



# Education Act 1996

## 1996 CHAPTER 56

### PART VI

#### SCHOOL ADMISSIONS, ATTENDANCE AND CHARGES

### CHAPTER II

#### SCHOOL ATTENDANCE

#### *[<sup>F1</sup>Children not receiving suitable education*

##### Textual Amendments

- F1** S. 436A and cross-heading inserted (27.2.2007 for E., 1.9.2009 for W.) by [Education and Inspections Act 2006 \(c. 40\)](#), ss. [4\(1\)](#), 188(3); S.I. 2006/3400, art. 6(a); S.I. 2009/1027, art. 3(a)

#### **436A Duty to make arrangements to identify children not receiving education**

- (1) A [<sup>F2</sup>local authority] must make arrangements to enable them to establish (so far as it is possible to do so) the identities of children in their area who are of compulsory school age but—
  - (a) are not registered pupils at a school, and
  - (b) are not receiving suitable education otherwise than at a school.
- (2) In exercising their functions under this section a [<sup>F2</sup>local authority] must have regard to any guidance given from time to time by the Secretary of State.
- (3) In this Chapter, “suitable education”, in relation to a child, means efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have [<sup>F3</sup>(in the case of a local authority in England) or suitable to the child's age, ability and aptitude and to any additional learning needs the child may have (in the case of a local authority in Wales)].]

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### Textual Amendments

- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(2)** (with [Sch. 2 para. 7\(4\)\(5\)](#))
- F3** Words in [s. 436A\(3\)](#) inserted (1.9.2021 for specified purposes, 1.1.2022 for specified purposes, 1.9.2022 for specified purposes) by [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), s. 100(3), **Sch. 1 para. 4(13)**; S.I. 2021/373, arts. 3, 4, 6, 7 (as amended by S.I. 2021/938, **art. 2**); S.I. 2021/1243, **art. 3** (with arts. 4-23) (as amended by S.I. 2021/1428, **art. 2**); S.I. 2021/1244, **art. 3** (with arts. 4-21) (as amended by S.I. 2021/1428, **art. 3**); S.I. 2021/1245, arts. 3, 4 (with art. 1(4)); S.I. 2022/891, **art. 3** (with arts. 4-25); S.I. 2022/892, arts. 2, 3 (with arts. 4-18); S.I. 2022/893, **art. 4**; S.I. 2022/894, **art. 3**; S.I. 2022/895, arts. 3, 4; S.I. 2022/896, **art. 3** (with arts. 1(7), 4-22); S.I. 2022/897, **art. 3** (with arts. 1(8), 4-21); S.I. 2022/898, arts. 2, 3

### *School attendance orders*

#### 437 School attendance orders.

- (1) If it appears to a [<sup>F2</sup>local authority] that a child of compulsory school age in their area is not receiving suitable education, either by regular attendance at school or otherwise, they shall serve a notice in writing on the parent requiring him to satisfy them within the period specified in the notice that the child is receiving such education.
- (2) That period shall not be less than 15 days beginning with the day on which the notice is served.
- (3) If—
  - (a) a parent on whom a notice has been served under subsection (1) fails to satisfy the [<sup>F2</sup>local authority], within the period specified in the notice, that the child is receiving suitable education, and
  - (b) in the opinion of the authority it is expedient that the child should attend school,
 the authority shall serve on the parent an order (referred to in this Act as a “school attendance order”), in such form as may be prescribed, requiring him to cause the child to become a registered pupil at a school named in the order.
- (4) A school attendance order shall (subject to any amendment made by the [<sup>F2</sup>local authority]) continue in force for so long as the child is of compulsory school age, unless—
  - (a) it is revoked by the authority, or
  - (b) a direction is made in respect of it under section 443(2) or 447(5).
- (5) Where a maintained <sup>F4</sup>. . . school is named in a school attendance order, the [<sup>F2</sup>local authority] shall inform the governing body and the head teacher.
- (6) Where a maintained <sup>F4</sup>. . . school is named in a school attendance order, the governing body (and, in the case of a maintained school, the [<sup>F2</sup>local authority]) shall admit the child to the school.
- (7) Subsection (6) does not affect any power to exclude from a school a pupil who is already a registered pupil there.

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(8) In this Chapter—

[<sup>F5</sup>“maintained school” means any community, foundation or voluntary school or any community or foundation special school not established in a hospital; and]

<sup>F6</sup>  
...

#### Textual Amendments

- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(2)** (with [Sch. 2 para. 7\(4\)\(5\)](#))
- F4** Words in s. 437(5)(6) repealed (1.9.1999) by 1998 c. 31, s. 140(1)(3), [Sch. 30 para. 113\(a\)](#), **Sch. 31** (with [ss. 138\(9\)](#), [144\(6\)](#)); [S.I. 1999/2323](#), art. 2(1), **Sch. 1**
- F5** Definition substituted (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para. 113(b)** (with [ss. 138\(9\)](#), [144\(6\)](#)); [S.I. 1999/2323](#), art. 2(1), **Sch. 1**
- F6** Words in s. 437(8) repealed (27.2.2007 for E., 1.9.2009 for W.) by [Education and Inspections Act 2006 \(c. 40\)](#), [ss. 4\(2\)](#), [188\(3\)](#), **Sch. 18 Pt. 6**; [S.I. 2006/3400](#), art. 6(a)(g); [S.I. 2009/1027](#), art. 3(a)(d)

#### Modifications etc. (not altering text)

- C1** S. 437: power to disapply conferred (temp.) (25.3.2020) by [Coronavirus Act 2020 \(c. 7\)](#), s. 87(1), **Sch. 17 para. 5** (with [ss. 88-90](#))

### 438 Choice of school: child without [<sup>F7</sup>EHC plan] [<sup>F8</sup>or statement of special educational needs] [<sup>F8</sup>, or an individual development plan which names a school].

- (1) This section applies where a [<sup>F2</sup>local authority] are required by virtue of section 437(3) to serve a school attendance order in respect of a child, other than a child for whom they maintain [<sup>F9</sup>an EHC plan (in the case of a local authority in England) or] [<sup>F10</sup>a statement under section 324] [<sup>F10</sup>a child for whom an individual development plan is maintained in which a particular school is named] [<sup>F11</sup>(in the case of a local authority in Wales)].
- (2) Before serving the order, the authority shall serve on the parent a notice in writing—
- informing him of their intention to serve the order,
  - specifying the school which the authority intend to name in the order and, if they think fit, one or more other schools which they regard as suitable alternatives, and
  - stating the effect of subsections (3) to (6).
- (3) If the notice specifies one or more alternative schools and the parent selects one of them within the period of 15 days beginning with the day on which the notice is served, the school selected by him shall be named in the order.
- (4) If—
- [<sup>F12</sup>(a) within the period mentioned in subsection (3) the parent applies for the child to be admitted to a school maintained by a [<sup>F2</sup>local authority] and, where that authority are not the authority by whom the notice was served, notifies the latter authority of the application, and]
  - (b) the child is offered a place at the school as a result of the application, that school shall be named in the order.

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[<sup>F13</sup>(5) If—

- (a) within the period mentioned in subsection (3), the parent applies to the [<sup>F2</sup>local authority] by whom the notice was served for education to be provided at a school which is not a school maintained by a [<sup>F2</sup>local authority], and
- (b) the child is offered a place at the school and the authority are required by virtue of regulations under section 18(3) to pay the fees payable in respect of the education provided for him at the school,

that school shall be named in the order.]

(6) If, within the period mentioned in subsection (3)—

- (a) the parent—
  - (i) applies for the child to be admitted to a school which is not maintained by a [<sup>F2</sup>local authority]<sup>F14</sup> . . . , and in respect of which no application is made under subsection (5), and
  - (ii) notifies the [<sup>F2</sup>local authority] by whom the notice was served of the application,
- (b) the child is offered a place at the school as a result of the application, and
- (c) the school is suitable to his age, ability and aptitude and [<sup>F15</sup>to any special educational needs he may have]<sup>F15</sup>—
  - (i) (in the case of a local authority in England) any special educational needs the child may have, or
  - (ii) (in the case of a local authority in Wales) any additional learning needs the child may have],

that school shall be named in the order.

