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Education Act 1996

1996 CHAPTER 56

PART VI

SCHOOL ADMISSIONS, ATTENDANCE AND CHARGES

CHAPTER II

SCHOOL ATTENDANCE

School attendance: offences and education supervision orders

443 Offence: failure to comply with school attendance order.

- (1) If a parent on whom a school attendance order is served fails to comply with the requirements of the order, he is guilty of an offence, unless he proves that he is causing the child to receive suitable education otherwise than at school.
- (2) If, in proceedings for an offence under this section, the parent is acquitted, the court may direct that the school attendance order shall cease to be in force.
- (3) A direction under subsection (2) does not affect the duty of the local education authority to take further action under section 437 if at any time the authority are of the opinion that, having regard to any change of circumstances, it is expedient to do so.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

444 Offence: failure to secure regular attendance at school of registered pupil.

- (1) If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, his parent is guilty of an offence.

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- [^{F1}(1A) If in the circumstances mentioned in subsection (1) the parent knows that his child is failing to attend regularly at the school and fails ^{F2}... to cause him to do so, he is guilty of an offence.]
- [^{F3}(1B) It is a defence for a person charged with an offence under subsection (1A) to prove that he had a reasonable justification for his failure to cause the child to attend regularly at the school.]
- (2) Subsections [^{F4}(2A)] to (6) below apply in proceedings for an offence under this section in respect of a child who is not a boarder at the school at which he is a registered pupil.
- [^{F5}(2A) The child shall not be taken to have failed to attend regularly at the school by reason of his absence from the school at any time if the parent proves that at that time the child was prevented from attending by reason of sickness or any unavoidable cause.]
- (3) The child shall not be taken to have failed to attend regularly at the school by reason of his absence from the school—
- (a) with leave, [^{F6} or]
 - ^{F7}(b)
 - (c) on any day exclusively set apart for religious observance by the religious body to which his parent belongs.
- [^{F8}(3A) Subsections (3B) and (3D) apply where the child's home is in England.
- (3B) The child shall not be taken to have failed to attend regularly at the school if the parent proves that—
- (a) the local education authority have a duty to make travel arrangements in relation to the child under section 508B(1) for the purpose of facilitating the child's attendance at the school and have failed to discharge that duty, or
 - (b) the local education authority have a duty to make travel arrangements in relation to the child by virtue of subsection (2)(c) of section 508E (school travel schemes) for the purpose of facilitating the child's attendance at the school and have failed to discharge that duty.
- (3C) For the purposes of subsection (3B)—
- (a) the reference to “travel arrangements” in paragraph (a) has the same meaning as in section 508B, and
 - (b) the reference to “travel arrangements” in paragraph (b) has the same meaning as in paragraph 3 of Schedule 35C.
- (3D) Where the school is an independent school which is not a qualifying school, the child shall not be taken to have failed to attend regularly at the school if the parent proves—
- (a) that the school is not within walking distance of the child's home,
 - (b) that no suitable arrangements have been made by the local education authority for boarding accommodation for him at or near the school, and
 - (c) that no suitable arrangements have been made by the local education authority for enabling him to become a registered pupil at a qualifying school nearer to his home.
- (3E) For the purposes of subsection (3D), “qualifying school” has the same meaning as it has for the purposes of Schedule 35B (meaning of “eligible child” for the purposes of section 508B).

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(3F) Subsection (4) applies where the child's home is in Wales.]

(4) The child shall not be taken to have failed to attend regularly at the school if the parent proves—

- (a) that the school at which the child is a registered pupil is not within walking distance of the child's home, and
- (b) that no suitable arrangements have been made by the local education authority^{F9} . . . for any of the following—
 - (i) his transport to and from the school,
 - (ii) boarding accommodation for him at or near the school, or
 - (iii) enabling him to become a registered pupil at a school nearer to his home.

(5) In [^{F10}subsections (3D) and (4)] “walking distance”—

- (a) in relation to a child who is under the age of eight, means 3.218688 kilometres (two miles), and
- (b) in relation to a child who has attained the age of eight, means 4.828032 kilometres (three miles),

in each case measured by the nearest available route.

