
STATUTORY INSTRUMENTS

2007 No. 1867

EDUCATION, ENGLAND

The Education (Penalty Notices) (England) Regulations 2007

Made - - - - 26th June 2007

Laid before Parliament 6th July 2007

Coming into force - - 1st September 2007

The Secretary of State for Education and Skills, in exercise of the powers conferred upon him by sections 444A(3) and (6), 444B and 569 of the Education Act 1996⁽¹⁾ and sections 105(3) and (5), 106 and 181 of the Education and Inspections Act 2006⁽²⁾, makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Education (Penalty Notices) (England) Regulations 2007 and come into force on 1st September 2007.

(2) These Regulations apply only in relation to England.

(3) In relation to offences under section 444 of the 1996 Act, these Regulations apply to penalty notices issued on or after the date on which these Regulations come into force, whether the alleged offence was committed before, on or after that date.

Interpretation

2.—(1) In these Regulations—

“the 1996 Act” means the Education Act 1996;

“the 2006 Act” means the Education and Inspections Act 2006;

“the 2004 Regulations” has the meaning given by regulation 24(1)(a);

“alternative educational provision” means one of the following—

(a) education provided by a local education authority for a child otherwise than at school or at his home by way of arrangements made under section 19 of the 1996 Act⁽³⁾;

(1) 1996 c. 56; sections 444A and 444B were inserted by section 23(1) of the Anti-social Behaviour Act 2003 (c. 38); section 444A has been amended by section 117 of, and paragraph 3 of Schedule 18 to, the Education Act 2005 (c. 18) and section 110 of the Education and Inspections Act 2006 (c. 40). There are amendments to section 569 not relevant to these Regulations. For the meaning of “prescribed”, see section 579(1).

(2) 2006 c. 40; for the meaning of “prescribed”, see section 187(2) and (3)(e) of that Act, and section 579(1) of 1996 c. 56.

(3) Section 19 was amended by sections 47 and 57 of, and Schedule 8 to, the Education Act 1997 (c.44), and section 101 of the 2006 Act.

- (b) education at a place outside the premises of the school at which the child is a registered pupil and which the child is required by the appropriate authority (within the meaning of section 444ZA(4) of the 1996 Act) to attend for the purpose of receiving any instruction or training;
- (c) education at the school at which the child is a registered pupil pursuant to arrangements of the description referred to in subsection (3) of section 100 (duty of governing body or proprietor where pupil excluded for a fixed period) of the 2006 Act, whether provided pursuant to the duty imposed by that subsection or otherwise;
- (d) arrangements made for a child by a local education authority at a school (whether or not the school at which the child was, immediately before permanent exclusion, a registered pupil, and whether pursuant to its duty in section 19(3A) of the 1996 Act (duty of local education authority in relation to excluded pupils) or otherwise, in conjunction with arrangements of the type referred to in subsection (3) of section 100 of the 2006 Act;

“code of conduct” means the local education authority’s code of conduct for the time being in force pursuant to regulations 14 to 18;

“penalty notice” means a penalty notice issued pursuant to section 444A(1) of the 1996 Act or section 105(1) of the 2006 Act;

“public place” has the meaning given by section 103(8) of the 2006 Act;

“recipient” means a person to whom a penalty notice is given in accordance with section 444A(1) of the 1996 Act or section 105(1) of the 2006 Act, as the case may be; and

“school hours” has the meaning given by section 103(8) of the 2006 Act.

(2) In these Regulations a reference to a deputy or assistant head teacher includes a reference to a person acting as deputy or assistant head teacher, as the case may be(5).

Form and content of penalty notices

3. A penalty notice must give such details of the circumstances alleged to constitute the offence to which the notice relates as are necessary to give reasonable information as to the offence and must contain—

- (a) the name and address of the recipient;
- (b) the name and address of the child who—
 - (i) is failing to attend school regularly;
 - (ii) is failing to attend alternative educational provision regularly and, as applicable—
 - (aa) the name of the school where he is a registered pupil, if applicable; and
 - (bb) the place where the alternative educational provision is provided for the child or at which he is required to attend; or
 - (iii) was present in a public place at a time during school hours on a school day falling within section 103(2) of the 2006 Act, as the case may be;
- (c) the name and official particulars of the authorised officer issuing the notice;
- (d) the period during which the offence was committed in the case of an offence under section 444 of the 1996 Act, and the date of the offence in relation to an offence under section 103(3) of the 2006 Act, and (in either case) the date of the issue of the notice;

(4) Section 444ZA was inserted by section 116 of the Education Act 2005.

