty notices. This means that while the guidance does not have the force of law, there is an expectation that it will be followed unless there is good reason to depart from it.

## Purpose and scope of these legal measures

Parenting contracts, parenting orders and penalty notices are interventions available to promote better school attendance and behaviour. Good behaviour and attendance are essential to children's educational prospects. These measures are permissive and it is for individual governing bodies and local authorities to decide whether to use them. In exercising these powers governing bodies, head teachers and local authority officers should have regard to their safeguarding duties<sup>8</sup>.

Parenting contracts, orders and penalty notices for irregular attendance apply only to pupils of compulsory school age who are registered at a school. Penalty notices for parents of pupils found in a public place during school hours after being excluded also apply only to children of compulsory school age who are registered at a school. Parenting contracts, parenting orders and penalty notices for misbehaviour can be applied to pupils outside compulsory school age e.g. in a sixth form or maintained nursery.

All schools are required by law to have a written behaviour policy (see the Department's advice on ensuring good behaviour for more details). Schools can inform parents about their use of parenting contracts, parenting orders and penalty notices in their behaviour policy.

Local authorities also have other powers to enforce school attendance where this becomes problematic, including the power to prosecute parents who fail to comply with a school attendance order, or fail to ensure their child's regular attendance at school.

Local authorities and schools using parenting contracts, parenting orders or penalty notices need to ensure that parents affected have access to clear, accurate information, including about their own rights and responsibilities.

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<sup>8</sup> <http://www.education.gov.uk/aboutdfe/statutory/g00213160/working-together-to-safeguard-children>



## What legislation does the guidance in this section relate to?

- The Children Act 1989 (section 36);
- The Education Act 1996 (sections 7, 19, 436A, 437-39, 443-447);
- Crime and Disorder Act 1998 (section 8 -10);
- The Anti-social Behaviour Act 2003 (ASB Act) (sections 19-24);
- The Education Act 2005 (section 115);
- The Education and Inspections Act 2006 (sections 97-111) ;
- The Education (Parenting Contracts and Parenting Orders) (England) Regulations 2007;
- The Education (Penalty Notices) (England) Regulations 2007;
- The Education (Penalty Notices) (England) (Amendment) Regulations 2012;
- The Education (Penalty Notices) (England) (Amendment) Regulations 2013; and
- The Education and Skills Act 2008 (section 2 and 155).

### Definition of a parent

A parent means<sup>9</sup>:

- All natural parents, whether they are married or not;
- Any person who has parental responsibility for a child or young person; and,
- Any person who has care of a child or young person i.e. lives with and looks after the child.

The local authority and school will need to decide who comes within the definition of parent in respect of a particular pupil when using the legal measures, but generally parents include all those with day to day responsibility for a child.

### Context of the school attendance measures

Parents are responsible for making sure that their children of compulsory school age receive a suitable full-time education<sup>10</sup>. This can be by regular attendance at school, at alternative provision, or otherwise (e.g. the parent can choose to educate their child at home).

A child reaches compulsory school age on or after their fifth birthday. If they turn 5 between 1 January and 31 March they are of compulsory school age on 31 March; if they turn 5 between 1 April and 31 August they are of compulsory school age on 31 August. If they turn 5 between 1 September and 31 December, then they are of compulsory school age on 31st December.

A child continues to be of compulsory school age until the last Friday of June in the school year that they reach sixteen. From September 2013<sup>11</sup> all 16 year-olds will be required to continue in education or training, until the end of the academic year in which they turn 17. From September 2015 they will be required to continue until their 18th birthday.

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<sup>9</sup> As set out in section 576 of the Education Act 1996.

<sup>10</sup> Under section 7 of the Education Act 1996.

<sup>11</sup> Section 2 of the Education and Skills Act 2008

## School Attendance Orders

If it appears to the local authority that a child of compulsory school age is not receiving a suitable education, either by regular attendance at school or otherwise, then they must begin procedures for issuing a School Attendance Order<sup>12</sup>. The order will require the child's parents to register their child at a named school. If they fail to comply with the order the parent can be prosecuted.

## Prosecutions by local authorities

If a child of compulsory school age fails to attend regularly at a school at which they are registered, or at a place where alternative provision is provided for them, the parents may be guilty of an offence and can be prosecuted by the local authority. Only local authorities can prosecute parents and they must fund all associated costs. Local authorities should consider the Attorney General's Guidelines for Crown Prosecutors in all prosecution cases.

Local authorities must conduct all investigations in accordance with the Police and Criminal Evidence (PACE) Act 1984.

Local authorities have the power to prosecute parents who fail to comply with a school attendance order (section 443 of the Education Act 1996) or fail to ensure their child's regular attendance at a school (section 444 of the Education Act 1996)<sup>13</sup>.