(6) If it is proved that the child has no fixed abode, [^{F11}subsections (3B), (3D) and (4)] shall not apply, but [^{F12}it is a defence for the parent to prove] —

- (a) that he is engaged in a trade or business of such a nature as to require him to travel from place to place,
- (b) that the child has attended at a school as a registered pupil as regularly as the nature of that trade or business permits, and
- (c) if the child has attained the age of six, that he has made at least 200 attendances during the period of 12 months ending with the date on which the proceedings were instituted.

(7) In proceedings for an offence under this section in respect of a child who is a boarder at the school at which he is a registered pupil, the child shall be taken to have failed to attend regularly at the school if he is absent from it without leave during any part of the school term [^{F13}unless the parent proves that at that time the child was] prevented from being present by reason of sickness or any unavoidable cause.

[^{F14}(7A) Where—

- (a) a child of compulsory school age has been excluded for a fixed period on disciplinary grounds from a school in England which is—
 - (i) a maintained school,
 - (ii) a pupil referral unit,
 - (iii) an Academy,
 - (iv) a city technology college, or
 - (v) a city college for the technology of the arts,
- (b) he remains for the time being a registered pupil at the school,
- (c) the appropriate authority make arrangements for the provision of full-time education for him at the school during the period of exclusion, and
- (d) notice in writing of the arrangements has been given to the child's parent,

the exclusion does not affect the application of subsections (1) to (7) to the child's attendance at the school on any day to which the arrangements relate.

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- (7B) In subsection (7A)(c) “the appropriate authority” means—
- (a) in relation to a maintained school, the governing body of the school,
 - (b) in relation to a pupil referral unit, the local education authority, and
 - (c) in relation to any school mentioned in subsection (7A)(a)(iii) to (v), the proprietor of the school.]
- (8) A person guilty of an offence under [^{F15}subsection (1)] is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- [^{F16}(8A) A person guilty of an offence under subsection (1A) is liable on summary conviction—
- (a) to a fine not exceeding level 4 on the standard scale, or
 - (b) to imprisonment for a term not exceeding three months,
- or both.
- (8B) If, on the trial of an offence under subsection (1A), the court finds the defendant not guilty of that offence but is satisfied that he is guilty of an offence under subsection (1), the court may find him guilty of that offence.]
- (9) In this section “leave”, in relation to a school, means leave granted by any person authorised to do so by the governing body or proprietor of the school.

Textual Amendments

- F1** S. 444(1A) inserted (1.3.2001) by 2000 c. 43, s. 72(1)(a)(2); S.I. 2001/562, art. 2
- F2** Words in s. 444(1A) repealed (8.11.2006) by Education and Inspections Act 2006 (c. 40), ss. 109(1), 188(1), **Sch. 18 Pt. 1** (with s. 109(11))
- F3** S. 444(1B) inserted (8.11.2006) by Education and Inspections Act 2006 (c. 40), ss. 109(2), 188(1) (with s. 109(11))
- F4** Word in s. 444(2) substituted (8.11.2006) by Education and Inspections Act 2006 (c. 40), ss. 109(3), 188(1) (with s. 109(11))
- F5** S. 444(2A) inserted (8.11.2006) by Education and Inspections Act 2006 (c. 40), ss. 109(4), 188(1) (with s. 109(11))
- F6** Word in s. 444(3)(a) inserted (8.11.2006) by Education and Inspections Act 2006 (c. 40), ss. 109(5)(a), 188(1) (with s. 109(11))
- F7** S. 444(3)(b) repealed (8.11.2006) by Education and Inspections Act 2006 (c. 40), ss. 109(5)(b), 188(1), **Sch. 18 Pt. 1** (with s. 109(11))
- F8** S. 444(3A)-(3F) inserted (1.9.2007) by Education and Inspections Act 2006 (c. 40), ss. 82(2), 188(3) (with s. 82(5)); S.I. 2007/1801, art. 4(d)
- F9** Words in S. 444(4)(b) repealed (1.9.1999) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 117, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**.
- F10** Words in s. 444(5) substituted (1.9.2007) by Education and Inspections Act 2006 (c. 40), ss. 82(3), 188(3) (with s. 82(5)); S.I. 2007/1801, art. 4(d)
- F11** Words in s. 444(6) substituted (1.9.2007) by Education and Inspections Act 2006 (c. 40), ss. 82(4), 188(3) (with s. 82(5)); S.I. 2007/1801, art. 4(d)
- F12** Words in s. 444(6) substituted (8.11.2006) by Education and Inspections Act 2006 (c. 40), ss. 109(6), 188(1) (with s. 109(11))
- F13** Words in s. 444(7) substituted (8.11.2006) by Education and Inspections Act 2006 (c. 40), ss. 109(7), 188(1) (with s. 109(11))
- F14** S. 444(7A)(7B) inserted (1.9.2007) by Education and Inspections Act 2006 (c. 40), ss. 109(8), 188(3) (with s. 109(11)); S.I. 2007/1801, art. 4(i)
- F15** Words in s. 444(8) substituted (1.3.2001) by 2000 c. 43, s. 72(1)(b)(2); S.I. 2001/562, art. 2
- F16** S. 444(8A)(8B) inserted (1.3.2001) by 2000 c. 43, s. 72(1)(c)(2); S.I. 2001/562, art. 2