#### Textual Amendments

- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(2)** (with Sch. 2 para. 7(4)(5))
- F7** Words in s. 438 title inserted (1.9.2014) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), **Sch. 3 para. 39(3)**; S.I. 2014/889, art. 7(a) (with savings and transitional provisions in S.I. 2014/2270 (as amended (1.4.2015) by S.I. 2015/505))
- F8** Words in s. 438 heading substituted (1.9.2021 for specified purposes, 1.1.2022 for specified purposes, 1.9.2022 for specified purposes) by [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), s. 100(3), **Sch. 1 para. 4(14)(c)**; S.I. 2021/373, arts. 3, 4, 6, 7 (as amended by S.I. 2021/938, art. 2); S.I. 2021/1243, art. 3 (with arts. 4-23) (as amended by S.I. 2021/1428, art. 2); S.I. 2021/1244, art. 3 (with arts. 4-21) (as amended by S.I. 2021/1428, art. 3); S.I. 2021/1245, arts. 3, 4 (with art. 1(4)); S.I. 2022/891, art. 3 (with arts. 4-25); S.I. 2022/892, arts. 2, 3 (with arts. 4-18); S.I. 2022/893, art. 4; S.I. 2022/894, art. 3; S.I. 2022/895, arts. 3, 4; S.I. 2022/896, art. 3 (with arts. 1(7), 4-22); S.I. 2022/897, art. 3 (with arts. 1(8), 4-21); S.I. 2022/898, arts. 2, 3
- F9** Words in s. 438(1) inserted (1.9.2014) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), **Sch. 3 para. 39(2)(a)**; S.I. 2014/889, art. 7(a) (with savings and transitional provisions in S.I. 2014/2270 (as amended (1.4.2015) by S.I. 2015/505))
- F10** Words in s. 438(1) substituted (1.9.2021 for specified purposes, 1.1.2022 for specified purposes, 1.9.2022 for specified purposes) by [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), s. 100(3), **Sch. 1 para. 4(14)(a)**; S.I. 2021/373, arts. 3, 4, 6, 7 (as amended by S.I. 2021/938, art. 2); S.I. 2021/1243, art. 3 (with arts. 4-23) (as amended by S.I. 2021/1428, art. 2); S.I. 2021/1244, art. 3 (with arts. 4-21) (as amended by S.I. 2021/1428, art. 3); S.I. 2021/1245, arts. 3, 4 (with art. 1(4)); S.I. 2022/891, art. 3 (with arts. 4-25); S.I. 2022/892, arts. 2, 3 (with arts. 4-18); S.I.

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- 2022/893, **art. 4**; S.I. 2022/894, **art. 3**; S.I. 2022/895, arts. 3, 4; S.I. 2022/896, **art. 3** (with arts. 1(7), 4-22); S.I. 2022/897, **art. 3** (with arts. 1(8), 4-21); S.I. 2022/898, arts. 2, 3
- F11** Words in s. 438(1) inserted (1.9.2014) by **Children and Families Act 2014 (c. 6), s. 139(6), Sch. 3 para. 39(2)(b)**; S.I. 2014/889, **art. 7(a)** (with savings and transitional provisions in S.I. 2014/2270 (as amended (1.4.2015) by S.I. 2015/505)
- F12** S. 438(4)(a) substituted (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para. 114(a)** (with ss. 138(9), 144(6)); S.I. 1999/2323, **art. 2(1), Sch. 1**.
- F13** S. 438(5) substituted (1.9.1999 for certain purposes, otherwise prosp.) by 1998 c. 31, ss. 140(1), 145(3), **Sch. 30 para. 114(b)** (with ss. 138(9), 144(6)); S.I. 1999/2323, **art. 2(1), Sch. 1**
- F14** Words in s. 438(6)(a)(i) repealed (1.9.1999) by 1998 c. 31, s. 140(1)(3), **Sch. 30 para. 114(c), Sch. 31** (with ss. 138(9), 144(6)); S.I. 1999/2323, **art. 2(1), Sch. 1**
- F15** S. 438(6)(c)(i)(ii) substituted for words (1.9.2021 for specified purposes, 1.1.2022 for specified purposes, 1.9.2022 for specified purposes) by **Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), s. 100(3), Sch. 1 para. 4(14)(b)**; S.I. 2021/373, arts. 3, 4, 6, 7 (as amended by S.I. 2021/938, **art. 2**); S.I. 2021/1243, **art. 3** (with arts. 4-23) (as amended by S.I. 2021/1428, **art. 2**); S.I. 2021/1244, **art. 3** (with arts. 4-21) (as amended by S.I. 2021/1428, **art. 3**); S.I. 2021/1245, arts. 3, 4 (with art. 1(4)); S.I. 2022/891, **art. 3** (with arts. 4-25); S.I. 2022/892, arts. 2, 3 (with arts. 4-18); S.I. 2022/893, **art. 4**; S.I. 2022/894, **art. 3**; S.I. 2022/895, arts. 3, 4; S.I. 2022/896, **art. 3** (with arts. 1(7), 4-22); S.I. 2022/897, **art. 3** (with arts. 1(8), 4-21); S.I. 2022/898, arts. 2, 3

### 439 Specification of schools in notices under section 438(2).

- (1) Subject to subsection (3), a [F2local authority] shall not, if it appears to them that subsection (2) applies in relation to any school, specify the school in a notice under section 438(2) unless they are responsible for determining the arrangements for the admission of pupils to the school.
  - (2) This subsection applies where, if the child concerned were admitted to the school in accordance with a school attendance order resulting from the notice, the number of pupils at the school in the child's age group would exceed the number [F16[F17determined in accordance with section 89 of the School Standards and Framework Act 1998 (determination of admission numbers))] as the number] of pupils in that age group which it is intended to admit to the school in the school year in which he would be admitted.
  - (3) Subsection (1) does not prevent a [F2local authority] specifying in a notice under section 438(2) any maintained F18 . . . school if—
    - (a) there is no maintained F18 . . . school in their area which—
      - (i) the authority are not (apart from this subsection) prevented by subsection (1) from specifying, and
      - (ii) is, in the opinion of the authority, a reasonable distance from the home of the child concerned, and
    - (b) in the opinion of the authority, the school in question is a reasonable distance from the home of the child concerned.
  - (4) A [F2local authority] shall not specify in a notice under section 438(2) a school from which the child concerned is permanently excluded.
- F19[(4A) A [F2local authority] shall not specify a school in a notice under section 438(2) if the admission of the child concerned would result in prejudice of the kind referred to in section 86(3)(a) of the School Standards and Framework Act 1998 (parental preferences) by reason of measures required to be taken as mentioned in subsection (4) of that section.]

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- (5) Before deciding to specify a particular maintained <sup>F18</sup>. . . school in a notice under section 438(2) a [<sup>F2</sup>local authority] shall consult—
  - (a) the governing body, and
  - (b) if another [<sup>F2</sup>local authority] are responsible for determining the arrangements for the admission of pupils to the school, that authority.
- (6) Where a [<sup>F2</sup>local authority] decide to specify a particular maintained <sup>F18</sup>. . . school in a notice under section 438(2) they shall, before serving the notice, serve notice in writing of their decision on—
  - (a) the governing body and head teacher of the school, and
  - (b) if another [<sup>F2</sup>local authority] are responsible for determining the arrangements for the admission of pupils to the school, that authority.
- (7) A governing body or [<sup>F2</sup>local authority] on whom notice is served under subsection (6) may, within the period of 15 days beginning with the day on which the notice was received, apply to the Secretary of State for a direction under this section and, if they do so, shall inform the [<sup>F2</sup>local authority] which served the notice.
- (8) Where the Secretary of State gives a direction under this section, the school or schools to be specified in the notice under section 438(2) shall be determined in accordance with the direction.