Section 444 has two separate but linked offences: Section 444(1): where a parent fails to secure the child's regular attendance; and section 444(1A) where a parent knows that the child is failing to attend school regularly, and fails to ensure the child does so. Section 444ZA<sup>14</sup> applies the offence to where parents fail to secure the regular attendance of their child at a place where the local authority or governing body has arranged alternative provision.

There are statutory defences for parents to use under the 1996 Act.

The fines available to the courts if parents are found guilty of the section 444 (1) offence include a level 3 fine of up to £1,000. If they are found guilty of the section 444 (1A) the fine is at level 4, up to £2,500 and the court can also sentence them to imprisonment for up to three months. Local authorities have the power to prosecute parents of pupils found in a public place during school hours after being excluded from school<sup>15</sup>. The fine is a level 3 fine of up to £1,000.

## Education Supervision Orders

The local authority must consider applying for an Education Supervision Order (ESO) before prosecuting parents<sup>16</sup>. A local authority may apply for an ESO instead of or as well as prosecuting parents. The order is placed on the child and the local authority is

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<sup>12</sup> Under section 437 of the Education Act 1996.

<sup>13</sup> Section 446 of the Education Act 1996 provides that proceedings can only be instituted by Local Authorities.

<sup>14</sup> Section 444ZA of the Education Act 1996

<sup>15</sup> Section 103 of the Education and Inspections Act 2006.

<sup>16</sup> Under section 447 of the Education Act 1996.

appointed by the court to supervise that child's education, either at a school, or at home for a specified period of time.

## Parenting Contracts

A parenting contract<sup>17</sup> is a formal written signed agreement between parents and either the local authority or the governing body of a school and should contain:

- A statement by the parents that they agree to comply for a specified period with whatever requirements are set out in the contract; and
- A statement by the local authority or governing body agreeing to provide support to the parents for the purpose of complying with the contract.

Parenting contracts can be used in cases of misbehaviour<sup>18</sup> or irregular attendance at school or alternative provision. Parenting contracts are voluntary but any non-compliance should be recorded by the school or local authority as it may be used as evidence in court where an application is made for a behaviour parenting order.

The local authority or governing body should fund any support required to implement a parenting contract (such as referral to parenting classes) and provide information to parents about other types of support available, such as details of national and local agencies and helplines.

## Parenting Orders

Parenting orders<sup>19</sup> are imposed by the court and the parents' agreement is not required before an order is made.

Parenting orders are available as an 'ancillary order' following a successful prosecution by the local authority for irregular attendance or breach of a school attendance order.

They are also available as a 'free-standing order' by direct application by the governing body of a school, or local authority to the Magistrates' Court, in cases either where exclusion has taken place or where there has been serious misbehaviour<sup>20</sup>. An application for a parenting order for misbehaviour must be made within 40 school days of the date upon which the latest instance of serious misbehaviour occurred or, if applicable, the date on which the exclusion review process ends. If a parent has already entered into a parenting contract, an application can be made within 6 months of the date the contract was signed.

Parenting orders consist of 2 elements:

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<sup>17</sup> Section 19 of the Anti-social Behaviour Act 2003

<sup>18</sup> Section 19 of the Anti-social Behaviour Act 2003 provides that parenting contracts can be entered into where a child who is a registered pupil has engaged in behaviour connected with the school which is likely to cause significant disruption to the education of others, significant detriment to the welfare of the child himself or of other pupils or to the health and safety of staff or the pupil is at risk of exclusion.

<sup>19</sup> Section 8 of the Crime and Disorder Act 1998 parenting orders for irregular attendance.

<sup>20</sup> Section 98 of the Education and Inspections Act 2006 states that where a school or local authority have reason to believe that a pupil has behaved in such a way as to cause, or be likely to cause, significant disruption to the education of other pupils or significant detriment to the welfare of that pupil or other pupils or to the health or safety of any staff. Or, where the pattern of behaviour (if continued) could lead to the pupil being excluded.

- A requirement for parents to attend counselling or guidance sessions (e.g. parenting education or parenting support classes) where they will receive help and support to enable them to improve their child's behaviour. This is the core of the parenting order and lasts for up to 3 months; and,
- A requirement for parents to comply with such requirements as is specified in the order. This element can last up to 12 months.

All parenting orders must be supervised by a 'responsible officer' from the school (behaviour orders only) or local authority. They are individually named in the parenting order.

Any breach by parents without a reasonable excuse could lead to a fine of up to £1,000. The police may enforce any breach of an order by a parent.

Parents have a right to appeal a parenting order to the Crown Court.

