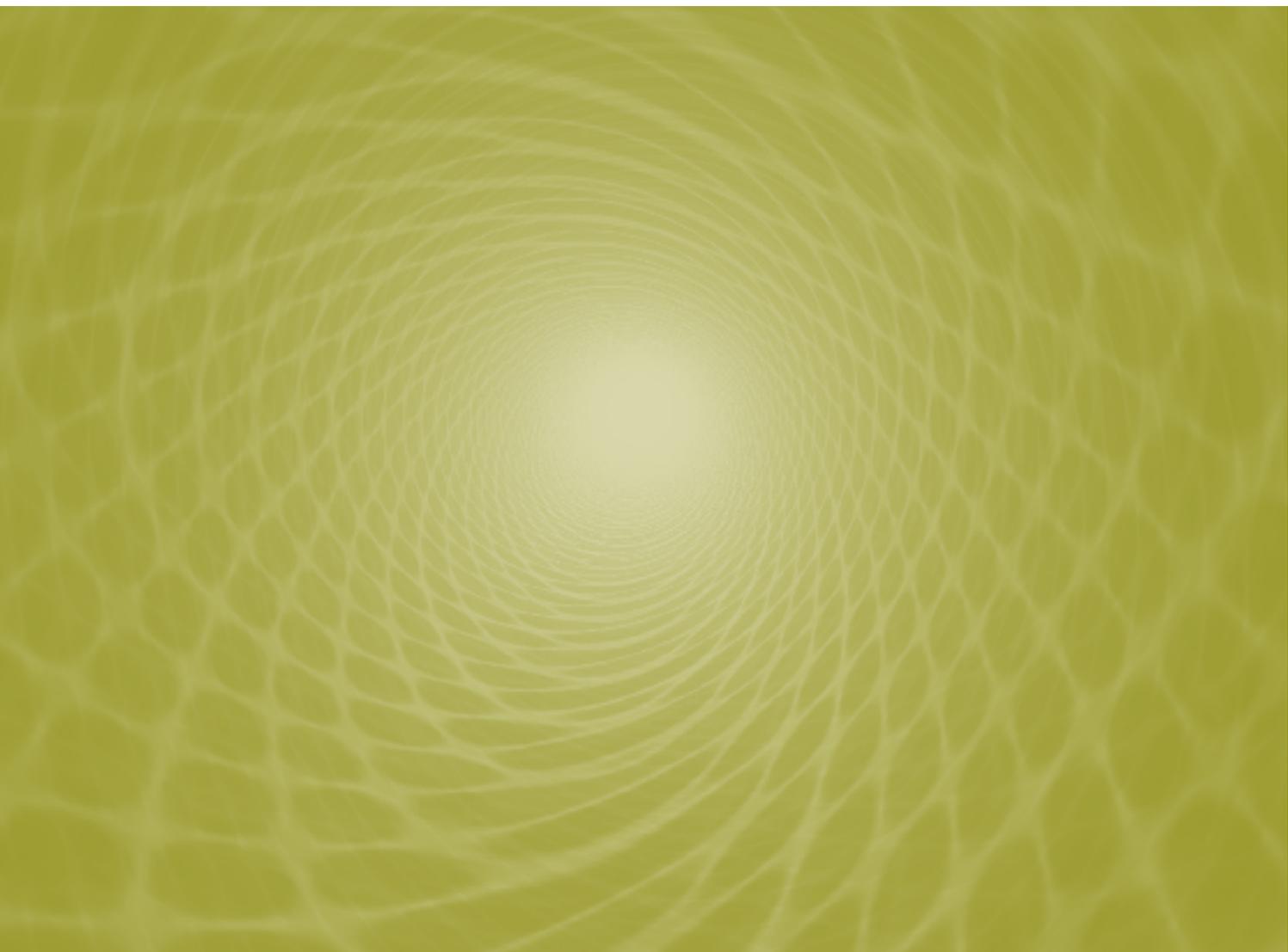




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# Guidance on penalty notices for regular non-attendance at school