#### Textual Amendments

- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(2)** (with Sch. 2 para. 7(4)(5))
- F16** Words in s. 439(2) substituted (1.9.1999) by [1998 c. 31, s. 140\(1\)](#), **Sch. 30 para. 115(2)** (with ss. 138(9), 144(6)); [S.I. 1999/2323](#), art. 2(1), Sch. 1
- F17** Words in s. 439(2) substituted (1.10.2002 for E., 1.2.2006 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), **Sch. 4 para. 14** (with ss. 210(8), 214(4)); [S.I. 2002/2439](#), art. 3 (with art. 4, Sch. paras. 310); [S.I. 2006/172](#), art. 4, Sch.
- F18** Words in s. 439(3)(5)(6) repealed (1.9.1999) by [1998 c. 31, s. 140\(1\)\(3\)](#), Sch. 30 para. 115(3), **Sch. 31** (with ss. 138(9), 144(6)); [S.I. 1999/2323](#), art. 2(1), **Sch. 1**.
- F19** S. 439(4A) inserted (1.9.1999) by [1998 c. 31, s. 140\(1\)](#), **Sch. 30 para. 115(4)** (with ss. 138(9), 144(6)); [S.I. 1999/2323](#), art. 2(1), **Sch. 1**

#### Modifications etc. (not altering text)

- C2** S. 439 modified (temp. from 1.9.1998) by [S.I. 1998/1948](#), reg. 3, **Sch. para. 8**
- C3** S. 439 applied (with modifications) (18.10.1999) by [S.I. 1999/2666](#), reg. 8, Sch. paras. 1(a), **2-8**  
 s. 439 applied (with modifications) (1.9.1999) by [S.I. 1999/2800](#), reg. 7, Sch. paras. 1, **2-8**
- C4** S. 439 applied (with modifications) (E.) (8.5.2003) by [The New School \(Admissions\) \(England\) Regulations 2003 \(S.I. 2003/1041\)](#), regs. 1(1), 9, **Sch. para. 1(a)**
- C5** S. 439 applied (with modifications) (W.) (1.2.2006) by [The New School \(Admissions\) \(Wales\) Regulations 2006 \(S.I. 2006/175\)](#), regs. 1(1), 9, **Sch.** (with reg. 2(2))
- C6** S. 439(2) transitional provisions for effects of 2002 c. 32, Sch. 4 para. 14 (W.) (1.2.2006) by [The Education Act 2002 \(Transitional Provisions and Consequential Amendments\) \(Wales\) Regulations 2006 \(S.I. 2006/173\)](#), regs. 1(1), **9**



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**440 Amendment of order at request of parent: child without [<sup>F20</sup>EHC plan][<sup>F21</sup>or statement of special educational needs][<sup>F21</sup>, or an individual development plan which names a school].**

- (1) This section applies where a school attendance order is in force in respect of a child, other than a child for whom the [<sup>F21</sup>local authority] maintain [<sup>F22</sup>an EHC plan (in the case of a local authority in England) or][<sup>F23</sup>a statement under section 324][<sup>F23</sup>a child for whom an individual development plan is maintained in which a particular school is named][<sup>F24</sup>(in the case of a local authority in Wales)].
- (2) If at any time—
- (a) the parent applies for the child to be admitted to a school maintained by a [<sup>F21</sup>local authority]<sup>F25</sup>. . . which is different from the school named in the order,
  - (b) the child is offered a place at the school as a result of the application, and
  - (c) the parent requests the [<sup>F21</sup>local authority] by whom the order was served to amend it by substituting that school for the one currently named,
- the authority shall comply with the request.
- (3) If at any time—
- <sup>F26</sup>(a) the parent applies to the authority for education to be provided for the child at a school which is not a school maintained by a [<sup>F21</sup>local authority] and which is different from the school named in the order,
  - (b) the child is offered a place at the school and the authority are required by virtue of regulations under section 18(3) to pay the fees payable in respect of the education provided for him at the school, and]
  - (c) the parent requests the authority to amend the order by substituting that school for the one currently named,
- the authority shall comply with the request.
- (4) If at any time—
- (a) the parent applies for the child to be admitted to a school which is not maintained by a [<sup>F21</sup>local authority]<sup>F27</sup>. . . , which is different from the school named in the order and in respect of which no application is made under subsection (3),
  - (b) as a result of the application, the child is offered a place at the school, being a school which is suitable to his age, ability and aptitude and [<sup>F28</sup>to any special educational needs he may have][<sup>F28</sup>—
  - (i) (in the case of a local authority in England) any special educational needs the child may have, or
  - (ii) (in the case of a local authority in Wales) any additional learning needs the child may have], and
  - (c) the parent requests the authority to amend the order by substituting that school for the one currently named,
- the authority shall comply with the request.

**Textual Amendments**

- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(2)** (with Sch. 2 para. 7(4)(5))

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- F20** Words in s. 440 title inserted (1.9.2014) by [Children and Families Act 2014 \(c. 6\), s. 139\(6\), Sch. 3 para. 40\(3\)](#); S.I. 2014/889, art. 7(a) (with savings and transitional provisions in S.I. 2014/2270 (as amended (1.4.2015) by S.I. 2015/505))
- F21** Words in s. 440 heading substituted (1.9.2021 for specified purposes, 1.1.2022 for specified purposes, 1.9.2022 for specified purposes) by [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\), s. 100\(3\), Sch. 1 para. 4\(15\)\(c\)](#); S.I. 2021/373, arts. 3, 4, 6, 7 (as amended by S.I. 2021/938, art. 2); S.I. 2021/1243, art. 3 (with arts. 4-23) (as amended by S.I. 2021/1428, art. 2); S.I. 2021/1244, art. 3 (with arts. 4-21) (as amended by S.I. 2021/1428, art. 3); S.I. 2021/1245, arts. 3, 4 (with art. 1(4)); S.I. 2022/891, art. 3 (with arts. 4-25); S.I. 2022/892, arts. 2, 3 (with arts. 4-18); S.I. 2022/893, art. 4; S.I. 2022/894, art. 3; S.I. 2022/895, arts. 3, 4; S.I. 2022/896, art. 3 (with arts. 1(7), 4-22); S.I. 2022/897, art. 3 (with arts. 1(8), 4-21); S.I. 2022/898, arts. 2, 3
- F22** Words in s. 440(1) inserted (1.9.2014) by [Children and Families Act 2014 \(c. 6\), s. 139\(6\), Sch. 3 para. 40\(2\)\(a\)](#); S.I. 2014/889, art. 7(a) (with savings and transitional provisions in S.I. 2014/2270 (as amended (1.4.2015) by S.I. 2015/505))
- F23** Words in s. 440(1) substituted (1.9.2021 for specified purposes, 1.1.2022 for specified purposes, 1.9.2022 for specified purposes) by [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\), s. 100\(3\), Sch. 1 para. 4\(15\)\(a\)](#); S.I. 2021/373, arts. 3, 4, 6, 7 (as amended by S.I. 2021/938, art. 2); S.I. 2021/1243, art. 3 (with arts. 4-23) (as amended by S.I. 2021/1428, art. 2); S.I. 2021/1244, art. 3 (with arts. 4-21) (as amended by S.I. 2021/1428, art. 3); S.I. 2021/1245, arts. 3, 4 (with art. 1(4)); S.I. 2022/891, art. 3 (with arts. 4-25); S.I. 2022/892, arts. 2, 3 (with arts. 4-18); S.I. 2022/893, art. 4; S.I. 2022/894, art. 3; S.I. 2022/895, arts. 3, 4; S.I. 2022/896, art. 3 (with arts. 1(7), 4-22); S.I. 2022/897, art. 3 (with arts. 1(8), 4-21); S.I. 2022/898, arts. 2, 3
- F24** Words in s. 440(1) inserted (1.9.2014) by [Children and Families Act 2014 \(c. 6\), s. 139\(6\), Sch. 3 para. 40\(2\)\(b\)](#); S.I. 2014/889, art. 7(a) (with savings and transitional provisions in S.I. 2014/2270 (as amended (1.4.2015) by S.I. 2015/505))
- F25** Words in S. 440(2)(a) repealed (1.9.1999) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 116(a), [Sch.31](#) (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), [Sch. 1](#).
- F26** S. 440(3)(a)(b) substituted (1.9.1999 for certain purposes, otherwise prosp.) by 1998 c. 31, ss. 140(1), 145(3), [Sch. 30 para. 116\(b\)](#) (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), [Sch. 1](#)
- F27** Words in S. 440(4)(a) repealed (1.9.1999) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 116(c), [Sch.31](#) (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), [Sch. 1](#)
- F28** S. 440(4)(i)(ii) substituted for words (1.9.2021 for specified purposes, 1.1.2022 for specified purposes, 1.9.2022 for specified purposes) by [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\), s. 100\(3\), Sch. 1 para. 4\(15\)\(b\)](#); S.I. 2021/373, arts. 3, 4, 6, 7 (as amended by S.I. 2021/938, art. 2); S.I. 2021/1243, art. 3 (with arts. 4-23) (as amended by S.I. 2021/1428, art. 2); S.I. 2021/1244, art. 3 (with arts. 4-21) (as amended by S.I. 2021/1428, art. 3); S.I. 2021/1245, arts. 3, 4 (with art. 1(4)); S.I. 2022/891, art. 3 (with arts. 4-25); S.I. 2022/892, arts. 2, 3 (with arts. 4-18); S.I. 2022/893, art. 4; S.I. 2022/894, art. 3; S.I. 2022/895, arts. 3, 4; S.I. 2022/896, art. 3 (with arts. 1(7), 4-22); S.I. 2022/897, art. 3 (with arts. 1(8), 4-21); S.I. 2022/898, arts. 2, 3

