



# Education and Inspections Act 2006

## 2006 CHAPTER 40

### PART 7

#### DISCIPLINE, BEHAVIOUR AND EXCLUSION

### CHAPTER 1

#### SCHOOL DISCIPLINE

##### *Certain schools required to have behaviour policy*

#### **88 Responsibility of governing body for discipline**

- (1) The governing body of a relevant school must ensure that policies designed to promote good behaviour and discipline on the part of its pupils are pursued at the school.
- (2) In particular, the governing body—
  - (a) must make, and from time to time review, a written statement of general principles to which the head teacher is to have regard in determining any measures under section 89(1), and
  - (b) where they consider it desirable that any particular measures should be so determined by the head teacher or that he should have regard to any particular matters—
    - (i) shall notify him of those measures or matters, and
    - (ii) may give him such guidance as they consider appropriate.
- (3) Before making or revising the statement required by subsection (2)(a) the governing body must consult (in such manner as appears to them to be appropriate)—
  - (a) the head teacher,
  - (b) such other persons who work at the school (whether or not for payment) as it appears to the governing body to be appropriate to consult,
  - (c) parents of registered pupils at the school, and

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- (d) registered pupils at the school.
- (4) In exercising their functions under subsection (2) the governing body must have regard to any guidance given from time to time—
  - (a) in relation to England, by the Secretary of State, and
  - (b) in relation to Wales, by the Assembly.
- (5) In this section and section 89—
  - “relevant school” means—
    - (a) a community, foundation or voluntary school,
    - (b) a community or foundation special school,
    - (c) a maintained nursery school,
    - (d) a pupil referral unit, or
    - (e) a school approved by the Secretary of State or the Assembly under section 342 of EA 1996 (approval of non-maintained special schools);
  - “governing body”, in relation to a school approved by the Secretary of State or the Assembly under section 342 of EA 1996, means the proprietor of the school.

## **89 Determination by head teacher of behaviour policy**

- (1) The head teacher of a relevant school must determine measures to be taken with a view to—
  - (a) promoting, among pupils, self-discipline and proper regard for authority,
  - (b) encouraging good behaviour and respect for others on the part of pupils and, in particular, preventing all forms of bullying among pupils,
  - (c) securing that the standard of behaviour of pupils is acceptable,
  - (d) securing that pupils complete any tasks reasonably assigned to them in connection with their education, and
  - (e) otherwise regulating the conduct of pupils.
- (2) The head teacher must in determining such measures—
  - (a) act in accordance with the current statement made by the governing body under section 88(2)(a), and
  - (b) have regard to any notification or guidance given to him under section 88(2)(b).
- (3) The standard of behaviour which is to be regarded as acceptable must be determined by the head teacher, so far as it is not determined by the governing body.
- (4) The measures which the head teacher determines under subsection (1) must include the making of rules and provision for disciplinary penalties (as defined by section 90).
- (5) The measures which the head teacher determines under subsection (1) may, to such extent as is reasonable, include measures to be taken with a view to regulating the conduct of pupils at a time when they are not on the premises of the school and are not under the lawful control or charge of a member of the staff of the school.
- (6) The measures determined by the head teacher under subsection (1) must be publicised by him in the form of a written document as follows—
  - (a) he must make the measures generally known within the school and to parents of registered pupils at the school, and

- (b) he must in particular, at least once in every school year, take steps to bring them to the attention of all such pupils and parents and all persons who work at the school (whether or not for payment).

*Enforcement of discipline (including compliance with instructions)*

**90 Meaning of “disciplinary penalty”**

- (1) In this Chapter, “disciplinary penalty” means a penalty imposed on a pupil, by any school at which education is provided for him, where his conduct falls below the standard which could reasonably be expected of him (whether because he fails to follow a rule in force at any such school or an instruction given to him by a member of its staff or for any other reason).
- (2) In subsection (1), the reference to conduct, in relation to a pupil, includes—
  - (a) conduct which occurs at a time when the pupil is not on the premises of a school and is not under the lawful control or charge of a member of the staff of a school, but only to the extent that it is reasonable for the school imposing the penalty to regulate the pupil’s conduct at such a time, and
  - (b) conduct which consists of a failure by the pupil to comply with a penalty previously imposed on him.