## Guidance

Guidance document no: 116/2013

Date of issue: September 2013

# Guidance on penalty notices for regular non-attendance at school

<b>Audience</b>	Headteachers and governing bodies of maintained schools in Wales; police; teachers in charge of Pupil Referral Units (PRUs); local authorities (LAs); teaching and other unions; pupils; parents/carers; parent support organisations; diocesan authorities and voluntary organisations.
<b>Overview</b>	This document provides guidance on the application of penalty notices for regular non-school attendance.
<b>Action required</b>	LAs, school governing bodies (GBs), school staff, and the police are required by law to have regard to the relevant parts of this guidance when carrying out their functions in relation to penalty notices, including making decisions on issuing a penalty notice under section 444A of the Education Act 1996.
<b>Further information</b>	Enquiries about this document should be directed to: Pupil Wellbeing Team Department for Education and Skills Welsh Government Cathays Park Cardiff CF10 3NQ e-mail: WELLBEINGshare@wales.gsi.gov.uk
<b>Additional copies</b>	This document can be accessed from the Welsh Government's website at <a href="http://www.wales.gov.uk/educationandskills">www.wales.gov.uk/educationandskills</a>

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## Introduction

In line with the Welsh Government commitment to *Improving schools* (Welsh Government, 2012)<sup>1</sup> we aim to strengthen our approaches to inclusion and safeguarding. We agreed to consult on legislation for the introduction of fixed penalty notices for non-school attendance. Having considered the responses to this consultation the Welsh Government has made the Education (Penalty Notice) (Wales) Regulations 2013. The regulations come into force in September 2013.

Local authorities (LAs), school governing bodies, school staff, and the police are required by law to have regard to the relevant parts of this guidance when carrying out their functions in relation to penalty notices, including making decisions on issuing a penalty notice under section 444A of the Education Act 1996.

This means that due regard must be given to the guidance and there is an expectation that it will be followed unless there is good reason to depart from it.

Penalty notices are one option among a number of different interventions available to promote better school attendance. Attendance at school is essential to improve children's educational prospects and to avoid putting them at risk of criminal or antisocial behaviour.

The penalty notice measures will support LAs and schools in ensuring parents/carers fulfil their responsibilities by ensuring their children regularly attend school. As such, it is important that professionals involved in applying the penalty notice procedures are aware of the different types of strategies and support that will be appropriate in engaging different parents/carers.

The penalty notice process is described in detail in the 'Issuing penalty notices' section of this guidance but to be helpful to those implementing the process the guidance provides examples of other good practice.

In addition LAs and schools should make use of data to help them monitor and evaluate the effectiveness and appropriateness of their use of penalty notices.

Penalty notices are an additional option that can be used in a wide range of intervention and support strategies to support parents/carers and pupils. Schools and the LA Education Welfare Service (EWS) should consider each case individually.

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<sup>1</sup> [learning.wales.gov.uk/news/sitenews/improvingschools/?lang=en](http://learning.wales.gov.uk/news/sitenews/improvingschools/?lang=en)

Penalty notices will be most effective when issued for less entrenched attendance issues, particularly for certain age groups or over particular time periods such as Key Stage 4 pupils in the run-up to examination periods.

In most cases when a warning is issued for a fine this is enough to raise awareness of the severity of the attendance issue. This in itself can lead to an improvement in attendance.

The guidance is not exhaustive and judgements will need to take account of the circumstances of individual cases.

### **School attendance**

All parents/carers have a legal responsibility to ensure their child regularly attends school.