(5) By section 579(1) of 1996 c. 56 (which applies to penalty notices issued under section 105 of 2006 c. 40 by virtue of section 187(2) and (3)(e) of that Act), “head teacher” includes an acting head teacher.

- (e) the amount of the penalty which is to be paid, if it is paid within 28 days in accordance with regulation 4, and the amount in accordance with that regulation if it is not paid within that period but is paid within 42 days;
- (f) the name and the address of the local education authority to which the penalty is to be paid in accordance with regulation 6 and to which any correspondence relating to the penalty notice may be sent;
- (g) the method or methods by which payment of the penalty may be made;
- (h) the period for paying the penalty, in accordance with regulation 5;
- (i) a statement that payment within that period will discharge any liability for the offence;
- (j) the consequences of the penalty not being paid before the expiration of the period for paying it; and
- (k) the grounds on which the notice may be withdrawn.

The penalty

Amount of penalty

- 4. The amount of the penalty to be paid is—
 - (a) £50, where the amount is paid within 28 days of receipt of the notice;
 - (b) £100, where paragraph (a) does not apply but where the amount is paid within 42 days of receipt of the notice.

Period for payment of the penalty

- 5. The time by which the penalty is to be paid⁽⁶⁾ is within 42 days of receipt of the notice.

Payment of penalty

- 6.—(1) The penalty is payable to—
 - (a) the local education authority in whose area the school at which the recipient's child is a registered pupil is situated;
 - (b) where the child is not, at the time of giving the notice, a registered pupil at any school, whether due to permanent exclusion or otherwise, the local education authority in whose area the child resides.

(2) A certificate purporting to be signed by the proper officer of a local education authority to the effect that the recipient of a penalty notice has or has not paid the amount due on or before a date stated in the certificate is admissible in evidence in any legal proceedings and is evidence of the matters stated in it.

Effect of penalty notice

Period during which proceedings may not be instituted

7. The period prescribed for the purposes of section 444A(3) of the 1996 Act and section 105(3) of the 2006 Act is 42 days beginning with the date on which the recipient receives the penalty notice.

⁽⁶⁾ If the penalty is paid within this period, the recipient cannot be convicted of the offence under section 444A(4) of 1996 c. 56, or section 105(4) of 2006 c. 40, to which the notice relates.

Withdrawal

Withdrawal of penalty notice

8.—(1) A penalty notice may be withdrawn by the local education authority named in the notice as the authority to which payment is to be made for payment in any case in which—

- (a) that authority determines that—
 - (i) it ought not to have been issued; or
 - (ii) it ought not to have been issued to the person named as the recipient; or
- (b) it appears to the authority that the notice contains material errors.

(2) A penalty notice may be withdrawn in accordance with paragraph (1) whether or not the period for payment referred to in the notice pursuant to regulation 3(h) has expired, and whether or not the penalty has been paid.

(3) Where a penalty notice has been withdrawn in accordance with paragraph (1)—

- (a) notice of the withdrawal must be given to the recipient; and
- (b) any amount paid by way of penalty in pursuance of that notice must be repaid to the person who paid it.

(4) Except as provided in paragraph (5), no proceedings may be continued or instituted against the recipient for the offence in connection with which the withdrawn notice was issued, or, where the notice related to an offence under subsection (1) of section 444 of the 1996 Act, for an offence under subsection (1A) arising out of the same circumstances.

(5) But where a penalty notice was issued, and was withdrawn pursuant to paragraph (1)(b), proceedings may be continued or instituted—

- (a) for the offence in connection with which that penalty notice was issued; or,
- (b) where the penalty notice related to an offence under subsection (1) of section 444 of the 1996 Act, for an offence under subsection (1A) of that section arising out of the same circumstances as the first mentioned offence,

if both of the following conditions are met—

- (i) a further penalty notice in respect of the offence, or in the case of sub-paragraph (b), the first mentioned offence, was issued at the same time as the first penalty notice was withdrawn; and
- (ii) the penalty has not been paid pursuant to that further penalty notice in accordance with the requirements of these Regulations.

Non payment of the penalty

9. Where—

- (a) the penalty is not paid in full before the expiry of the period for paying it; and
- (b) the local education authority named in the notice pursuant to regulation 3(f) has neither instituted proceedings against the recipient for the offence to which the notice relates, nor is contemplating such proceedings,

the authority must withdraw the notice.

Issue of penalty notices

Authority to issue penalty notices

- 10.**—(1) A head teacher may authorise a deputy or assistant head teacher to issue penalty notices.
(2) But a head teacher may not authorise any other member of staff to issue penalty notices.