**91 Enforcement of disciplinary penalties: general**

- (1) This section applies in relation to a disciplinary penalty imposed on a pupil by any school at which education is provided for him, other than a penalty which consists of exclusion.
- (2) The imposition of the disciplinary penalty is lawful if the following three conditions are satisfied.
- (3) The first condition is that the imposition of the penalty on the pupil—
  - (a) is not in breach of any statutory requirement or prohibition, and
  - (b) is reasonable in all the circumstances.
- (4) The second condition is that the decision to impose the penalty on the pupil was made—
  - (a) by any paid member of the staff of the school, except in circumstances where the head teacher has determined that the member of staff is not permitted to impose the penalty on the pupil, or
  - (b) by any other member of the staff of the school, in circumstances where the head teacher has authorised the member of the staff to impose the penalty on the pupil and it was reasonable for the head teacher to do so.
- (5) The third condition is that the decision to impose the penalty was made, and any action taken on behalf of the school to implement the decision was taken—
  - (a) on the premises of the school, or
  - (b) elsewhere at a time when the pupil was under the lawful control or charge of a member of staff of the school.
- (6) In determining for the purposes of subsection (3)(b) whether the imposition of the penalty is reasonable, the following matters must be taken into account—

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- (a) whether the imposition of the penalty constitutes a proportionate punishment in the circumstances of the case, and
- (b) any special circumstances relevant to its imposition on the pupil which are known to the person imposing it (or of which he ought reasonably to be aware) including in particular—
  - (i) the pupil's age,
  - (ii) any special educational needs he may have,
  - (iii) any disability he may have, and
  - (iv) any religious requirements affecting him.
- (7) For the purposes of subsection (6)(b)(iii) a pupil has a disability if he has a disability for the purposes of the Disability Discrimination Act 1995 (c. 50).
- (8) A determination or authorisation by the head teacher for the purpose of subsection (4) (a) or (b) may be made—
  - (a) in relation to a particular member of staff or members of staff of a particular description;
  - (b) in relation to a particular disciplinary penalty or disciplinary penalties of a particular description;
  - (c) in relation to a particular pupil or pupils of a particular description or generally in relation to pupils.
- (9) Where the disciplinary penalty is detention outside school sessions, this section has effect subject to section 92.
- (10) Nothing in this section authorises anything to be done in relation to a pupil which constitutes the giving of corporal punishment within the meaning of section 548 of EA 1996.
- (11) This section is not to be construed as restricting what may lawfully be done apart from this section.
- (12) In this section, “paid member of the staff”, in relation to a school, means any member of the staff who works at the school for payment, whether under a contract of employment or a contract for services; and, for this purpose, it is immaterial whether the contract of employment or contract for services is made with the governing body or proprietor of the school or with any other person.

## **92 Enforcement of disciplinary penalties: detention outside school sessions**

- (1) This section applies in relation to a disciplinary penalty which consists of the detention of a pupil outside school sessions.
- (2) In relation to a disciplinary penalty to which this section applies, subsection (2) of section 91 has effect as if it required the following additional conditions to be satisfied, as well as the conditions set out in subsections (3) to (5) of that section.
- (3) The additional conditions are—
  - (a) that the pupil has not attained the age of 18,
  - (b) that the head teacher of the school has previously determined, and has made generally known within the school and to parents of registered pupils at the school, that the detention of pupils outside school sessions is one of the measures that may be taken with a view to regulating the conduct of pupils,