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[^{F17}444Z] Application of section 444 to alternative educational provision

- (1) Where, in the case of a child of compulsory school age who is not a registered pupil at any school—
 - (a) a local education authority has made arrangements under section 19 for the provision of education for him otherwise than at a school or at his home, and
 - (b) notice in writing of the arrangements has been given to the child's parent,subsections (1) to (7) of section 444 have effect as if the place at which the education is provided were a school and the child were a registered pupil at that school.
- (2) Where—
 - (a) a child of compulsory school age has been excluded from a relevant school,
 - (b) he remains for the time being a registered pupil at the school,
 - (c) he is required by the appropriate authority for the school to attend at a place outside the school premises for the purpose of receiving any instruction or training, and
 - (d) notice in writing of the requirement has been given to the child's parent,subsections (1) to (7) of section 444 have effect as if the place at which the child is required to attend were a school and the child were a registered pupil at that school (and not at the school mentioned in paragraph (b)).
- (3) In relation to a maintained school or a pupil referral unit—
 - (a) the reference in subsection (2)(a) to exclusion is a reference to exclusion under section 52 of the Education Act 2002, and
 - (b) the requirement referred to in subsection (2)(c) is a requirement imposed under section 29(3) of that Act.
- (4) A child shall not be taken to have failed to attend regularly—
 - (a) in a case falling within subsection (1), at the place at which education is provided for him, or
 - (b) in a case falling within subsection (2), at the place at which he is required to attend,unless he has failed to attend regularly since the giving of the notice mentioned in subsection (1)(b) or (2)(d).
- (5) Section 572, which provides for the methods by which notices may be served under this Act, does not preclude the notice mentioned in subsection (1)(b) or (2)(d) from being given to a child's parent by any other effective method.
- (6) In proceedings for an offence under section 444 in a case falling within subsection (1) of this section, [^{F18}it is a defence for the parent to prove] that the child is receiving suitable education otherwise than by regular attendance at a school or at the place mentioned in subsection (1).
- (7) In section 444 “leave”—
 - (a) in relation to a place at which education is provided as mentioned in subsection (1) of this section, means leave granted by any person authorised to do so by the local education authority;
 - (b) in relation to a place at which a child is required to attend as mentioned in subsection (2)(c) of this section, means leave granted by any person authorised to do so by the appropriate authority for the school.
- (8) In this section—

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- (a) “relevant school” means—
- (i) a maintained school,
 - (ii) a pupil referral unit,
 - (iii) an Academy,
 - (iv) a city technology college, or
 - (v) a city college for the technology of the arts;
- (b) “appropriate authority” means—
- (i) in relation to a maintained school, the governing body,
 - (ii) in relation to a pupil referral unit, the local education authority, and
 - (iii) in relation to a school falling within paragraph (a)(iii), (iv) or (v), the proprietor of the school.]