## Consultation and co-operation

Local authorities, registered social landlords and youth offending teams can also enter into parenting contracts or apply for parenting orders in cases of criminal conduct and anti-social behaviour. In such cases, organisations should coordinate their action, including with schools.

## Penalty Notices

Penalty notices<sup>21</sup> are fines of £60/£120 imposed on parents. They are an alternative to the prosecution of parents for failing to ensure that their child of compulsory school age regularly attends the school where they are registered or at a place where alternative provision is provided.

Penalty notices can only be issued by a head teacher or someone authorised by them (a deputy or assistant head), a local authority officer or the police. All schools and the police must send copies of penalties issued to the local authority. Penalty notices can be issued to each parent liable for the attendance offence or offences.

Penalty notices can be used where the pupil's absence has not been authorised by the school. Penalty notices may also be issued where parents allow their child to be present in a public place during school hours without reasonable justification during the first five days of a fixed period or permanent exclusion<sup>22</sup>. The parents must have been notified by the school at the time of the exclusion of this and the days to which it applies<sup>23</sup>.

## The Code of Conduct

The *Education (Penalty Notices) Regulations 2007*<sup>24</sup> set out the details of how the penalty notice scheme must operate. This includes a requirement that every local authority must draw up and publish a Code of Conduct for issuing penalty notices, after

<sup>21</sup> Section 23 of the Anti-social Behaviour Act 2003

<sup>22</sup> Section 103 and 105 of the Education and Inspections Act 2006 and the Education (Penalty Notices) (England) Regulations 2007 (S.I 2007/1867)

<sup>23</sup> Section 104 of the Education and Inspections Act 2006

<sup>24</sup> S.I. 2007/1867

consulting all schools, including academies, and the police. The code should set out the criteria that will be used to trigger the use of a penalty notice. These could include: a number of unauthorised absences, perhaps within a rolling academic year; one-off instances of irregular attendance such as holidays taken during term time without the school's permission; and where an excluded child is found in a public place during school hours without a justifiable reason.

The local authority administers the scheme for all schools in its area, including academies and Free Schools.

## **Payment of Penalty Notice**

The penalty is £60 if paid within 21 days of receipt rising to £120 if paid after 21 days but within 28 days. The payment must be paid direct to the local authority. The parents can only be prosecuted if 28 days have expired and full payment has not been made.

There is no right of appeal by parents against a penalty notice. If the penalty is not paid in full by the end of the 28 day period, the local authority must decide either to prosecute for the original offence to which the notice applies, or withdraw the notice.

## Frequently Asked Questions

### **Can a school place a pupil on a part-time timetable?**

As a rule, no. All pupils of compulsory school age are entitled to a full-time education. In very exceptional circumstances there may be a need for a temporary part-time timetable to meet a pupil's individual needs. For example where a medical condition prevents a pupil from attending full-time education and a part-time timetable is considered as part of a re-integration package. A part-time timetable must not be treated as a long-term solution. Any pastoral support programme or other agreement must have a time limit by which point the pupil is expected to attend full-time or be provided with alternative provision.

In agreeing to a part-time timetable a school has agreed to a pupil being absent from school for part of the week or day and therefore must record it as authorised absence.

### **Are pupils entitled to study leave?**

No. Study leave should not be granted by default once tuition of the exam syllabus is complete, and study leave should only ever be granted to pupils in year 11. If schools do decide to grant study leave, provision should still be made available for those pupils who want to continue to come into school to revise.

All pupils are different and have different requirements and preferences when preparing for examinations. Some schools do seek alternatives to study leave as they recognise that some pupils do not have the skills, or are not inclined, to make the best use of unsupervised and unstructured revision time. However, many schools also recognise that study leave is a chance for pupils to develop their independent study which will help them when they move to post-16 provision, where a self-study approach is commonly used.

### **How should schools record the attendance of pupils on study leave?**

Y11 pupils granted study leave should be marked on the attendance register as authorised absence using code S. No other attendance code is suitable for the purpose of study leave. Y11 pupils who are 16 years old are of compulsory school age (up to the last Friday in June) and must be marked on the attendance register accordingly.

### **Can a school use a designated school day as an academic review day for parents?**

No. Academic reviews day should not be used as part of the school day. Schools should endeavour to hold these reviews out of school hours.

### **Do schools need to consult parents if making changes to the school day?**

No. Although parents must be informed of the changes, there is no legal requirement to consult parents or to give an explanation as to why the decision has been made. Of course, schools can consult parents if they wish to, and where they have raised the expectation that they will consult, they should honour that commitment.