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- (c) that the detention is on a permitted day of detention, and
  - (d) that the pupil's parent has been given at least 24 hours' notice in writing that the detention is due to take place.
- (4) The additional conditions set out in subsection (3)(a), (c) and (d) do not apply in the case of a detention during a break between school sessions on the same day.
- (5) If arrangements have to be made for the pupil to travel to school for the purposes of the detention or to travel home after the detention, then in determining for the purposes of the condition in subsection (3) of section 91 whether the imposition of the detention is reasonable, subsection (6) of that section is to be read as if it also required the question whether suitable travelling arrangements can reasonably be made by his parent to be taken into account.
- (6) Section 572 of EA 1996, which provides for the methods by which notices may be served under that Act, does not preclude a notice under subsection (3)(d) from being given to the parent by any effective method.
- (7) This section is not to be construed as restricting what may lawfully be done apart from this section.
- (8) In this section, "permitted day of detention", in relation to a pupil, means any of the following days—
  - (a) a school day, other than a day on which the pupil has leave to be absent, and for this purpose "leave" means leave granted by a person authorised to do so by the governing body or proprietor of the school;
  - (b) a Saturday or Sunday during a school term, other than a Saturday or Sunday which falls during, or at a weekend immediately preceding or immediately following, a half-term break;
  - (c) a day (whether or not during a school term) which is set aside wholly or mainly for the performance of duties by members of the staff of the school other than teaching, other than such a day which is excluded by regulations made—
    - (i) in relation to England, by the Secretary of State, and
    - (ii) in relation to Wales, by the Assembly.

### *Use of reasonable force*

## **93 Power of members of staff to use force**

- (1) A person to whom this section applies may use such force as is reasonable in the circumstances for the purpose of preventing a pupil from doing (or continuing to do) any of the following, namely—
  - (a) committing any offence,
  - (b) causing personal injury to, or damage to the property of, any person (including the pupil himself), or
  - (c) prejudicing the maintenance of good order and discipline at the school or among any pupils receiving education at the school, whether during a teaching session or otherwise.
- (2) This section applies to a person who is, in relation to a pupil, a member of the staff of any school at which education is provided for the pupil.
- (3) The power conferred by subsection (1) may be exercised only where—

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- (a) the member of the staff and the pupil are on the premises of the school in question, or
  - (b) they are elsewhere and the member of the staff has lawful control or charge of the pupil concerned.
- (4) Subsection (1) does not authorise anything to be done in relation to a pupil which constitutes the giving of corporal punishment within the meaning of section 548 of EA 1996.
- (5) The powers conferred by subsection (1) are in addition to any powers exercisable apart from this section and are not to be construed as restricting what may lawfully be done apart from this section.
- (6) In this section, “offence” includes anything that would be an offence but for the operation of any presumption that a person under a particular age is incapable of committing an offence.

#### *Confiscation from pupils*

### **94 Defence where confiscation lawful**

- (1) This section applies where, as a disciplinary penalty—
- (a) an item which a pupil has with him or in his possessions is seized, and
  - (b) the item is retained for any period or is disposed of.
- (2) A person who seizes, retains or disposes of the item is not liable in any proceedings in respect of—
- (a) the seizure, retention or disposal (as the case may be), or
  - (b) any damage or loss which arises in consequence of it,
- if he proves that the seizure, retention or disposal (as the case may be) was lawful (whether or not by virtue of section 91).
- (3) Nothing in this section applies where an item is seized under section 550AA of EA 1996 (provision as to what is to be done with such an item being made by that section).
- (4) This section is not to be construed as preventing any person relying on any defence on which he is entitled to rely apart from this section.

#### *Interpretation of Chapter 1*

### **95 Interpretation of Chapter 1**

In this Chapter—

“disciplinary penalty” has the meaning given by section 90;

“member of the staff”, in relation to a school, means—

- (a) any teacher who works at the school, and
- (b) any other person who, with the authority of the head teacher, has lawful control or charge of pupils for whom education is being provided at the school;

“possessions”, in relation to a pupil, includes any goods over which he appears to have control.