Limitation on schools issuing penalty notices

11. A head teacher or deputy or assistant head teacher may only issue a penalty notice in respect of a child who is a registered pupil at the school at which that head teacher, or deputy or assistant head teacher, as the case may be, works.

Limitation on local education authorities issuing penalty notices

12.—(1) Subject to paragraph (2), an officer of a local education authority may only issue a penalty notice in respect of a child —

- (a) who is a registered pupil at a school in the area of that authority;
- (b) for whom that authority has made arrangements for alternative educational provision (whether or not in the area of that authority); or
- (c) who is not, at the time the notice is given, a registered pupil at any school (whether due to permanent exclusion or otherwise) but resides in the area of that authority.

(2) Where a local education authority has entered into an agreement with another local education authority for an officer of that other authority to issue penalty notices in respect of a child to which paragraph (1)(a) or (b) applies, an officer of that other authority may issue a penalty notice in respect of such child.

Several penalty notices in respect of the same offence

13. Where there is more than one person liable for the offence, a separate notice may be issued to each person.

Codes of conduct

Requirement to draw up code of conduct

14. Each local education authority must draw up a code of conduct which sets out measures to ensure consistency in the issuing of penalty notices, including—

- (a) means of avoiding the issue of duplicate penalty notices;
- (b) measures to ensure that a penalty notice is not issued in respect of an offence when proceedings for that offence under section 444 of the 1996 Act (or an offence under subsection (1A) of that section arising out of the same circumstances) or section 103(3) of the 2006 Act, as the case may be, are contemplated or have been commenced by the local education authority;
- (c) the occasions when it will be appropriate to issue a penalty notice for an offence;
- (d) a maximum number of penalty notices that may be issued to one parent in any twelve month period; and

- (e) arrangements for co-ordination between the local education authority, neighbouring local education authorities where appropriate, the police and authorised officers⁽⁷⁾.

Consultation on the code of conduct

15.—(1) In preparing the code of conduct the local education authority must consult governing bodies, head teachers and the chief officer of police for a police area which includes all or part of the area of the local education authority, and must have regard to any guidance issued by the Secretary of State.

(2) In this regulation-

- “chief officer of police” has the meaning given by section 101(1) of the Police Act 1996⁽⁸⁾; and
- “police area” means a police area provided for by section 1 of that Act.

Compliance with the code of conduct

16. Any person issuing a penalty notice must do so in accordance with the code of conduct.

Secretary of State’s power to give direction

17. The Secretary of State may at any time direct a local education authority—

- (a) (if it has not already drawn up a code of conduct under regulation 14) to prepare a draft code for his approval by the date specified in the direction; or
- (b) (if it has already drawn up such a code but the code appears to the Secretary of State to contain inappropriate measures) to prepare a draft of revisions to the code for his approval by the date specified in the direction.

Approval and effect of code of conduct following direction

18. The Secretary of State may approve a draft code or draft revisions to the code submitted under regulation 17 with or without modifications and—

- (a) where a draft code has been approved (pursuant to regulation 17(a) and this regulation) it has effect as approved; and
- (b) where draft revisions to the code have been approved (pursuant to regulation 17(b) and this regulation) the code has effect with the approved revisions.

Information

Copy of the penalty notice to be supplied to the LEA

19. A person issuing a penalty notice must (without delay) provide a copy to the local education authority which is named in the notice as the authority to which payment is to be made pursuant to regulation 3(f).

Records

20. A local education authority must keep records of penalty notices which must include—

- (a) a copy of each notice issued;
- (b) a record of all payments made and on what dates;

(7) Authorised officers are defined in section 444B(4) of 1996 c. 56 in relation to penalty notices under section 444A of that Act, and in subsection (6) of section 105 of 2006 c. 40 in relation to penalty notices under that section.

(8) 1996 c.16, to which there are amendments not relevant to these Regulations.

- (c) whether the notice was withdrawn and on what grounds; and
- (d) whether the recipient was prosecuted for the offence for which the notice was issued (or, where the notice related to an offence under subsection (1) of section 444 of the 1996 Act, for an offence under subsection (1A) arising out of the same circumstances).

Information to the Secretary of State

21. A local education authority must supply to the Secretary of State such information as he may require in respect of penalty notices.

Final provisions

Service of notices

22.—(1) Where the penalty notice is served by first class post⁽⁹⁾, service is deemed to have been effected, unless the contrary is proved, on the second working day after posting the notice.

(2) In this regulation “working day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday, or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971⁽¹⁰⁾.

Sums received by local education authorities

23.—(1) The functions of a local education authority specified for the purposes of section 444A(6)⁽¹¹⁾ of the 1996 Act and section 105(5) of the 2006 Act are issuing and enforcing penalty notices, and prosecuting recipients who do not pay.