### **Can a parent take their child on holiday during term time?**

Head teachers should only authorise leave of absence in exceptional circumstances. If a head teacher grants a leave request, it will be for the head teacher to determine the length of time that the child can be away from school. Leave is unlikely, however, to be granted for the purposes of a family holiday as a norm.

### **Can a school fine a parent for taking their child on holiday during term time?**

Yes. Parents have a legal duty to make sure that their child aged 5-16, if registered at a school, attends that school regularly. If taking an unauthorised term time holiday is grounds for issuing a penalty notice according to the local authority's code, and if the leave of absence for holiday was not authorised by the school, either the school or the local authority may issue a penalty notice.

### **Can schools decide whether parents should be prosecuted or not?**

No. Only local authorities can make decisions on whether parents should be prosecuted for school attendance offences. All schools (including academies) have a duty to refer regular absence (authorised and unauthorised) to the relevant local authority. This may include any evidence to show how they supported the pupil and parent to improve attendance. It is for each local authority to judge each referral on its own merits and make a decision on the next probable cause of action.

It is the statutory duty of local authorities to carry out investigations including witness statements leading up to prosecutions. Local authorities should conduct all investigations in accordance with PACE and Attorney General's Guidelines for Crown Prosecutors. Local authorities cannot delegate or charge schools, including academies for this service.

## Further sources of information

### Associated resources

- The Education Act 1996: <http://www.legislation.gov.uk/ukpga/1996/56/contents>
- The Children Act 1989: <http://www.legislation.gov.uk/ukpga/1989/41/contents>
- The Education (Pupil Registration) (England) Regulations 2006: <http://www.legislation.gov.uk/uksi/2006/1751/contents/made>
- The Education (Pupil Registration) (England) (Amendment) Regulations 2010: <http://www.legislation.gov.uk/uksi/2010/1725/contents/made>
- The Education (Pupil Registration) (England) (Amendment) Regulations 2011: <http://www.legislation.gov.uk/uksi/2011/1625/contents/made>
- The Education (Pupil Registration) (England) (Amendment) Regulations 2013: <http://www.legislation.gov.uk/uksi/2013/756/contents/made>
- The Education Act 2002: <http://www.legislation.gov.uk/ukpga/2002/32/contents>
- The Education (School Day and School Year) (England) Regulations 1999: <http://www.legislation.gov.uk/uksi/1999/3181/contents/made>
- The Changing of School Session Times (England) (Revocation) Regulations 2011: <http://www.legislation.gov.uk/uksi/2011/1954/made>
- Crime and Disorder Act 1998: <http://www.legislation.gov.uk/ukpga/1998/37/contents>
- The Anti-social Behaviour Act 2003: <http://www.legislation.gov.uk/ukpga/2003/38/contents>
- The Education Act 2005: <http://www.legislation.gov.uk/ukpga/2005/18/contents>
- The Education and Inspections Act 2006: <http://www.legislation.gov.uk/ukpga/2006/40/contents>
- The Education (Parenting Contracts and Parenting Orders) (England) Regulations 2007: <http://www.legislation.gov.uk/uksi/2007/1869/contents/made>
- Magistrates' Courts (Parenting Orders) Rules 2004: <http://www.legislation.gov.uk/uksi/2004/247/contents/made>
- Magistrates' Courts (Parenting Orders) (Amendment) Rules 2007: <http://www.legislation.gov.uk/uksi/2007/2222/made>
- The Education (Penalty Notices) (England) Regulations 2007: <http://www.legislation.gov.uk/uksi/2007/1867/contents/made>
- The Education and Skills Act 2008: <http://www.legislation.gov.uk/ukpga/2008/25/contents>
- The Education (Penalty Notices) (England) (Amendment) Regulations 2012: <http://www.legislation.gov.uk/uksi/2012/1046/contents/made>
- The Education (Penalty Notices) (England) (Amendment) Regulations 2013: <http://www.legislation.gov.uk/uksi/2013/757/contents/made>
- Copy of Attorney General's Guidelines for Crown Prosecutors can be found at: <http://www.cps.gov.uk/publications/prosecution/index.html>
- Police and Criminal Evidence (PACE) Act 1984: <http://www.homeoffice.gov.uk/police/powers/pace-codes/>
- The Deregulation and Contracting Out Act 1994 – prosecutions section 71(1) (b): <http://www.legislation.gov.uk/ukpga/1994/40/section/71>



## Other departmental advice and guidance you may be interested in

- Revised statutory guidance for local authorities in England to identify children not receiving a suitable education: <https://www.education.gov.uk/publications/standard/Integratedworking/Page1/STATUTORY-LA-GUIDE>
- Power to Innovate: <http://www.education.gov.uk/schools/leadership/schoolperformance/a0014624/power-to-innovate>



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