## *Repeals*

### **96 Repeals consequential on provisions of Chapter 1**

The following provisions (which are superseded by sections 88 to 93) cease to have effect—

- (a) sections 550A and 550B of EA 1996;
- (b) section 61 of SSFA 1998.

## **CHAPTER 2**

### **PARENTAL RESPONSIBILITIES AND EXCLUDED PUPILS**

#### *Parenting contracts and parenting orders*

### **97 Parenting contracts**

- (1) Section 19 of the Anti-social Behaviour Act 2003 (c. 38) (parenting contracts in cases of exclusion from school or truancy) is amended as follows.

- (2) After subsection (1) insert—

“(1A) This section also applies where a local education authority or the governing body of a relevant school have reason to believe that a child who is a registered pupil at a relevant school has engaged in behaviour connected with the school which—

- (a) has caused, or is likely to cause—
  - (i) significant disruption to the education of other pupils, or
  - (ii) significant detriment to the welfare of the child himself or of other pupils or to the health or safety of any staff, or
- (b) forms part of a pattern of behaviour which (if continued) will give rise to a risk of future exclusion from the school on disciplinary grounds.

(1B) For the purposes of subsection (1A) the child’s behaviour is connected with the school to the extent that it consists of—

- (a) conduct at the school, or
- (b) conduct elsewhere in circumstances in which it would be reasonable for the school to regulate his conduct.”

- (3) In subsection (6), after “subsection (1)” insert “or (1A)”.

- (4) In the heading to the section, and in the italic cross-heading immediately before the section, for “exclusion from” substitute “misbehaviour at”.

### **98 Parenting orders in case of exclusion or misbehaviour**

- (1) Section 20 of the Anti-social Behaviour Act 2003 (parenting orders in case of exclusion from school) is amended as follows.

- (2) In subsection (1), for “This section” substitute “Subsection (2)”.

- (3) In subsection (2), for “A local education authority” substitute “A relevant body”.

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(4) After subsection (2) insert—

“(2A) A relevant body may also apply to a magistrates' court for a parenting order in respect of a pupil at a relevant school if—

- (a) it appears to the body making the application that the pupil has engaged in behaviour which would warrant the exclusion of the pupil from the school on disciplinary grounds for a fixed period or permanently, and
- (b) such conditions as may be prescribed in regulations made by the appropriate person are satisfied.

(2B) For the purposes of subsection (2A), there are to be disregarded—

- (a) any practice restricting the use of exclusion at a particular school, or at schools of a particular description, and
- (b) any grounds that might exist for not excluding the pupil, to the extent that those grounds relate to his education or welfare after exclusion.”

(5) For subsection (3) substitute—

“(3) If an application is made under subsection (2) or (2A), the court may make a parenting order in respect of a pupil if it is satisfied—

- (a) in the case of an application under subsection (2A), that the pupil has engaged in behaviour of the kind mentioned in that subsection, and
- (b) in any case, that the making of the order would be desirable in the interests of improving the behaviour of the pupil.”

(6) After subsection (8) insert—

“(9) In this section “a relevant body” means—

- (a) a local education authority,
- (b) the governing body of any relevant school in England at which the pupil to whom the application relates is a pupil or from which he has been excluded.”

(7) In the heading, after “exclusion” insert “or potential exclusion”.

## **99 Parenting contracts and parenting orders: further provisions**

(1) The Anti-social Behaviour Act 2003 (c. 38) is amended as follows.

(2) In section 21 (parenting orders: supplemental)—

- (a) in subsection (1)(a), after “subsection (1)” insert “or (1A)”,
- (b) after subsection (1) insert—

“(1A) In deciding whether to make a parenting order under section 20, a court must also take into account any failure by the parent without reasonable excuse to attend a reintegration interview under section 102 of the Education and Inspections Act 2006 (reintegration interview in case of fixed period exclusion) when requested to do so in accordance with regulations under that section.”,

- (c) omit subsection (4), and
- (d) in subsection (5), after “authorities,” insert “governing bodies”.