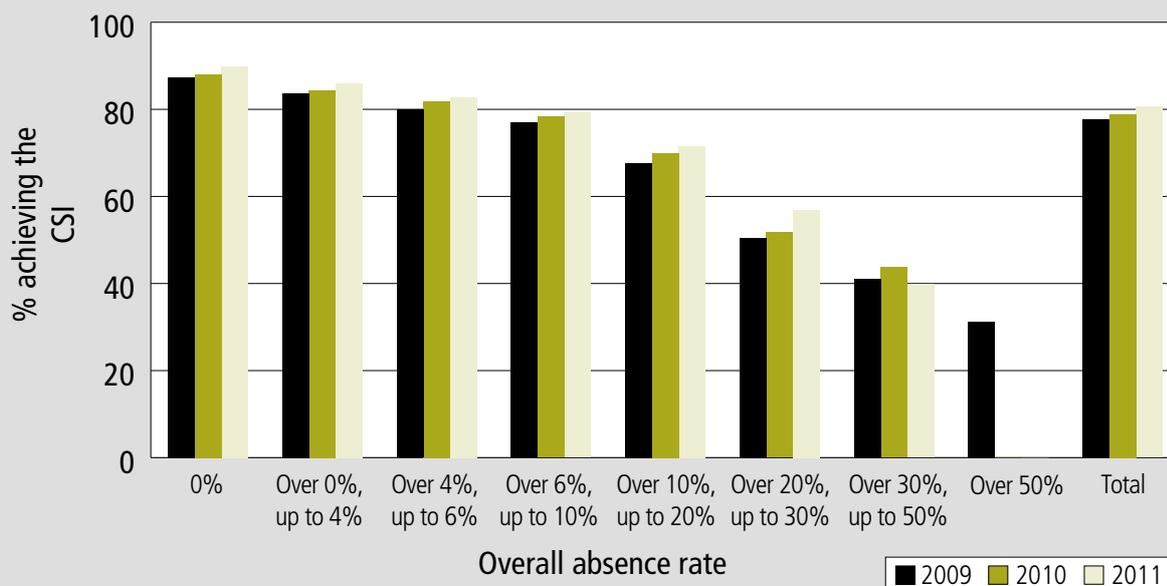
When a child attends school on a regular basis, they take an important step towards reaching their full potential, and are given the greatest opportunity to learn new things and develop their skills.

Children who miss school can frequently fall behind with their work and do less well in exams.

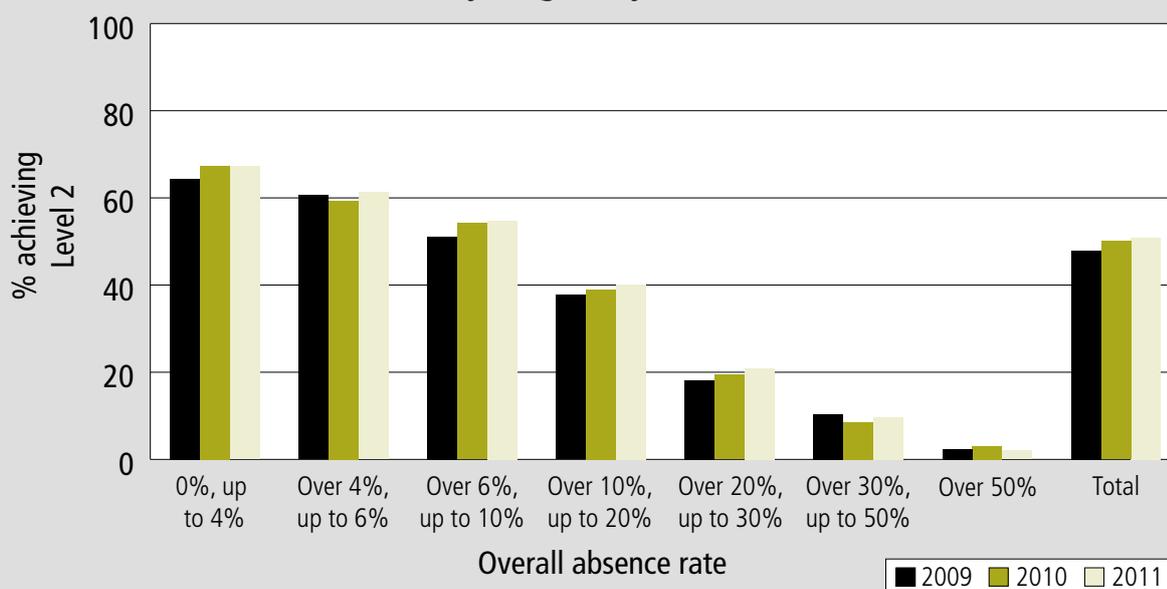
The more time a child spends around other children, whether in the classroom or as part of a school team or club, the more chance they have of making friends and feeling included, boosting social skills, confidence and self-esteem.

Attendance in schools needs to remain a priority to ensure that children and young people are given the chance to achieve their potential. The statistical links between attendance and achievement are very strong as shown in the following tables.

**Percentage of pupils achieving the CSI at Key Stage 2 by overall absence rates, 2009–2011**



**Percentage of pupils achieving the Level 2 threshold including a GCSE grade A\*–C in English Language or Welsh (First Language) and Mathematics at Key Stage 4 by overall absence rates, 2009–2011**



As well as helping young people achieve their potential, active follow-up of non-attenders is a key element in their protection and helping them to avoid involvement in criminal activity. Pupils not attending school on a regular basis are far more likely to commit crime.