Textual Amendments

- F17** S. 444ZA inserted (1.9.2005 for E., 1.9.2006 for W.) by [Education Act 2005 \(c. 18\)](#), **ss. 116**, 125(4); [S.I. 2005/2034](#), art. 4; [S.I. 2006/1338](#), art. 3, Sch. 1
- F18** Words in s. 444ZA(6) substituted (8.11.2006) by [Education and Inspections Act 2006 \(c. 40\)](#), **ss. 109(9)**, 188(1) (with s. 109(11))

[^{F19}444A] **Penalty notice in respect of failure to secure regular attendance at school of registered pupil**

- (1) Where an authorised officer has reason to believe—
- (a) that a person has committed an offence under section 444(1), and
 - [^{F20}(b) that the offence relates—
 - (i) to a relevant school in England,
 - (ii) in a case falling within subsection (1) of section 444ZA, to a place at which education is provided by a local education authority in England, or
 - (iii) in a case falling within subsection (2) of that section, to a place at which a child is required to attend by the appropriate authority (within the meaning of that section) for a relevant school in England,]
- he may give the person a penalty notice in respect of the offence.
- (2) A penalty notice is a notice offering a person the opportunity of discharging any liability to conviction for the offence under section 444(1) to which the notice relates by payment of a penalty in accordance with the notice.
- (3) Where a person is given a penalty notice, proceedings for the offence to which the notice relates (or an offence under section 444(1A) arising out of the same circumstances) may not be instituted before the end of such period as may be prescribed.
- (4) Where a person is given a penalty notice, he cannot be convicted of the offence to which the notice relates (or an offence under section 444(1A) arising out of the same circumstances) if he pays a penalty in accordance with the notice.
- (5) Penalties under this section shall be payable to local education authorities in England.
- [^{F21}(6) Sums received by a local education authority under this section may be used by the authority for the purposes of any of its functions which may be specified in regulations

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but, to the extent that they are not so used, must be paid in accordance with regulations to the Secretary of State.]

Textual Amendments

- F19** Ss. 444A, 444B inserted (E.W.) (27.2.2004) by [Anti-social Behaviour Act 2003 \(c. 38\)](#), **ss. 23(1)**, 93; [S.I. 2003/3300](#), **art. 3(a)(ii)**
- F20** S. 444A(1)(b) substituted (1.9.2005) by [Education Act 2005 \(c. 18\)](#), s. 125(4), **Sch. 18 para. 3** (with s. 119); [S.I. 2005/2034](#), **art. 5**
- F21** S. 444A(6) substituted (1.9.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), **ss. 110**, 188(3); [S.I. 2007/1801](#), **art. 4(i)**

Modifications etc. (not altering text)

- C1** S. 444A: power to amend conferred (27.2.2004) by [Anti-social Behaviour Act 2003 \(c. 38\)](#), **ss. 23(9)**, 93; [S.I. 2003/3300](#), **art. 3(a)(ii)**

444B Penalty notices: supplemental

- (1) Regulations may make—
- (a) provision as to the form and content of penalty notices,
 - (b) provision as to the monetary amount of any penalty and the time by which it is to be paid,
 - (c) provision for determining the local education authority to which a penalty is payable,
 - (d) provision as to the methods by which penalties may be paid,
 - (e) provision as to the records which are to be kept in relation to penalty notices,
 - (f) provision as to the persons who may be authorised by a local education authority or a head teacher to give penalty notices,
 - (g) provision limiting the circumstances in which authorised officers of a prescribed description may give penalty notices,
 - (h) provision for or in connection with the withdrawal, in prescribed circumstances, of a penalty notice, including—
 - (i) repayment of any amount paid by way of penalty under a penalty notice which is withdrawn, and
 - (ii) prohibition of the institution or continuation of proceedings for the offence to which the withdrawn notice relates (and any offence under section 444(1A) arising out of the same circumstances),
 - (i) provision for a certificate—
 - (i) purporting to be signed by or on behalf of a prescribed person, and
 - (ii) stating that payment of any amount paid by way of penalty was or, as the case may be, was not received on or before a date specified in the certificate,to be received in evidence of the matters so stated,
 - (j) provision as to the action to be taken if a penalty is not paid in accordance with a penalty notice,
 - (k) provision for or in connection with the preparation of codes of conduct in relation to the giving of penalty notices,
 - (l) such other provision in relation to penalties or penalty notices as the Secretary of State thinks necessary or expedient.