**441 Choice of school: child with [<sup>F29</sup>EHC plan ||<sup>F30</sup>or statement of special educational needs].**

- (1) Subsections (2) and (3) apply where a [<sup>F2</sup>local authority][<sup>F31</sup>in England] are required by virtue of section 437(3) to serve a school attendance order in respect of a child for whom they maintain [<sup>F32</sup>an EHC plan [<sup>F33</sup>(in the case of a local authority in England) or] a statement under section 324 [<sup>F34</sup>(in the case of a local authority in Wales)]]].
- (2) Where the [<sup>F35</sup>EHC plan ||<sup>F36</sup>or statement] specifies the name of a school, that school shall be named in the order.
- (3) Where the [<sup>F37</sup>EHC plan ||<sup>F38</sup>or statement] does not specify the name of a school—



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- (a) the authority shall, <sup>F39</sup> . . . , amend the [<sup>F40</sup>EHC plan ][<sup>F41</sup>or statement] so that it specifies the name of a school, and
  - (b) that school shall then be named in the order.
- [<sup>F42</sup>(3A) [<sup>F43</sup>An amendment to a statement required to be made under subsection (3)(a) shall be treated for the purposes of Schedule 27 as if it were an amendment proposed following a periodic review (within the meaning of that Schedule).]]
- [<sup>F44</sup>(3B) An amendment to an EHC plan required to be made under subsection (3)(a) shall be treated as if it were an amendment made following a review under section 44 of the Children and Families Act 2014, and that section and regulations made under it apply accordingly.]
- (4) Where—
- (a) a school attendance order is in force in respect of a child for whom the [<sup>F2</sup>local authority] maintain [<sup>F45</sup>an EHC plan ][<sup>F46</sup>or a statement under section 324], and
  - (b) the name of the school specified in the [<sup>F47</sup>plan ][<sup>F48</sup>or statement] is changed, the [<sup>F2</sup>local authority] shall amend the order accordingly.

#### Textual Amendments

- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(2)** (with Sch. 2 para. 7(4)(5))
- F29** Words in s. 441 title inserted (1.9.2014) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), **Sch. 3 para. 41(7)**; S.I. 2014/889, art. 7(a) (with savings and transitional provisions in S.I. 2014/2270 (as amended (1.4.2015) by S.I. 2015/505))
- F30** Words in s. 441 heading omitted (1.9.2021 for specified purposes, 1.1.2022 for specified purposes, 1.9.2022 for specified purposes) by virtue of [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), s. 100(3), **Sch. 1 para. 4(16)(f)**; S.I. 2021/373, arts. 3, 4, 6, 7 (as amended by S.I. 2021/938, art. 2); S.I. 2021/1243, art. 3 (with arts. 4-23) (as amended by S.I. 2021/1428, art. 2); S.I. 2021/1244, art. 3 (with arts. 4-21) (as amended by S.I. 2021/1428, art. 3); S.I. 2021/1245, arts. 3, 4 (with art. 1(4)); S.I. 2022/891, art. 3 (with arts. 4-25); S.I. 2022/892, arts. 2, 3 (with arts. 4-18); S.I. 2022/893, art. 4; S.I. 2022/894, art. 3; S.I. 2022/895, arts. 3, 4; S.I. 2022/896, art. 3 (with arts. 1(7), 4-22); S.I. 2022/897, art. 3 (with arts. 1(8), 4-21); S.I. 2022/898, arts. 2, 3
- F31** Words in s. 441(1) inserted (1.9.2021 for specified purposes, 1.1.2022 for specified purposes, 1.9.2022 for specified purposes) by [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), s. 100(3), **Sch. 1 para. 4(16)(a)(i)**; S.I. 2021/373, arts. 3, 4, 6, 7 (as amended by S.I. 2021/938, art. 2); S.I. 2021/1243, art. 3 (with arts. 4-23) (as amended by S.I. 2021/1428, art. 2); S.I. 2021/1244, art. 3 (with arts. 4-21) (as amended by S.I. 2021/1428, art. 3); S.I. 2021/1245, arts. 3, 4 (with art. 1(4)); S.I. 2022/891, art. 3 (with arts. 4-25); S.I. 2022/892, arts. 2, 3 (with arts. 4-18); S.I. 2022/893, art. 4; S.I. 2022/894, art. 3; S.I. 2022/895, arts. 3, 4; S.I. 2022/896, art. 3 (with arts. 1(7), 4-22); S.I. 2022/897, art. 3 (with arts. 1(8), 4-21); S.I. 2022/898, arts. 2, 3
- F32** Words in s. 441(1) inserted (1.9.2014) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), **Sch. 3 para. 41(2)(a)**; S.I. 2014/889, art. 7(a) (with savings and transitional provisions in S.I. 2014/2270 (as amended (1.4.2015) by S.I. 2015/505))
- F33** Words in s. 441(1) omitted (1.9.2021 for specified purposes, 1.1.2022 for specified purposes, 1.9.2022 for specified purposes) by virtue of [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), s. 100(3), **Sch. 1 para. 4(16)(a)(ii)**; S.I. 2021/373, arts. 3, 4, 6, 7 (as amended by S.I. 2021/938, art. 2); S.I. 2021/1243, art. 3 (with arts. 4-23) (as amended by S.I. 2021/1428, art. 2); S.I. 2021/1244, art. 3 (with arts. 4-21) (as amended by S.I. 2021/1428, art. 3); S.I. 2021/1245, arts. 3, 4 (with art. 1(4)); S.I. 2022/891, art. 3 (with arts. 4-25); S.I. 2022/892, arts. 2, 3 (with arts. 4-18); S.I.