(3) After section 22 insert—

**“22A Parenting contracts and parenting orders: further provisions**

- (1) The appropriate person may by regulations make further provision about the exercise by local education authorities and the governing bodies of relevant schools of their functions relating to—
  - (a) parenting contracts under section 19, and
  - (b) parenting orders under section 20.
- (2) The provision that may be made under subsection (1) includes—
  - (a) provision limiting the power of a local education authority to enter into a parenting contract, or apply for a parenting order, in prescribed cases where—
    - (i) the school by reference to which the contract is entered into or the application is made is not in the area of the authority, or
    - (ii) the child by reference to whom the contract is entered into or the application is made does not reside in that area;
  - (b) provision as to which governing body may apply for a parenting order in cases where a pupil has been admitted to a relevant school after being permanently excluded from another;
  - (c) provision requiring one local education authority or governing body to consult with another before taking any prescribed step;
  - (d) provision authorising or requiring the provision of information by one local education authority or governing body to another;
  - (e) provision as to how the costs associated with parenting contracts entered into by local education authorities or governing bodies of relevant schools or the costs associated with the requirements of parenting orders under section 20 (including in each case the costs of providing counselling or guidance programmes) are to be met.
- (3) In subsection (2), “prescribed” means prescribed by regulations made by the appropriate person under subsection (1).”
- (4) In section 24 (interpretation)—
  - (a) for “sections 19 to 21” substitute “sections 19 to 22A”, and
  - (b) after the definition of “child of compulsory school age” insert—

““governing body”, in relation to a relevant school which is an Academy, a city technology college or a city college for the technology of the arts, means the proprietor of the school, as defined by section 579(1) of the 1996 Act;”.

*Excluded pupils*

**100 Duty of governing body or proprietor where pupil excluded for fixed period**

- (1) Except in prescribed cases, the governing body of a relevant school in England must make arrangements for the provision of suitable full-time education for pupils of compulsory school age who are excluded from the school for a fixed period on disciplinary grounds.

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- (2) The education referred to in subsection (1) must be provided from a day that, in relation to the pupil concerned, is determined in accordance with regulations.
- (3) The education must not be provided at the school unless it is provided there in pursuance of arrangements which—
  - (a) are made jointly with the governing body of at least one other relevant school, and
  - (b) make provision for the education of pupils excluded on disciplinary grounds from any of the schools that are parties to the arrangements.
- (4) In determining what arrangements to make under subsection (1) in the case of any pupil, a governing body must have regard to any guidance given from time to time by the Secretary of State.
- (5) In this section—
  - “governing body”, in relation to a relevant school which is an Academy, a city technology college or a city college for the technology of the arts, means proprietor;
  - “prescribed” means prescribed by regulations;
  - “regulations” means regulations made by the Secretary of State;
  - “relevant school” does not include a pupil referral unit;
  - “suitable full-time education”, in relation to a pupil, means efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have.

## **101 Duty of local education authority in relation to excluded pupils**

- (1) Section 19 of EA 1996 (exceptional provision of education in pupil referral units or elsewhere) is amended as follows.
- (2) After subsection (3) insert—
  - “(3A) In relation to England, the duty imposed by subsection (1) includes, except in prescribed cases, a duty to make arrangements for the provision of suitable full-time education at school or otherwise than at school for—
    - (a) children of compulsory school age who have been permanently excluded on disciplinary grounds from relevant schools or pupil referral units, and have not subsequently been admitted to schools other than pupil referral units, and
    - (b) children of compulsory school age who are excluded for a fixed period on disciplinary grounds from any pupil referral unit maintained by the authority.
  - (3B) The education referred to in subsection (3A) must be provided from a day that, in relation to the pupil concerned, is determined in accordance with regulations.”
- (3) For subsection (6) substitute—
  - “(6) In this section—
    - “relevant school” means—
      - (a) a maintained school,
      - (b) an Academy,

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- (c) a city technology college, or
- (d) a city college for the technology of the arts;

“suitable education”, in relation to a child or young person, means efficient education suitable to his age, ability and aptitude and to any special educational needs he may have (and “suitable full-time education” is to be read accordingly).”