### **The role of school in achieving regular school attendance**

Effective engagement is the bedrock on which all work with parents/carers is built. Key to this is respecting parents'/carers' rights and supporting them in meeting their responsibilities. It is essential when school staff feel that a pattern of non-attendance is emerging that they work closely with education, social and health support services to ensure the most appropriate and effective intervention is available to the pupil and parents/carers.

Schools and LAs should work with parents/carers and pupils as far as possible to encourage attendance and provide any necessary additional support, before taking forward any prosecution.

The use of targeted intervention and support in areas of specific need can be very effective in improving attendance, particularly when working in partnership with the EWS and the LA.

Non-attendance can be a sign of significant problems in the home environment and schools need to ensure that they are actively involved with pursuing the reasons for non-attendance and making the appropriate links with external organisations.

Schools are required to take an attendance register twice a day: at the start of the morning session and once during the afternoon session. The register shows whether the pupil is present, engaged in approved educational activities off-site, or is absent. In addition, where a pupil is of compulsory school age, the register must show whether the absence was authorised by the school or unauthorised.

Authorised absence is where the school has either given approval in advance for the pupil to be absent from school, or where an explanation offered afterwards has been accepted by the school as satisfactory justification for absence. Only schools, not parents/carers, can authorise an absence, and schools must consider whether the reason for absence is reasonable before doing so. Any absence that is not authorised by the school should be recorded as an unauthorised absence.

## Additional learning needs

Attendance problems could, in some instances, relate to a child's additional learning needs (ALN). School governing bodies have a statutory duty to use their best endeavours to ensure that the necessary provision is made for any pupil who has ALN. LAs have specific duties in relation to identifying, assessing and making provision for pupils with ALN, including those with behavioural, social and emotional needs. Statutory guidance on identifying, assessing and making provision for pupils with ALN, including those with behavioural, social and emotional needs, is given in the *Special Educational Needs Code of Practice for Wales* (Welsh Assembly Government, 2004)<sup>2</sup>. Schools and LAs must have regard to this guidance.

Before proceeding to issue a penalty notice schools and LAs should consider whether attendance problems may be related to a pupil's special educational needs. Maintained schools should be able to demonstrate that they have used their best endeavours, acting in conjunction with the LA where appropriate, to make appropriate provision for the pupil's needs. This may include action to support the pupil through School Action and School Action Plus in the ALN Code of Practice for Wales or asking the LA to carry out a statutory assessment of the pupil's needs. Early identification and intervention, accurate assessment and the arrangement of appropriate provision to meet pupils' ALN usually leads to better outcomes.

Penalty notices are not, and should not be used as, alternatives to taking appropriate action to meet a pupil's ALN.

## United Nations Convention on the Rights of the Child

The United Nations Convention on the Rights of the Child (UNCRC) is an international agreement that protects the rights of children under the age of 18. By virtue of the Rights of Children and Young Persons (Wales) Measure 2011, the Welsh Ministers are required to have due regard to the UNCRC when bringing forward new policy proposals and legislation.

In considering these proposals we have had due regard to the UNCRC, e.g. the right of the child to education. There is also a requirement to give children a voice in decision-making processes affecting them. The Welsh Government takes into account the views and ideas expressed by children when making decisions that have a direct impact upon their lives.

<sup>2</sup> [www.wales.gov.uk/topics/educationandskills/publications/guidance/specialeduneedscop/?lang=en](http://www.wales.gov.uk/topics/educationandskills/publications/guidance/specialeduneedscop/?lang=en)

## **Further information**

Further information on strategies to support regular school attendance can be found in the following Welsh Government guidance.

*All Wales Attendance Framework* (2011)

[www.wales.gov.uk/topics/educationandskills/schoolshome/pupilsupport/framework/?lang=en](http://www.wales.gov.uk/topics/educationandskills/schoolshome/pupilsupport/framework/?lang=en)

*Inclusion and Pupil Support* (2006)

[www.wales.gov.uk/topics/educationandskills/schoolshome/pupilsupport/inclusionpupilsupportguidance/?lang=en](http://www.wales.gov.uk/topics/educationandskills/schoolshome/pupilsupport/inclusionpupilsupportguidance/?lang=en)

## Responsibilities for securing regular school attendance

Ensuring regular school attendance is a demanding area of work that depends on establishing and utilising close working relationships between parents/carers, pupils, schools, the LA EWS and other professionals working with children and young people in social, educational and health care settings.