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- (2) Without prejudice to the generality of subsection (1) or section 569(4), regulations under subsection (1)(b) may make provision for penalties of different amounts to be payable in different cases or circumstances (including provision for the penalty payable under a penalty notice to differ according to the time by which it is paid).
- (3) Local education authorities, head teachers and authorised officers shall, in carrying out their functions in relation to penalty notices, have regard to any guidance which is published by the Secretary of State from time to time in relation to penalty notices.
- (4) In this section and section 444A—
- “authorised officer” means—
- (a) a constable,
 - (b) an officer of a local education authority in England who is authorised by the authority to give penalty notices, or
 - (c) an authorised staff member,
- “authorised staff member” means—
- (a) a head teacher of a relevant school in England, or
 - (b) a member of the staff of a relevant school in England who is authorised by the head teacher of the school to give penalty notices,
- “penalty” means a penalty under a penalty notice,
- “penalty notice” has the meaning given by section 444A(2),
- “relevant school” means—
- (a) a maintained school,
 - (b) a pupil referral unit,
 - (c) an Academy,
 - (d) a city technology college, or
 - (e) a city college for the technology of the arts.]

Textual Amendments

F19 Ss. 444A, 444B inserted (E.W.) (27.2.2004) by [Anti-social Behaviour Act 2003 \(c. 38\)](#), **ss. 23(1)**, 93; [S.I. 2003/3300](#), art. 3(a)(ii)

Modifications etc. (not altering text)

C2 S. 444B: power to amend conferred (27.2.2004) by [Anti-social Behaviour Act 2003 \(c. 38\)](#), **ss. 23(9)**, 93; [S.I. 2003/3300](#), art. 3(a)(ii)

445 Presumption of age.

- (1) This section applies for the purposes of any proceedings for an offence under section 443 or 444.
- (2) In so far as it is material, the child in question shall be presumed to have been of compulsory school age at any time unless the parent proves the contrary.
- (3) Where a court is obliged by virtue of subsection (2) to presume a child to have been of compulsory school age, section 565(1) (provisions as to evidence) does not apply.

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446 Institution of proceedings.

Proceedings for an offence under section 443 or 444 shall not be instituted except by a local education authority.

447 Education supervision orders.

- (1) Before instituting proceedings for an offence under section 443 or 444, a local education authority shall consider whether it would be appropriate (instead of or as well as instituting the proceedings) to apply for an education supervision order with respect to the child.
- (2) The court—
 - (a) by which a person is convicted of an offence under section 443, or
 - (b) before which a person is charged with an offence under section 444,may direct the local education authority instituting the proceedings to apply for an education supervision order with respect to the child unless the authority, having consulted the appropriate local authority, decide that the child’s welfare will be satisfactorily safeguarded even though no education supervision order is made.
- (3) Where, following such a direction, a local education authority decide not to apply for an education supervision order, they shall inform the court of the reasons for their decision.
- (4) Unless the court has directed otherwise, the information required under subsection (3) shall be given to the court before the end of the period of eight weeks beginning with the date on which the direction was given.
- (5) Where—
 - (a) a local education authority apply for an education supervision order with respect to a child who is the subject of a school attendance order, and
 - (b) the court decides that section 36(3) of the ^{M1}Children Act 1989 (education supervision orders) prevents it from making the order,the court may direct that the school attendance order shall cease to be in force.
- (6) In this section—

“the appropriate local authority” has the same meaning as in section 36(9) of the ^{M2}Children Act 1989, and

“education supervision order” means an education supervision order under that Act.

Marginal Citations

M1 1989 c. 41.

M2 1989 c. 41.

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