## **102 Reintegration interviews**

- (1) Regulations may require the head teacher of a relevant school in prescribed cases to request any parent of a temporarily excluded pupil to attend an interview (“a reintegration interview”) at the school with the head teacher of the school or any other person authorised by the head teacher.
- (2) The purpose of a reintegration interview is to assist the reintegration of the pupil after the period of exclusion and to promote the improvement of his behaviour.
- (3) Regulations under this section may make provision about the time within which any reintegration interview must be held, the procedure for arranging the interview and the notification of any request to the parent.
- (4) In this section—
  - “prescribed” means prescribed by regulations;
  - “regulations” means regulations made—
    - (a) in relation to England, by the Secretary of State, or
    - (b) in relation to Wales, by the Assembly;
  - “a temporarily excluded pupil” means a pupil who is or has been excluded on disciplinary grounds for a fixed period.

## **103 Duty of parent in relation to excluded pupil**

- (1) This section applies where—
  - (a) a pupil of compulsory school age (“the excluded pupil”) is excluded on disciplinary grounds from a relevant school in England, whether for a fixed period or permanently, and
  - (b) notice under section 104 has been given to a parent of the pupil.
- (2) The parent of the excluded pupil must ensure that the pupil is not present in a public place at any time during school hours on a day which—
  - (a) is one of the first five school days to which the exclusion mentioned in subsection (1)(a) relates or, where that exclusion is for a fixed period of five days or less, any of the days to which the exclusion relates, and
  - (b) is stated in the notice under section 104 to be a day on which the parent is subject to this subsection.
- (3) If the excluded pupil is present in a public place at any time during school hours on a school day falling within subsection (2), the parent commits an offence.
- (4) It is a defence for a person charged with an offence under subsection (3) to prove that he had a reasonable justification for his failure to comply with the duty imposed by subsection (2).

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- (5) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) Proceedings for an offence under subsection (3) may not be instituted except by a local education authority.
- (7) Where the excluded pupil is excluded during the course of a school day but before the beginning of any afternoon session on that day, that day is to be treated for the purposes of subsection (2)(a) as the first day to which the exclusion relates.
- (8) In this section—
  - “parent”, in relation to a pupil, does not include any person who is not an individual;
  - “public place” means—
    - (a) any highway, and
    - (b) any place to which at the material time the public or any section of the public have access, on payment or otherwise, as of right or by virtue of express or implied permission;
  - “school hours” means any time during a school session of the school referred to in subsection (1)(a) or during a break between sessions of that school on the same day.

#### **104 Notice to parent relating to excluded pupil**

- (1) The head teacher of a relevant school in England, on excluding from the school a pupil of compulsory school age, must give the parent by the prescribed time a notice in writing complying with subsections (2) and (3) and containing such other information as may be prescribed.
- (2) Where the appropriate authority are or will be obliged under the relevant enactment to make arrangements for the provision of full-time education for the excluded pupil during his exclusion, or intend to do so without being so obliged, the notice must specify the first day on which full-time education is to be provided for the excluded pupil.
- (3) The notice must specify as days on which the parent is to be subject to section 103(2) each school day beginning with the first school day to which the exclusion relates and ending with the earliest of the following—
  - (a) where a day is specified under subsection (2), the school day preceding that day,
  - (b) the fifth school day to which the exclusion relates, and
  - (c) the last school day to which the exclusion relates.
- (4) Subsection (7) of section 103 applies for the purposes of subsection (3) as it applies for the purposes of subsection (2)(a) of that section.
- (5) Where the appropriate authority are a local education authority, they must provide the head teacher with such information as will enable the head teacher to give a notice complying with subsection (2).
- (6) Section 572 of EA 1996, which provides for the methods by which notices may be served under that Act, does not preclude a notice under this section from being given to the parent of the excluded pupil by any effective method.