A key element of any successful working relationship is a clear understanding of each person's role and responsibilities, and as such this section sets out to clarify the roles and responsibilities for those people engaged with tackling attendance issues.

### **Parent/carer**

Under section 7 of the Education Act 1996, the parent/carer is responsible for ensuring that their child of compulsory school age receives efficient full-time education that is suitable to their child's age, ability and aptitude and to any special educational needs the child may have. This can be by regular attendance at school, alternative provision or by elective home education (the parent/carer can choose to provide education for their child).

For the purposes of education legislation the definition of parent/carer is set out at section 576 of the Education Act 1996. 'Parent' means all natural parents/carers, whether they are married or not; it includes any person who, although not a natural parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person, and any person who, although not a natural parent, has care of a child or young person. Having care of a child or young person means that a person with whom the child lives and who looks after the child, irrespective of what their relationship is with the child, is considered to be a parent in education law. For further information see *"Parents" and "Parental Responsibility"* (Welsh Assembly Government, 2007)<sup>3</sup>.

Sections 444A and 444B of the Education Act 1996 (introduced by section 23 of the Anti-social Behaviour Act 2003) introduced penalty notices as an alternative to prosecution under section 444. Parents/carers may discharge potential liability for conviction for an offence under section 444 by paying a penalty.

<sup>3</sup> [www.wales.gov.uk/about/foi/publications-catalogue/circular/2007/1552456/?skip=1&lang=en](http://www.wales.gov.uk/about/foi/publications-catalogue/circular/2007/1552456/?skip=1&lang=en)

There is no legal requirement for there first to have been a penalty notice before proceeding to prosecution.

## School

Schools are required under the Education (Pupil Registration) (Wales) Regulations 2010 to take an attendance register twice a day: at the start of the morning session and once during the afternoon session. The accuracy of the register is important to support any statutory interventions that may be required. It should be noted that it is an offence not to maintain accurate registers. Detailed guidance on attendance codes can be found in 'Annex 4.i' of the *Inclusion and Pupil Support* (Welsh Government, 2006)<sup>4</sup> guidance document.

## Local authority

Under section 437 of the Education Act 1996, LAs have a duty to ensure that a child for whom they are responsible is receiving a suitable education either by regular attendance at school or otherwise. Further information can be found in 'Section 4' of the *Inclusion and Pupil Support* guidance document.

In September 2009 section 436A<sup>5</sup> of the Education Act 1996 came into force. This section requires that LAs must make arrangements to enable them to establish (so far as it is possible to do so) the identities of children residing in their area who are not receiving a 'suitable education'.

Implementation of the duty under section 436A should be integrated with the wider range of duties placed on LAs, including the Children Act 2004 and the Welsh Government's *Safeguarding Children: Working Together Under the Children Act 2004* that aims to improve outcomes, and safeguard and promote the welfare of children. The new duty should strengthen and complement these existing duties.

## Consortia working

LAs may wish to consider how they might develop and consult on their code of conduct on a consortia basis. This approach has the benefit of creating greater consistency, minimising duplication of effort and providing clarity in relation to cross-border practices.

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<sup>4</sup> [www.wales.gov.uk/topics/educationandskills/schoolshome/pupilsupport/inclusionpupilsupportguidance/?lang=en](http://www.wales.gov.uk/topics/educationandskills/schoolshome/pupilsupport/inclusionpupilsupportguidance/?lang=en)

<sup>5</sup> This section was inserted into the Education Act 1996 by section 4 of the Education and Inspections Act 2006.

This would also help to reinforce consortia work already being undertaken to improve school attendance.

### **Looked-after children**

Children looked after by LAs are especially at risk of low attainment in school. Schools should be especially sensitive to issues where looked-after children are concerned. Schools should try every practicable means to maintain the learner in school and should seek LA and other professional advice as appropriate. LA children's services departments should in all cases be involved at the earliest opportunity in working with the school.

