



Department  
for Education

# **Parental responsibility measures for school attendance and behaviour**

**Statutory guidance for maintained  
schools, academies, local authorities and  
the police**

November 2013

# Contents

Summary	3
About this guidance	3
Expiry or review date	3
What legislation does this guidance refer to?	3
Who is this guidance for?	3
Introduction	4
Purpose and scope of these legal measures	4
Context of the school attendance measures	5
School Attendance Orders	5
Prosecutions by local authorities	6
Parenting Contracts	6
Parenting Orders	7
Consultation and co-operation	8
Penalty Notices	8
Frequently Asked Questions	10
Further sources of information	11
Relevant legislation on <a href="http://www.legislation.gov.uk">www.legislation.gov.uk</a>	11
Other departmental advice and guidance you may be interested in	11

# Summary

## About this guidance

This is statutory guidance from the Department for Education. This means that recipients must have regard to it when carrying out duties relating on Parenting Contracts, Parenting Orders and Penalty Notices.

This replaces statutory guidance on *Education-related parenting contracts, parenting orders and penalty notices* published in September 2007.

## Expiry or review date

This guidance will next be reviewed in November 2014.

## What legislation does this guidance refer 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
- The Education and Skills Act 2008 (section 2 and 155)

## Who is this guidance for?

This guidance is for:

- headteachers, school staff and governing bodies in all maintained schools, academies, free schools and pupil referral units
- local authorities
- the police (for penalty notices)

## Key points

- This document replaces previous 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.
- This guidance should be read in read in conjunction with advice on school attendance matters.

## 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>1</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.

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<sup>1</sup> *Working together to safeguard children statutory guidance* is available from the [DfE website](#).

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.

### **Definition of a parent**

A parent means<sup>2</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>3</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 31 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>4</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.

### **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>5</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.

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<sup>2</sup> As set out in section 576 of the Education Act 1996.

<sup>3</sup> Under section 7 of the Education Act 1996.

<sup>4</sup> Section 2 of the Education and Skills Act 2008.

<sup>5</sup> Under section 437 of the Education Act 1996.

## 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>6</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>7</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>8</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>9</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 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>10</sup> is a formal written signed agreement between parents and either the local authority or the governing body of a school and should contain:

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<sup>6</sup> Section 446 of the Education Act 1996 provides that proceedings can only be instituted by Local Authorities.

<sup>7</sup> Section 444ZA of the Education Act 1996

<sup>8</sup> Section 103 of the Education and Inspections Act 2006.

<sup>9</sup> Under section 447 of the Education Act 1996.

<sup>10</sup> Section 19 of the Anti-social Behaviour Act 2003

- 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>11</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>12</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>13</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:

- 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.

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<sup>11</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>12</sup> Section 8 of the Crime and Disorder Act 1998 parenting orders for irregular attendance.

<sup>13</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.

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>14</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>15</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>16</sup>.

## The Code of Conduct

The *Education (Penalty Notices) Regulations 2007*<sup>17</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 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

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<sup>14</sup> Section 23 of the Anti-social Behaviour Act 2003

<sup>15</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>16</sup> Section 104 of the Education and Inspections Act 2006

<sup>17</sup> S.I. 2007/1867

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 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 to 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.

### **Can a school or local authority fine a parent in relation to a pupil in reception classes or sixth form?**

Fines can only be issued to parents in relation to a child of compulsory school age (5 to 16) and registered at a school or alternative provision.

## Further sources of information

### Relevant legislation on [www.legislation.gov.uk](http://www.legislation.gov.uk)

- [The Education Act 1996](#)
- [The Children Act 1989](#)
- [The Education \(Pupil Registration\) \(England\) Regulations 2006:](#)
- [The Education \(Pupil Registration\) \(England\) \(Amendment\) Regulations 2010](#)
- [The Education \(Pupil Registration\) \(England\) \(Amendment\) Regulations 2011](#)
- [The Education \(Pupil Registration\) \(England\) \(Amendment\) Regulations 2013](#)
- [The Education Act 2002](#)
- [The Education \(School Day and School Year\) \(England\) Regulations 1999](#)
- [The Changing of School Session Times \(England\) \(Revocation\) Regulations 2011](#)
- [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](#)
- [Magistrates' Courts \(Parenting Orders\) Rules 2004:](#)
- [Magistrates' Courts \(Parenting Orders\) \(Amendment\) Rules 2007](#)
- [The Education \(Penalty Notices\) \(England\) Regulations 2007](#)
- [The Education and Skills Act 2008](#)
- [The Education \(Penalty Notices\) \(England\) \(Amendment\) Regulations 2012](#)
- [The Education \(Penalty Notices\) \(England\) \(Amendment\) Regulations 2013](#)
- [Copy of Attorney General's Guidelines for Crown Prosecutors](#)
- [Police and Criminal Evidence \(PACE\) Act 1984](#)
- [The Deregulation and Contracting Out Act 1994 – prosecutions section 71\(1\) \(b\)](#)

### 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](#)



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