(2) To the extent that sums received by a local education authority are not used for the purposes of the functions specified in paragraph (1), they must be paid to the Secretary of State.

Revocation and transitional provisions

24.—(1) Subject to paragraphs (2) and (3), the following regulations are revoked—

- (a) the Education (Penalty Notices) (England) Regulations 2004⁽¹²⁾ (“the 2004 Regulations”);
- (b) the Education (Penalty Notices) (England) (Amendment) Regulations 2004⁽¹³⁾; and
- (c) the Education (Penalty Notices) (England) (Amendment) Regulations 2005⁽¹⁴⁾.

(2) The 2004 Regulations continue to apply to penalty notices issued before the date on which these Regulations came into force.

(3) A code of conduct drawn up under regulation 12, or drawn up and approved pursuant to regulations 15 and 16, as the case may be, of the 2004 Regulations, and in force immediately before the coming into force of these Regulations, has effect under these Regulations as if drawn up pursuant to regulation 14, or drawn up and approved pursuant to regulation 17 and 18, as the case may require, of these Regulations; but nothing in this paragraph has the effect of applying that code of conduct to penalty notices issued pursuant to section 105 of the 2006 Act.

(4) A penalty notice issued pursuant to the 2004 Regulations is taken into account for the purposes of regulation 14(d) of these Regulations.

⁽⁹⁾ Section 572 of the Education Act 1996 makes provision for the service of notices.

⁽¹⁰⁾ 1971 c. 80.

⁽¹¹⁾ Section 444A(6) was inserted by section 110 of the 2006 Act.

⁽¹²⁾ S.I. 2004/181.

⁽¹³⁾ S.I. 2004/920.

⁽¹⁴⁾ S.I. 2005/2029.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

26th June 2007

Jim Knight
Minister of State
Department for Education and Skills

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations prescribe the necessary details for the operation of the penalty notice scheme under –

- (a) section 444A of the Education Act 1996 (“the 1996 Act”; section 444A was inserted by the Anti-Social Behaviour Act 2003); and
- (b) section 105 of the Education and Inspections Act 2006 (“the 2006 Act”).

They only apply in England (regulation 1(2)) and in the case of truancy offences under section 444 of the 1996 Act, apply to penalty notices served on or after the date on which they come into force, whether the offence was committed before or after they come into force (regulation 1(3)).

Regulation 3 sets out the matters to be contained in a penalty notice.

Regulations 4 prescribes the level of the penalty which is to be paid to the local education authority, and regulation 6 what is evidence of its payment or non-payment. Regulation 5 provides for the period in which it is to be paid, if it is to discharge liability for the offence. Regulation 6 provides which local education authority the penalty is to be paid to.

Regulation 7 prescribes 42 days as the period before which no proceedings can be commenced. Regulation 8 makes provision for the withdrawal of a penalty notice. Regulation 9 requires the local education authority to withdraw the notice where it is not paid but where the authority does not prosecute for the offence.

Regulations 10 to 13 set out details about who may issue penalty notices and in what circumstances.

Regulations 14 to 18 require the local education authority to draw up and consult on a code of conduct for the issuing of penalty notices. Regulations 17 and 18 provide for the Secretary of State to have power to direct a local education authority to draw up a draft code or revisions to a code and for the Secretary of State to approve the draft code or revisions.

Regulations 19 to 21 require records to be kept, a copy of any penalty notice issued to be given to the local education authority, and information to be given to the Secretary of State.

Regulation 22 provides that if service of a penalty notice by prepaid letter is by first class post, the time at which it will be considered to have been served on the recipient is on the second working day after posting, unless the contrary is proved. Methods of service are provided for in section 572 of the Education Act 1996.

Regulation 23 specifies the functions of local education authorities for which sums received as penalties may be used, that is, the operation and enforcement of the penalty notice scheme. Sums not so used must be paid to the Secretary of State.

Regulation 24 makes transitional provision. The Education (Penalty Notices) (England) Regulations 2004 (S.I. 2004/181 as amended by S.I. 2004/920 and 2005/2029; “the 2004 Regulations”) continue to apply to penalty notices served before these Regulations come into force, and penalty notices issued under them are taken into account for the purposes of applying regulation 14(d) (which requires codes of conduct to provide for how many penalty notices may be issued to the same parent in any period of twelve months) but are otherwise revoked. Codes of conduct under the 2004 Regulations continue in force for penalty notices issued under section 444A of the 1996 Act, but they are not automatically extended to penalty notices issued under section 105 of the 2006 Act.

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

A full impact assessment has not been produced for this instrument as it has no impact on the costs of business.