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- 2022/893, **art. 4**; S.I. 2022/894, **art. 3**; S.I. 2022/895, arts. 3, 4; S.I. 2022/896, **art. 3** (with arts. 1(7), 4-22); S.I. 2022/897, **art. 3** (with arts. 1(8), 4-21); S.I. 2022/898, arts. 2, 3
- F34** Words in s. 441(1) inserted (1.9.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 3 para. 41(2)(b)**; S.I. 2014/889, **art. 7(a)** (with savings and transitional provisions in S.I. 2014/2270 (as amended (1.4.2015) by S.I. 2015/505)
- F35** Words in s. 441(2) inserted (1.9.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 3 para. 41(3)**; S.I. 2014/889, **art. 7(a)** (with savings and transitional provisions in S.I. 2014/2270 (as amended (1.4.2015) by S.I. 2015/505)
- F36** Words in s. 441(2) omitted (1.9.2021 for specified purposes, 1.1.2022 for specified purposes, 1.9.2022 for specified purposes) by virtue of Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), s. 100(3), **Sch. 1 para. 4(16)(b)**; S.I. 2021/373, arts. 3, 4, 6, 7 (as amended by S.I. 2021/938, **art. 2**); S.I. 2021/1243, **art. 3** (with arts. 4-23) (as amended by S.I. 2021/1428, **art. 2**); S.I. 2021/1244, **art. 3** (with arts. 4-21) (as amended by S.I. 2021/1428, **art. 3**); S.I. 2021/1245, arts. 3, 4 (with art. 1(4)); S.I. 2022/891, **art. 3** (with arts. 4-25); S.I. 2022/892, arts. 2, 3 (with arts. 4-18); S.I. 2022/893, **art. 4**; S.I. 2022/894, **art. 3**; S.I. 2022/895, arts. 3, 4; S.I. 2022/896, **art. 3** (with arts. 1(7), 4-22); S.I. 2022/897, **art. 3** (with arts. 1(8), 4-21); S.I. 2022/898, arts. 2, 3
- F37** Words in s. 441(3) inserted (1.9.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 3 para. 41(4)(a)**; S.I. 2014/889, **art. 7(a)** (with savings and transitional provisions in S.I. 2014/2270 (as amended (1.4.2015) by S.I. 2015/505)
- F38** Words in s. 441(3) omitted (1.9.2021 for specified purposes, 1.1.2022 for specified purposes, 1.9.2022 for specified purposes) by virtue of Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), s. 100(3), **Sch. 1 para. 4(16)(c)(i)**; S.I. 2021/373, arts. 3, 4, 6, 7 (as amended by S.I. 2021/938, **art. 2**); S.I. 2021/1243, **art. 3** (with arts. 4-23) (as amended by S.I. 2021/1428, **art. 2**); S.I. 2021/1244, **art. 3** (with arts. 4-21) (as amended by S.I. 2021/1428, **art. 3**); S.I. 2021/1245, arts. 3, 4 (with art. 1(4)); S.I. 2022/891, **art. 3** (with arts. 4-25); S.I. 2022/892, arts. 2, 3 (with arts. 4-18); S.I. 2022/893, **art. 4**; S.I. 2022/894, **art. 3**; S.I. 2022/895, arts. 3, 4; S.I. 2022/896, **art. 3** (with arts. 1(7), 4-22); S.I. 2022/897, **art. 3** (with arts. 1(8), 4-21); S.I. 2022/898, arts. 2, 3
- F39** Words in s. 441(3)(a) repealed (1.1.2002 (E.) and 1.4.2002 (W.)) by 2001 c. 10, s. 42(1)(6), **Sch. 8 para. 15(2)**, **Sch. 9** (with s. 43(13)); S.I. 2001/2217, **art. 5**, **Sch. Pt. II** (as amended by S.I. 2001/2614, **art. 4**); S.I. 2001/3992, **art. 5**, **Sch. Pt. II**
- F40** Words in s. 441(3) inserted (1.9.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 3 para. 41(4)(b)**; S.I. 2014/889, **art. 7(a)** (with savings and transitional provisions in S.I. 2014/2270 (as amended (1.4.2015) by S.I. 2015/505)
- F41** Words in s. 441(3)(a) omitted (1.9.2021 for specified purposes, 1.1.2022 for specified purposes, 1.9.2022 for specified purposes) by virtue of Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), s. 100(3), **Sch. 1 para. 4(16)(c)(ii)**; S.I. 2021/373, arts. 3, 4, 6, 7 (as amended by S.I. 2021/938, **art. 2**); S.I. 2021/1243, **art. 3** (with arts. 4-23) (as amended by S.I. 2021/1428, **art. 2**); S.I. 2021/1244, **art. 3** (with arts. 4-21) (as amended by S.I. 2021/1428, **art. 3**); S.I. 2021/1245, arts. 3, 4 (with art. 1(4)); S.I. 2022/891, **art. 3** (with arts. 4-25); S.I. 2022/892, arts. 2, 3 (with arts. 4-18); S.I. 2022/893, **art. 4**; S.I. 2022/894, **art. 3**; S.I. 2022/895, arts. 3, 4; S.I. 2022/896, **art. 3** (with arts. 1(7), 4-22); S.I. 2022/897, **art. 3** (with arts. 1(8), 4-21); S.I. 2022/898, arts. 2, 3
- F42** S. 441(3A) inserted (1.1.2002 (E.) and 1.4.2002 (W.)) by 2001 c. 10, s. 42(1), **Sch. 8 para. 15(3)** (with s. 43(13)); S.I. 2001/2217, **art. 5**, **Sch. Pt. II** (as amended by S.I. 2001/2614, **art. 4**); S.I. 2001/3992, **art. 5**, **Sch. Pt. II**
- F43** S. 441(3A) omitted (1.9.2021 for specified purposes, 1.1.2022 for specified purposes, 1.9.2022 for specified purposes) by virtue of Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), s. 100(3), **Sch. 1 para. 4(16)(d)**; S.I. 2021/373, arts. 3, 4, 6, 7 (as amended by S.I. 2021/938, **art. 2**); S.I. 2021/1243, **art. 3** (with arts. 4-23) (as amended by S.I. 2021/1428, **art. 2**); S.I. 2021/1244, **art. 3** (with arts. 4-21) (as amended by S.I. 2021/1428, **art. 3**); S.I. 2021/1245, arts. 3, 4 (with art. 1(4)); S.I. 2022/891, **art. 3** (with arts. 4-25); S.I. 2022/892, arts. 2, 3 (with arts. 4-18); S.I. 2022/893, **art. 4**; S.I. 2022/894, **art. 3**; S.I. 2022/895, arts. 3, 4; S.I. 2022/896, **art. 3** (with arts. 1(7), 4-22); S.I. 2022/897, **art. 3** (with arts. 1(8), 4-21); S.I. 2022/898, arts. 2, 3

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- F44** S. 441(3B) inserted (1.9.2014) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), **Sch. 3 para. 41(5)**; S.I. 2014/889, art. 7(a) (with savings and transitional provisions in S.I. 2014/2270 (as amended (1.4.2015) by S.I. 2015/505)
- F45** Words in s. 441(4)(a) inserted (1.9.2014) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), **Sch. 3 para. 41(6)(a)**; S.I. 2014/889, art. 7(a) (with savings and transitional provisions in S.I. 2014/2270 (as amended (1.4.2015) by S.I. 2015/505)
- F46** Words in s. 441(4)(a) omitted (1.9.2021 for specified purposes, 1.1.2022 for specified purposes, 1.9.2022 for specified purposes) by virtue of [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), s. 100(3), **Sch. 1 para. 4(16)(e)(i)**; S.I. 2021/373, arts. 3, 4, 6, 7 (as amended by S.I. 2021/938, art. 2); S.I. 2021/1243, art. 3 (with arts. 4-23) (as amended by S.I. 2021/1428, art. 2); S.I. 2021/1244, art. 3 (with arts. 4-21) (as amended by S.I. 2021/1428, art. 3); S.I. 2021/1245, arts. 3, 4 (with art. 1(4)); S.I. 2022/891, art. 3 (with arts. 4-25); S.I. 2022/892, arts. 2, 3 (with arts. 4-18); S.I. 2022/893, art. 4; S.I. 2022/894, art. 3; S.I. 2022/895, arts. 3, 4; S.I. 2022/896, art. 3 (with arts. 1(7), 4-22); S.I. 2022/897, art. 3 (with arts. 1(8), 4-21); S.I. 2022/898, arts. 2, 3
- F47** Words in s. 441(4)(b) inserted (1.9.2014) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), **Sch. 3 para. 41(6)(b)**; S.I. 2014/889, art. 7(a) (with savings and transitional provisions in S.I. 2014/2270 (as amended (1.4.2015) by S.I. 2015/505)
- F48** Words in s. 441(4)(b) omitted (1.9.2021 for specified purposes, 1.1.2022 for specified purposes, 1.9.2022 for specified purposes) by virtue of [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), s. 100(3), **Sch. 1 para. 4(16)(e)(ii)**; S.I. 2021/373, arts. 3, 4, 6, 7 (as amended by S.I. 2021/938, art. 2); S.I. 2021/1243, art. 3 (with arts. 4-23) (as amended by S.I. 2021/1428, art. 2); S.I. 2021/1244, art. 3 (with arts. 4-21) (as amended by S.I. 2021/1428, art. 3); S.I. 2021/1245, arts. 3, 4 (with art. 1(4)); S.I. 2022/891, art. 3 (with arts. 4-25); S.I. 2022/892, arts. 2, 3 (with arts. 4-18); S.I. 2022/893, art. 4; S.I. 2022/894, art. 3; S.I. 2022/895, arts. 3, 4; S.I. 2022/896, art. 3 (with arts. 1(7), 4-22); S.I. 2022/897, art. 3 (with arts. 1(8), 4-21); S.I. 2022/898, arts. 2, 3

**[<sup>F49</sup>441AChoice of school: child with individual development plan which names a school**

- (1) Where a local authority in Wales are required by virtue of section 437(3) to serve a school attendance order in respect of a child for whom an individual development plan is maintained in which a particular school is named, that school must be named in the order.
- (2) Where—
  - (a) a school attendance order is in force in respect of a child for whom an individual development plan is maintained in which a particular school is named, and
  - (b) the name of the school specified in the plan is changed,
the local authority must amend the order accordingly.
- (3) Where—
  - (a) a school attendance order is in force in respect of a child for whom no individual development plan is maintained in which a particular school is named, and
  - (b) an individual development plan in which a particular school is named begins to be maintained for the child,
the local authority must amend the order accordingly.]