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- (7) Regulations may enable a notice under this section to be combined with a notice required by virtue of section 52(3)(a) of EA 2002 (which relates to the exclusion of pupils from maintained schools).
- (8) In this section—
- “the appropriate authority” means—
    - (a) in the case of a permanent exclusion or an exclusion from a pupil referral unit, a local education authority,
    - (b) in the case of an exclusion for a fixed period from a maintained school, the governing body of the school, and
    - (c) in the case of an exclusion for a fixed period from a relevant school which is an Academy, a city technology college or a city college for the technology of the arts, the proprietor of the school;
  - “prescribed” means prescribed by regulations;
  - “regulations” means regulations made by the Secretary of State;
  - “the relevant enactment” means—
    - (a) where the appropriate authority is a local education authority, section 19 of EA 1996, and
    - (b) in any other case, section 100 of this Act.

## **105 Penalty notice in respect of presence of excluded pupil in public place**

- (1) Where an authorised officer has reason to believe that a person has committed an offence under section 103(3), he may give the person a penalty notice in respect of the offence.
- (2) A penalty notice is a notice offering the person the opportunity of discharging any liability to conviction for the offence under section 103(3) 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 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 if he pays a penalty in accordance with the notice.
- (5) Sums received by a local education authority under this section may be used by the authority for the purposes of any of their 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.
- (6) In this section—
- “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;

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“regulations” means regulations made by the Secretary of State.

## **106 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 whom 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 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;
- (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.

(2) Without prejudice to the generality of subsection (1) or section 181(2)(a), regulations under subsection (1)(b) may make provision for penalties of different amounts to be payable in different cases (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 must, in carrying out their functions in relation to penalty notices, have regard to any guidance which is given by the Secretary of State from time to time in relation to penalty notices.

### **(4) In this section —**

- “penalty” means a penalty under a penalty notice;
  - “penalty notice” has the meaning given by section 105(2);
- and other expressions have the same meaning as in section 105.

## **107 Penalty notices: amendments of Police Reform Act 2002**

- (1) The Police Reform Act 2002 (c. 30) is amended as follows.
- (2) In paragraph 1(2) of Schedule 4 (powers of community support officers to issue fixed penalty notices), after paragraph (aa) insert—
  - “(ab) the power of a constable to give a penalty notice under section 105 of the Education and Inspections Act 2006 (penalty notice in respect of presence of excluded pupil in public place);”.
- (3) In paragraph 1(4) of that Schedule, after “sub-paragraph (2)(aa)” insert “or (ab)”.
- (4) In paragraph 1(2) of Schedule 5 (powers of accredited persons to issue fixed penalty notices), after paragraph (ab) insert—
  - “(ac) the power of a constable to give a penalty notice under section 105 of the Education and Inspections Act 2006 (penalty notice in respect of presence of excluded pupil in public place);”.
- (5) In paragraph 1(4) of that Schedule, after “sub-paragraph (2)(ab)” insert “or (ac)”.
- (6) In paragraph 2(4) of that Schedule, after “paragraph 1(2)(ab)” insert “or (ac)”.