## Roles and responsibilities for issuing penalty notices

### **Roles and responsibilities of the local authority**

LAs are responsible for the administration of the scheme and for bringing prosecutions and must therefore issue a local code of conduct (see 'Local codes of conduct' on page 13 and 'Annex A') to ensure the smooth administration and operation of the scheme and to ensure that it operates consistently across the LA area. In doing so, LAs will need to define the criteria under which a penalty notice will be issued. LAs will need to ensure that there is sufficient evidence available to proceed to a successful prosecution if payment of a notice is not made, e.g. data from school registration.

LAs may, in the absence of any other agreement, only issue penalty notices in respect of a pupil registered at a school in that LA area or, in the case of an unregistered pupil, who resides in their area or for whom that LA has arranged alternative provision. LAs may only issue penalty notices in respect of a pupil registered at a school in another LA area or, in the case of an unregistered pupil, for whom another LA has arranged alternative provision if they have an agreement to that effect with the other LA.

LAs, following consultation with their schools and police, may limit the power of issuing penalties to the authority only, if they so wish as part of their code of conduct.

**Action:** LAs will be expected to have a code of conduct in place by the end of the 2013/14 academic year. Of course, this can be introduced earlier.

### **Roles and responsibilities of schools**

Headteachers are empowered to issue penalty notices and to authorise their deputy and assistant head to do the same. They may only issue penalty notices to parents/carers in respect of the irregular attendance of a child registered at their school.

Headteachers wishing to issue, or authorise their staff to issue, penalty notices should first discuss this with their governing body. It is good practice to include the use of penalty notices in the school's attendance and behaviour policies.

Headteachers and deputy and assistant heads must comply with the local code of conduct issued by their LA when issuing penalty notices and provide to the LA a copy of any notice issued.

**Action:** Schools will be expected to have updated attendance and behaviour policies in place for the start of the 2014/15 academic year. Again, this can be introduced earlier if schools so wish.

### **Roles and responsibilities of the police**

The police are empowered to issue penalty notices.

The police must comply with the local code of conduct issued by the relevant LA when issuing penalty notices and provide to the LA a copy of any notice issued.

### **Local codes of conduct**

To ensure the powers are applied consistently a local code of conduct must be developed. The purpose of the local code of conduct is to ensure that the powers are applied consistently and fairly across the consortium or LA area and that suitable arrangements are in place for the administration of the scheme. Local codes should contain a statement to this effect.

To further promote consistency and minimise unnecessary duplication, LAs may wish to develop a code of conduct at consortium level.

Anyone issuing a penalty notice must do so within the terms of the local code.

**Action:** It is the responsibility of each LA to draw up a code of conduct after consultation as set out in the Education (Penalty Notices) (Wales) Regulations 2013.

The local code of conduct is key to the successful use of penalty notices. It ensures consistency, fairness and transparency in the way penalty notices are applied and allows consortia and LAs to manage the system and tailor it to local needs and resources. The regulations specify that the local code must include:

- a means of avoiding the issuing of duplicate notices and of ensuring that notices are not issued when a prosecution for that particular offence is already being planned or is underway. One way of achieving this might be for LAs to restrict those able to issue notices to only one department, e.g. EWS. This would also allow headteachers to maintain effective management of the school/home relationships
- when it will be appropriate to issue a penalty notice for an offence. In the case of truancy, this must include the level of unauthorised absence which is necessary to trigger a penalty notice. In considering this trigger, LAs should take into account the level of unauthorised absence at which it will be willing and able to prosecute for the offence of irregular attendance as the LA will normally be following this course of action where a penalty notice is not paid. Other criteria may also be included
- the maximum number of penalty notices that can be issued to one parent/carer in any 12-month period
- arrangements for coordination between the LA and its local partners.

Although not specifically provided for in the regulations, the code could include any locally agreed criteria for authorising or not authorising absence (though headteachers should not restrict their discretion).

It is good practice for LAs to publicise the contents of local codes, e.g. by including them in any LA or school attendance policies.

'Annex A' provides an example of the content and layout of a local code of conduct. The example should not be interpreted as definitive. It is intended to set out some of the issues LAs should take into account when framing their local codes.

## Issuing penalty notices

The Education (Penalty Notices) (Wales) Regulations 2013 sets out the framework for the operation of penalty notice schemes.

### **Who can issue a penalty notice?**

The provisions enable the following to issue penalty notices, although there is no requirement for them to do so:

- authorised LA staff, e.g. Education Welfare Service staff
- headteachers and school staff authorised by them (limited by the regulations to deputy and assistant heads)
- the police.