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### Textual Amendments

**F49** S. 441A inserted (1.9.2021 for specified purposes, 1.1.2022 for specified purposes, 1.9.2022 for specified purposes) by [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), s. 100(3), [Sch. 1 para. 4\(17\)](#); S.I. 2021/373, arts. 3, 4, 6, 7 (as amended by S.I. 2021/938, [art. 2](#)); S.I. 2021/1243, [art. 3](#) (with arts. 4-23) (as amended by S.I. 2021/1428, [art. 2](#)); S.I. 2021/1244, [art. 3](#) (with arts. 4-21) (as amended by S.I. 2021/1428, [art. 3](#)); S.I. 2021/1245, arts. 3, 4 (with art. 1(4)); S.I. 2022/891, [art. 3](#) (with arts. 4-25); S.I. 2022/892, arts. 2, 3 (with arts. 4-18); S.I. 2022/893, [art. 4](#); S.I. 2022/894, [art. 3](#); S.I. 2022/895, arts. 3, 4; S.I. 2022/896, [art. 3](#) (with arts. 1(7), 4-22); S.I. 2022/897, [art. 3](#) (with arts. 1(8), 4-21); S.I. 2022/898, arts. 2, 3

## 442 Revocation of order at request of parent.

- (1) This section applies where a school attendance order is in force in respect of a child.
- (2) If at any time the parent applies to the [<sup>F2</sup>local authority] requesting that the order be revoked on the ground that arrangements have been made for the child to receive suitable education otherwise than at school, the authority shall comply with the request, unless they are of the opinion that no satisfactory arrangements have been made for the education of the child otherwise than at school.
- (3) If a parent is aggrieved by a refusal of the [<sup>F2</sup>local authority] to comply with a request under subsection (2), he may refer the question to the Secretary of State.
- (4) Where a question is referred to the Secretary of State under subsection (3), he shall give such direction determining the question as he thinks fit.
- (5) Where the child in question is one for whom the authority maintain [<sup>F50</sup>an EHC plan (in the case of a local authority in England)][<sup>F51</sup>or a statement under section 324 (in the case of a local authority in Wales)]—
  - (a) subsections (2) to (4) do not apply if the name of a school or other institution is specified in [<sup>F52</sup>the EHC plan][<sup>F53</sup>or the statement], and
  - (b) in any other case a direction under subsection (4) may require the authority to make such amendments in the plan [<sup>F54</sup>or the statement] as the Secretary of State considers necessary or expedient in consequence of his determination.
- [<sup>F55</sup>(6) Where, in the case of a local authority in Wales, the child in question is one for whom an individual development plan is maintained by the authority or by another local authority—
  - (a) subsections (2) to (4) do not apply if a school or other institution is named in the individual development plan, and
  - (b) in any other case a direction under subsection (4) may require the authority maintaining the individual development plan to make such amendments to the plan as is considered necessary or expedient in consequence of the determination.]

### Textual Amendments

**F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), [Sch. 2 para. 7\(2\)](#) (with [Sch. 2 para. 7\(4\)\(5\)](#))

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- F50** Words in s. 442(5) inserted (1.9.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 3 para. 42(a)**; S.I. 2014/889, art. 7(a) (with savings and transitional provisions in S.I. 2014/2270 (as amended (1.4.2015) by S.I. 2015/505)
- F51** Words in s. 442(5) omitted (1.9.2021 for specified purposes, 1.1.2022 for specified purposes, 1.9.2022 for specified purposes) by virtue of Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), s. 100(3), **Sch. 1 para. 4(18)(a)(i)**; S.I. 2021/373, arts. 3, 4, 6, 7 (as amended by S.I. 2021/938, **art. 2**); S.I. 2021/1243, **art. 3** (with arts. 4-23) (as amended by S.I. 2021/1428, **art. 2**); S.I. 2021/1244, **art. 3** (with arts. 4-21) (as amended by S.I. 2021/1428, **art. 3**); S.I. 2021/1245, arts. 3, 4 (with art. 1(4)); S.I. 2022/891, **art. 3** (with arts. 4-25); S.I. 2022/892, arts. 2, 3 (with arts. 4-18); S.I. 2022/893, **art. 4**; S.I. 2022/894, **art. 3**; S.I. 2022/895, arts. 3, 4; S.I. 2022/896, **art. 3** (with arts. 1(7), 4-22); S.I. 2022/897, **art. 3** (with arts. 1(8), 4-21); S.I. 2022/898, arts. 2, 3
- F52** Words in s. 442(5)(a) inserted (1.9.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 3 para. 42(c)**; S.I. 2014/889, art. 7(a) (with savings and transitional provisions in S.I. 2014/2270 (as amended (1.4.2015) by S.I. 2015/505)
- F53** Words in s. 442(5)(a) omitted (1.9.2021 for specified purposes, 1.1.2022 for specified purposes, 1.9.2022 for specified purposes) by virtue of Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), s. 100(3), **Sch. 1 para. 4(18)(a)(ii)**; S.I. 2021/373, arts. 3, 4, 6, 7 (as amended by S.I. 2021/938, **art. 2**); S.I. 2021/1243, **art. 3** (with arts. 4-23) (as amended by S.I. 2021/1428, **art. 2**); S.I. 2021/1244, **art. 3** (with arts. 4-21) (as amended by S.I. 2021/1428, **art. 3**); S.I. 2021/1245, arts. 3, 4 (with art. 1(4)); S.I. 2022/891, **art. 3** (with arts. 4-25); S.I. 2022/892, arts. 2, 3 (with arts. 4-18); S.I. 2022/893, **art. 4**; S.I. 2022/894, **art. 3**; S.I. 2022/895, arts. 3, 4; S.I. 2022/896, **art. 3** (with arts. 1(7), 4-22); S.I. 2022/897, **art. 3** (with arts. 1(8), 4-21); S.I. 2022/898, arts. 2, 3
- F54** Words in s. 442(5)(b) omitted (1.9.2021 for specified purposes, 1.1.2022 for specified purposes, 1.9.2022 for specified purposes) by virtue of Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), s. 100(3), **Sch. 1 para. 4(18)(a)(iii)**; S.I. 2021/373, arts. 3, 4, 6, 7 (as amended by S.I. 2021/938, **art. 2**); S.I. 2021/1243, **art. 3** (with arts. 4-23) (as amended by S.I. 2021/1428, **art. 2**); S.I. 2021/1244, **art. 3** (with arts. 4-21) (as amended by S.I. 2021/1428, **art. 3**); S.I. 2021/1245, arts. 3, 4 (with art. 1(4)); S.I. 2022/891, **art. 3** (with arts. 4-25); S.I. 2022/892, arts. 2, 3 (with arts. 4-18); S.I. 2022/893, **art. 4**; S.I. 2022/894, **art. 3**; S.I. 2022/895, arts. 3, 4; S.I. 2022/896, **art. 3** (with arts. 1(7), 4-22); S.I. 2022/897, **art. 3** (with arts. 1(8), 4-21); S.I. 2022/898, arts. 2, 3
- F55** S. 442(6) inserted (1.9.2021 for specified purposes, 1.1.2022 for specified purposes, 1.9.2022 for specified purposes) by Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), s. 100(3), **Sch. 1 para. 4(18)(b)**; S.I. 2021/373, arts. 3, 4, 6, 7 (as amended by S.I. 2021/938, **art. 2**); S.I. 2021/1243, **art. 3** (with arts. 4-23) (as amended by S.I. 2021/1428, **art. 2**); S.I. 2021/1244, **art. 3** (with arts. 4-21) (as amended by S.I. 2021/1428, **art. 3**); S.I. 2021/1245, arts. 3, 4 (with art. 1(4)); S.I. 2022/891, **art. 3** (with arts. 4-25); S.I. 2022/892, arts. 2, 3 (with arts. 4-18); S.I. 2022/893, **art. 4**; S.I. 2022/894, **art. 3**; S.I. 2022/895, arts. 3, 4; S.I. 2022/896, **art. 3** (with arts. 1(7), 4-22); S.I. 2022/897, **art. 3** (with arts. 1(8), 4-21); S.I. 2022/898, arts. 2, 3

### *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.



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- (3) A direction under subsection (2) does not affect the duty of the [<sup>F2</sup>local 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.