## **108 Removal of excluded pupils to designated premises**

- (1) Section 16 of the Crime and Disorder Act 1998 (c. 37) (removal of truants to designated premises) is amended in accordance with subsections (2) to (6).
- (2) In subsection (2)—
  - (a) for “subsection (3)” substitute “subsections (3) and (3ZA)”, and
  - (b) for “that subsection” substitute “each of those subsections”.
- (3) After subsection (3) insert—

“(3ZA) If a constable has reasonable cause to believe that a child or young person found by him in a public place in a specified area during a specified period and during school hours—

  - (a) is of compulsory school age,
  - (b) has been excluded on disciplinary grounds from a relevant school for a fixed period or permanently,
  - (c) remains excluded from that school,
  - (d) has not subsequently been admitted as a pupil to any other school, and
  - (e) has no reasonable justification for being in the public place,

the constable may remove the child or young person to designated premises.”
- (4) After subsection (3A) insert—

“(3B) In subsection (3ZA), “school hours” means any time during a school session of the school referred to in paragraph (b) of that subsection or during a break between sessions of that school on the same day.”
- (5) In subsection (5), after the definition of “public place” insert—

““relevant school” has the meaning given by section 111 of the Education and Inspections Act 2006;”.
- (6) In the heading, after “truants” insert “and excluded pupils”.

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*Status: This is the original version (as it was originally enacted).*

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- (7) In Schedule 4 to the Police Reform Act 2002 (c. 30) (exercise of police powers by civilians)—
- (a) in paragraph 4C, for the words from “section 16(3)” to the end substitute “section 16(3) or (3ZA) of that Act (power to remove truant or excluded pupil found in specified area to designated premises or, in case of truant, to the school from which he is absent).”, and
  - (b) in the italic heading immediately before that paragraph, after “truants” insert “and excluded pupils”.

### *School attendance*

## **109 Failure to secure school attendance**

- (1) In section 444 of EA 1996 (offence of failing to secure regular attendance at school of registered pupil), in subsection (1A), omit “without reasonable justification”.
- (2) After that subsection insert—
 

“(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.”
- (3) In subsection (2) of that section, for “(3)” substitute “(2A)”.
- (4) After that subsection insert—
 

“(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.”
- (5) In subsection (3) of that section—
  - (a) at the end of paragraph (a) insert “or”, and
  - (b) omit paragraph (b) and the “or” immediately following it.
- (6) In subsection (6) of that section, for “the parent shall be acquitted if he proves” substitute “it is a defence for the parent to prove”.
- (7) In subsection (7) of that section, for “at a time when he was not” substitute “unless the parent proves that at that time the child was”.
- (8) After that subsection insert—
 

“(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,



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*Status: This is the original version (as it was originally enacted).*

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- (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 local education authority, and
- (c) in relation to any school mentioned in subsection (7A)(a)(iii) to (v), the proprietor of the school.”

(9) In subsection (6) of section 444ZA of EA 1996 (application of section 444 to alternative educational provision), for “the parent shall be acquitted if he proves” substitute “it is a defence for the parent to prove”.

(10) In section 16 of the Crime and Disorder Act 1998 (c. 37), in subsection (4) for the words from “unless” to the end substitute “unless the child or young person is prevented from attending by sickness or other unavoidable cause or the absence falls within subsection (3) (leave or day set apart for religious observance) of section 444 of the Education Act 1996”.

(11) The amendments made by this section, and the entry in Part 1 of Schedule 18 relating to section 444 of EA 1996, do not apply in relation to any failure to attend at a school, or other place in relation to which that section applies, which occurs before the commencement of the amendment in question.

## **110 Sums received under section 444A of EA 1996**

In section 444A of EA 1996 (penalty notice in respect of failure to secure regular attendance at school of registered pupil) for subsection (6) substitute—

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

### *Interpretation of Chapter 2*

## **111 Meaning of “maintained school” and “relevant school” in Chapter 2**

In this Chapter—

“maintained school” means—

- (a) a community, foundation or voluntary school,
- (b) a community or foundation special school, or
- (c) a pupil referral unit;

“relevant school” means—

- (a) a maintained school,
- (b) an Academy,

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**Status:** *This is the original version (as it was originally enacted).*

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- (c) a city technology college, or
- (d) a city college for the technology of the arts.