### **Who can receive a penalty notice?**

These procedures apply to the parents/carers of children of compulsory school age who are registered at a maintained school, a Pupil Referral Unit (PRU) and those attending alternative provision.

As with prosecutions under section 444 of the Education Act 1996, a penalty notice may be issued to each parent/carer liable for the offence or offences.

### **Formally notifying the parent/carer**

At the outset of casework by the school or LA the parent/carer should be given a formal written notification explaining the actions that may be taken. It is good practice to make sure the parent/carer understands the consequences of failing to ensure their child's regular attendance, in particular that the case could result in a penalty and/or prosecution. However, in certain circumstances a penalty notice may be issued without formal written notification.

It is good practice, where feasible, to warn the parent/carer or parents/carers of the possibility of a notice being issued and to allow 15 school days for the parent/carer to improve the situation before issuing a notice or commencing proceedings.

Sometimes the prospect of a penalty or prosecution may lead to a significant improvement in a pupil's attendance and a penalty notice or court proceedings may not be necessary if it is believed that the improvement will be sustained.

## **Circumstances in which a penalty notice might be issued**

In considering whether the necessary conditions for a penalty notice are fulfilled, LAs and school governing bodies should have regard to all their statutory duties.

The key consideration in deciding whether to issue a penalty notice for truancy will be whether it can be effective in helping to get the pupil who is truanting back into school or alternative provision.

A penalty notice is a suitable intervention in circumstances where the parent/carer is judged capable of securing their child's regular attendance or whereabouts but is not willing to take responsibility for doing so, for example where the parent/carer has:

- failed to engage with any voluntary or supportive measures proposed
- failed to make adequate arrangements for the whereabouts of their child.

The usual response to a first offence might be a warning rather than a penalty. However, authorised officers have the discretion to issue a penalty notice for a first offence in circumstances where the parent's/carer's conduct is particularly blameworthy. For example where unauthorised absence was for an extended period and condoned by the parent/carer, such as where the parent/carer has chosen to take their child on holiday during term time without authorisation.

LAs should take great care to ensure that notices are properly issued and only issued for offences where the LA is willing and able to prosecute. Penalty notices should be withdrawn only rarely. It is for LAs to set out in their local code of conduct the levels of unauthorised absence above which a penalty notice may be issued (taking into account the level of unauthorised absence at which they will be willing and able to prosecute for the offence of irregular attendance).

It will be for the parent/carer to prove reasonable justification. A justification which is capable of being reasonable will depend on points of fact and proof. It is unlikely that any justification would be reasonable unless it stood up to the facts.

LAs should not conclude that some justifications are automatically unreasonable. Some, such as a medical emergency are probably more straightforward: hospital records, doctor's certificate, etc., will help in the consideration of an individual case. Every case should be considered on its merits and all relevant evidence provided taken into account.

This guidance should not be interpreted as definitive; it is intended to set out some of the issues authorities should take into account when framing their local codes. Ultimately it will be for the court to determine if 'reasonable justification' has been proved by the parent/carer.

Specific examples used in codes of conducts for LAs in England can be found at 'Annex C'. LAs and schools should consider each pupil and case on an individual basis and assess the level of support and intervention required before deciding on the most suitable strategy for improving an individual pupil's attendance.

### **Once a penalty notice is issued**

The parent/carer cannot be prosecuted for the particular offence for which a notice was issued until after the final deadline for payment has passed (42 days after receipt of the notice) and cannot be convicted of that offence if he pays a penalty in accordance with the notice.

The penalty is £60 if paid within 28 days of receipt of the notice, rising to £120 if paid after 28 days but within 42 days of receipt of the notice (a notice served by first class post is deemed to have been received on the second working day after posting it by first class post unless it is shown otherwise – therefore the 28 days would begin on the second working day). If the penalty is not paid in full by the end of the 42-day period the LA must either prosecute for the offence to which the notice applies or withdraw the notice.

Prosecution is for the offence to which the notice relates rather than for non-payment of the notice. In the case of truancy, if there is a prosecution it will follow the usual procedures of a prosecution for irregular attendance (including considering an education supervision order as an alternative, or in addition, to prosecution). Irregular attendance prosecutions will be brought by the LA under section 444 of the Education Act 1996.