#### Textual Amendments

- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(2)** (with [Sch. 2 para. 7\(4\)\(5\)](#))

#### Modifications etc. (not altering text)

- C7** [S. 443](#): power to disapply conferred (temp.) (25.3.2020) by [Coronavirus Act 2020 \(c. 7\)](#), s. 87(1), **Sch. 17 para. 5** (with [ss. 88-90](#))

### 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.
- [<sup>F56</sup>(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 <sup>F57</sup>... to cause him to do so, he is guilty of an offence.]
- [<sup>F58</sup>(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 [<sup>F59</sup>(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.
- [<sup>F60</sup>(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, [<sup>F61</sup> or]
  - <sup>F62</sup>(b) .....
  - (c) on any day exclusively set apart for religious observance by the religious body to which his parent belongs.
- [<sup>F63</sup>(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 [<sup>F2</sup>local 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



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- (b) the [<sup>F2</sup>local 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 [<sup>F2</sup>local authority] for boarding accommodation for him at or near the school, and
  - (c) that no suitable arrangements have been made by the [<sup>F2</sup>local 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).
- (3F) Subsection (4) applies where the child's home is in Wales.]
- [<sup>F64</sup>(4) The child is not to be taken to have failed to attend regularly at the school if the parent proves that the local authority have failed to discharge—
  - (a) a duty to make transport arrangements in relation to the child under section 3 of the Learner Travel (Wales) Measure 2008, or
  - (b) a duty to make travel arrangements in relation to the child under section 4 of that Measure.]
- (5) In [<sup>F65</sup>subsection (3D)] “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, [<sup>F66</sup>subsections (3B), (3D) and (4)] shall not apply, but [<sup>F67</sup>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

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the school term [<sup>F68</sup>unless the parent proves that at that time the child was] prevented from being present by reason of sickness or any unavoidable cause.

[<sup>F69</sup>(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,
    - [<sup>F70</sup>(iii) an Academy school,
    - (iiia) an alternative provision 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.

(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 [<sup>F71</sup>local 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 [<sup>F71</sup>subsection (1)] is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

[<sup>F72</sup>(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

- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(2)** (with [Sch. 2 para. 7\(4\)\(5\)](#))
- F56** S. 444(1A) inserted (1.3.2001) by [2000 c. 43, s. 72\(1\)\(a\)\(2\)](#); [S.I. 2001/562, art. 2](#)
- F57** 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\(11\)](#))
- F58** S. 444(1B) inserted (8.11.2006) by [Education and Inspections Act 2006 \(c. 40\)](#), [ss. 109\(2\), 188\(1\)](#) (with [s. 109\(11\)](#))
- F59** 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\(11\)](#))

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- F60** S. 444(2A) inserted (8.11.2006) by Education and Inspections Act 2006 (c. 40), ss. 109(4), 188(1) (with s. 109(11))
- F61** 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))
- F62** 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))
- F63** 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)
- F64** S. 444(4) substituted (1.9.2009) by Learner Travel (Wales) Measure 2008 (nawm 2), ss. 20(2), 28(2); S.I. 2009/371, art. 2(2), Sch. Pt. 2
- F65** Words in s. 444(5) substituted and repealed (1.9.2009) by Learner Travel (Wales) Measure 2008 (nawm 2), ss. 20(3), 28(2) and Sch. 2; S.I. 2009/371, art. 2(2), Sch. Pt. 2
- F66** 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)
- F67** 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))
- F68** 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))
- F69** 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)
- F70** S. 444(7A)(iii)(iiia) substituted for s. 444(7A)(iii) (1.4.2012) by Education Act 2011 (c. 21), s. 82(3), Sch. 13 para. 9(7); S.I. 2012/924, art. 2
- F71** Words in s. 444(8) substituted (1.3.2001) by 2000 c. 43, s. 72(1)(b)(2); S.I. 2001/562, art. 2
- F72** S. 444(8A)(8B) inserted (1.3.2001) by 2000 c. 43, s. 72(1)(c)(2); S.I. 2001/562, art. 2

**Modifications etc. (not altering text)**

- C8** S. 444(1)(1A): power to disapply conferred (temp.) (25.3.2020) by Coronavirus Act 2020 (c. 7), s. 87(1), Sch. 17 para. 5 (with ss. 88-90)

**[<sup>F73</sup>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 [<sup>F2</sup>local 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.

[ Where—

- <sup>F74</sup>(1A) (a) a child of compulsory school age has been excluded for a fixed period on disciplinary grounds from a relevant school in England,
- (b) the child remains for the time being a registered pupil at the school,
- (c) the appropriate authority for the school has made arrangements under section 19 above or section 100 of the Education and Inspections Act 2006 for the provision of full-time education for the child otherwise than at the school or at the child's home during the period of exclusion, and
- (d) notice in writing of the arrangements has been given to the child's parent,
- subsections (1) to (7) of section 444 have effect during that period as if the child were not a registered pupil at the school and as if the place at which the education is provided

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were a school and the child were a registered pupil at that school (so far as that would not otherwise be the case).

(1B) Where—

- (a) a child of compulsory school age who is a registered pupil at a relevant school in England is required by the appropriate authority for the school to attend at a place outside the school premises for the purpose of receiving any educational provision, and
  - (b) 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 (in addition to being a registered pupil at the school mentioned in paragraph (a)).

(1C) Subsection (1B) does not apply if—

- (a) the place at which the child is required to attend is another relevant school (whether in England or elsewhere), and
- (b) the child is a registered pupil at that other school.

(1D) In relation to a maintained school or a pupil referral unit—

- (a) references in subsection (1A) to exclusion are references to exclusion under [F75 section 51A] of the Education Act 2002, and
- (b) the requirement referred to in subsection (1B) is a requirement imposed under section 29(3) or 29A(1) of that Act.]

(2) Where—

- (a) a child of compulsory school age has been excluded from a relevant school [F76 in Wales],
  - (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) [F77 or (1A)], at the place at which education is provided for him, or
- (b) in a case falling within subsection [F78 (1B) or] (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)[F79, (1A)(d), (1B)(b)] or (2)(d).

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- (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)[<sup>F80</sup>, (1A)(d), (1B)(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) [<sup>F81</sup>or (1A)] of this section, [<sup>F82</sup>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) [<sup>F81</sup>or (1A)].
- (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 [<sup>F2</sup>local authority];
  - <sup>F83</sup>(aa) [ in relation to a place at which education is provided as mentioned in subsection [<sup>F84</sup>(1B)(a) or] (1A) of this section, means leave granted by any person authorised to do so by the appropriate authority for the school;]
  - (b) in relation to a place at which a child is required to attend as mentioned in subsection [<sup>F84</sup>(1B)(a) or] (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—
- (a) “relevant school” means—
    - (i) a maintained school,
    - (ii) a pupil referral unit,
    - [<sup>F85</sup>(iii) an Academy school,
    - (iiia) an alternative provision 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 [<sup>F2</sup>local authority], and
    - (iii) in relation to a school falling within paragraph (a)(iii), [<sup>F86</sup>(iiia),] (iv) or (v), the proprietor of the school.]

### Textual Amendments

- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(2)** (with Sch. 2 para. 7(4)(5))
- F73** 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
- F74** S. 444ZA(1A)-(1D) inserted (1.9.2012) by [Education and Skills Act 2008 \(c. 25\)](#), **ss. 155(2)**, 173(4); [S.I. 2012/2197](#), art. 2(a)
- F75** Words in s. 444ZA(1D)(a) substituted (1.9.2012) by [Education Act 2011 \(c. 21\)](#), s. 82(3), **Sch. 1 para. 6**; [S.I. 2012/1087](#), art. 3 (with art. 4)
- F76** Words in s. 444ZA(2)(a) inserted (1.9.2012) by [Education and Skills Act 2008 \(c. 25\)](#), **ss. 155(3)**, 173(4); [S.I. 2012/2197](#), art. 2(a)
- F77** Words in s. 444ZA(4)(a) inserted (1.9.2012) by [Education and Skills Act 2008 \(c. 25\)](#), **ss. 155(4)(a)**, 173(4); [S.I. 2012/2197](#), art. 2(a)
- F78** Words in s. 444ZA(4)(b) inserted (1.9.2012) by [Education and Skills Act 2008 \(c. 25\)](#), **ss. 155(4)(b)**, 173(4); [S.I. 2012/2197](#), art. 2(a)

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- F79** Words in s. 444ZA(4) inserted (1.9.2012) by Education and Skills Act 2008 (c. 25), ss. 155(4)(c), 173(4); S.I. 2012/2197, art. 2(a)
- F80** Words in s. 444ZA(5) inserted (1.9.2012) by Education and Skills Act 2008 (c. 25), ss. 155(5), 173(4); S.I. 2012/2197, art. 2(a)
- F81** Words in s. 444ZA(6) inserted (1.9.2012) by Education and Skills Act 2008 (c. 25), ss. 155(6), 173(4); S.I. 2012/2197, art. 2(a)
- F82** 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))
- F83** S. 444ZA(7)(aa) inserted (1.9.2012) by Education and Skills Act 2008 (c. 25), ss. 155(7)(a), 173(4); S.I. 2012/2197, art. 2(a)
- F84** Words in s. 444ZA(7)(b) inserted (1.9.2012) by Education and Skills Act 2008 (c. 25), ss. 155(7)(b), 173(4); S.I. 2012/2197, art. 2(a)
- F85** S. 444ZA(8)(a)(iii)(iia) substituted for s. 444ZA(8)(a)(iii) (1.4.2012) by Education Act 2011 (c. 21), s. 82(3), Sch. 13 para. 9(8)(a); S.I. 2012/924, art. 2
- F86** Word in s. 444ZA(8)(b) inserted (1.4.2012) by Education Act 2011 (c. 21), s. 82(3), Sch. 13 para. 9(8)(b); S.I. 2012/924, art. 2

**[<sup>F87</sup>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
  - [<sup>F88</sup>(b) that the offence relates—
    - (i) to a relevant school <sup>F89</sup>...
    - (ii) in a case falling within subsection (1) of section 444ZA, to a place at which education is provided by a [<sup>F2</sup>local authority]<sup>F90</sup>...
    - [<sup>F91</sup>(iii) in a case falling within subsection (1A) of that section, to a place at which education is provided for a child in the circumstances mentioned in that subsection, or]
    - (iv) in a case falling within subsection (1B) of that section, to a place at which a child is required to attend in the circumstances mentioned in that subsection,]
- 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 [<sup>F92</sup>local authorities]<sup>F93</sup>...
- [<sup>F94</sup>(6) Sums received by a [<sup>F2</sup>local authority] under this section may be used by the authority for the purposes of any of its functions which may be specified in regulations but, to the extent that they are not so used, must be paid in accordance with regulations to the Secretary of State.]



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### Textual Amendments

- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(2)** (with Sch. 2 para. 7(4)(5))
- F87** 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)
- F88** 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
- F89** Words in s. 444A removed (3.7.2013) by [The Anti-Social Behaviour Act 2003 \(Amendment to the Education Act 1996\) \(Wales\) Order 2013 \(S.I. 2013/1657\)](#), arts. 1, **2(1)**
- F90** Words in s. 444A removed (3.7.2013) by [The Anti-Social Behaviour Act 2003 \(Amendment to the Education Act 1996\) \(Wales\) Order 2013 \(S.I. 2013/1657\)](#), arts. 1, **2(1)**
- F91** S. 444A(1)(b)(iii)(iv) substituted for s. 444A(1)(b)(iii) (1.9.2012) by [Education and Skills Act 2008 \(c. 25\)](#), s. 173(4), **Sch. 1 para. 50**; S.I. 2012/2197, art. 2(c)
- F92** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(3)** (with Sch. 2 para. 7(4)(5))
- F93** Words in s. 444A removed (3.7.2013) by [The Anti-Social Behaviour Act 2003 \(Amendment to the Education Act 1996\) \(Wales\) Order 2013 \(S.I. 2013/1657\)](#), arts. 1, **2(1)**
- F94** 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)

- C9** 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 [<sup>F2</sup>local 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 [<sup>F2</sup>local 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

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- (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.
- (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) [<sup>F92</sup>Local 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 [<sup>F2</sup>local authority]<sup>F95</sup> ... 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 <sup>F96</sup> ..., or
    - (b) a member of the staff of a relevant school <sup>F97</sup> ... 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) [<sup>F98</sup>an Academy school,
    - (ca) an alternative provision Academy,
    - (d) a city technology college, or
    - (e) a city college for the technology of the arts.]

### Textual Amendments

- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(2)** (with Sch. 2 para. 7(4)(5))
- F87** 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)
- F92** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(3)** (with Sch. 2 para. 7(4)(5))

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- F95** Words in s. 444B removed (3.7.2013) by [The Anti-Social Behaviour Act 2003 \(Amendment to the Education Act 1996\) \(Wales\) Order 2013 \(S.I. 2013/1657\)](#), arts. 1, **2(1)**
- F96** Words in s. 444B removed (3.7.2013) by [The Anti-Social Behaviour Act 2003 \(Amendment to the Education Act 1996\) \(Wales\) Order 2013 \(S.I. 2013/1657\)](#), arts. 1, **2(1)**
- F97** Words in s. 444B removed (3.7.2013) by [The Anti-Social Behaviour Act 2003 \(Amendment to the Education Act 1996\) \(Wales\) Order 2013 \(S.I. 2013/1657\)](#), arts. 1, **2(1)**
- F98** Words in s. 444B(4) substituted (1.4.2012) by [Education Act 2011 \(c. 21\)](#), s. 82(3), **Sch. 13 para. 9(9)**; [S.I. 2012/924](#), art. 2

**Modifications etc. (not altering text)**

- C10** 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.

**446 Institution of proceedings.**

Proceedings for an offence under section 443 or 444 shall not be instituted except by a [<sup>F2</sup>local authority].

**Textual Amendments**

- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(2)** (with [Sch. 2 para. 7\(4\)\(5\)](#))

**447 Education supervision orders.**

- (1) Before instituting proceedings for an offence under section 443 or 444, a [<sup>F2</sup>local 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 [<sup>F2</sup>local authority] instituting the proceedings to apply for an education supervision order with respect to the child unless the authority <sup>F99</sup>... decide that the child's welfare will be satisfactorily safeguarded even though no education supervision order is made.

[<sup>F100</sup>(2A) A local authority may not make a decision as mentioned in subsection (2) unless—

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- (a) they are the appropriate local authority, or
  - (b) they have consulted that authority.]
- (3) Where, following [<sup>F101</sup>a direction under subsection (2)], a [<sup>F2</sup>local 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 [<sup>F2</sup>local 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 <sup>M1</sup>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 <sup>M2</sup>Children Act 1989, and
  - “education supervision order” means an education supervision order under that Act.

#### Textual Amendments

- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(2)** (with Sch. 2 para. 7(4)(5))
- F99** Words in s. 447(2) repealed (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, Sch. 2 para. 7(8)(a), **Sch. 3 Pt. 1**
- F100** S. 447(2A) inserted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, **Sch. 2 para. 7(8)(b)**
- F101** Words in s. 447(3) substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, **Sch. 2 para. 7(8)(c)**

#### Modifications etc. (not altering text)

- C11** S. 447(2)(3) modified (18.6.2011) by [The Magistrates Courts \(Enforcement or Variation of Orders Made in Family Proceedings and Miscellaneous Provisions\) Rules 2011 \(S.I. 2011/1329\)](#), rules 1, **79(1)** (with rule 3)

#### Marginal Citations

- M1** 1989 c. 41.
- M2** 1989 c. 41.

### *Exemption*

<sup>F102</sup>448 .....

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#### Textual Amendments

**F102** S. 448 repealed (1.9.1999) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 118, **Sch.31** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**.

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 13(2)(ba) substituted for s. 13(2)(aa)(b) by [2022 asc 1 Sch. 4 para. 8\(2\)](#)
- s. 15A(3A) inserted by [2022 asc 1 Sch. 4 para. 8\(3\)](#)
- s. 15B(3)(c) inserted by [2022 asc 1 Sch. 4 para. 8\(4\)](#)
- s. 17A functions made exercisable concurrently by [S.I. 2014/1012 art. 12\(1\)Sch. 2 para. 3](#)
- s. 17A functions made exercisable concurrently by [S.I. 2014/863 Sch. 2 para. 4](#)
- s. 17A functions made exercisable concurrently by [S.I. 2014/865 Sch. 2 para. 3](#)
- s. 17A functions made exercisable concurrently by [S.I. 2016/653 Sch. 3 para. 3](#)
- s. 17A-17D inserted by [2009 c. 22 s. 45](#)
- s. 17B-17D applied by [2009 c. 22 s. 86\(8\)](#)
- s. 457(4)(i)-(iia) repealed by [2012 c. 5 Sch. 14 Pt. 1](#)
- s. 457(4)(iii) words repealed by [2012 c. 5 Sch. 14 Pt. 1](#)
- s. 508(4) inserted by [2022 asc 1 Sch. 4 para. 8\(7\)](#)
- s. 537AA inserted by [2008 c. 25 Sch. 1 para. 8](#)
- s. 548(7A)(7B) inserted by [2008 c. 25 Sch. 1 para. 9\(5\)](#)
- s. 578(1) words repealed by [2005 c. 18 Sch. 19 Pt. 1](#)