A penalty notice may only be withdrawn where:

- it ought not to have been issued, i.e. where it has been issued outside the terms of the local code of conduct or where no offence has been committed
- it has been issued to the wrong person
- it contains material errors.

### **Administration of the penalty notice scheme**

The detail of how penalty notice schemes must operate is set out in the Education (Penalty Notices) (Wales) Regulations 2013. A specimen penalty notice pro forma is set out at 'Annex B'. LAs are responsible for drawing up a penalty notice pro forma and distributing this to those issuing them.

The LA is responsible for the overall administration of the scheme. It may make such arrangements for the operation of the scheme, not provided for in this guidance or in the associated regulations, as it sees fit.

### **Retention of receipts and revenue collection**

The regulations provide that the LA can retain revenue from their penalty notice scheme to cover the costs of issuing or enforcing notices, or the cost of prosecuting recipients who do not pay. Revenue is payable to the LA in respect of pupils registered at a school in their area or, in the case of an unregistered pupil, for whom they have arranged alternative provision.

The LA should produce an auditor's statement as part of the usual audit procedure showing that income received from penalty notices does not exceed enforcement as defined above. The surplus, if any, must be surrendered to the Welsh Consolidated Fund.

LAs should consider the possibility of making arrangements with another part of the LA already involved in revenue collection to administer the collection of receipts from penalty notices. This will avoid having to establish new systems and procedures and allow for some economies of scale.

## **Penalty notices as evidence in legal proceedings**

Payment of a penalty notice discharges liability for prosecution for the offence to which the notice relates. This means that neither the fact that a penalty notice was issued and paid nor the pattern of unauthorised absence to which a paid notice relates can be submitted as evidence in a prosecution for any subsequent truancy. However, sections 98 to 101 of the Criminal Justice Act 2003 bring penalty notices within the definition of bad character in that legislation. Evidence of the issue of a paid penalty notice may therefore be introduced if any of the relevant conditions in sections 101 to 106 of the Criminal Justice Act 2003 are met. For example:

- if agreed by all parties
- if it is necessary to contradict a false impression given by the defendant
- if the defendant attacks the character of another person.

If a penalty is not paid, LAs may use the fact a notice was issued and unpaid as evidence in a subsequent prosecution. The unauthorised absence for which an unpaid notice was issued can be used as evidence for a prosecution in the usual way.

## Annex A: Local code of conduct

**[Name of local authority]**

**Code of conduct**

**Fixed penalty notice for non-attendance at school**

**[Date of issue]**

### **1. Legal basis and rationale**

Regular and punctual attendance of pupils at school is both a legal requirement and essential for pupils to maximise the educational opportunities available to them. In law, an offence occurs if a parent/carer fails to secure their child's attendance at school and that absence is not authorised by the school.

Sections 444A and 444B of the Education Act 1996 provide that certain cases of unauthorised absence can be dealt with by way of a penalty notice. A penalty notice is a fine of up to £120 and may be issued to a parent/carer as a result of a child's regular non-attendance at school.

The issuing of penalty notices must conform to all requirements of the Human Rights Act and equal opportunities legislation.

**[Name of authority]** has the prime responsibility for developing the protocol within which all partners named in the Education (Penalty Notices) (Wales) Regulations 2013 will operate and **[the Education Welfare Service (EWS)]** will deliver this LA responsibility.

The **[name of authority] [EWS]** will continue to investigate cases of irregular attendance from school and following appropriate casework, instigate legal action if appropriate. However, penalty notices offer a means of swift intervention which **[name of authority]** will use to deal with issues of regular non-attendance before they become entrenched.

The issuing of penalty notices will be based on clear threshold criteria which will need to be applied consistently and equitably across **[name of authority]**. Any person authorised to issue a notice in **[name of authority]** must comply with the guidance set out in this code of conduct.

Parents/carers and pupils are supported at school and local authority (LA) level to overcome barriers to regular attendance through a wide range of assessment and intervention strategies. Sanctions of any

nature are for use only where parental cooperation in this process is either absent or deemed insufficient to resolve the presenting problem.

This sanction is a means of enforcing attendance where there is a reasonable expectation that its use will secure an improvement.

## **2. Legal practicalities**

A penalty notice is £60 if paid within 28 days of receipt of the notice, rising to £120 if paid after 28 days but within 42 days of receipt. If the penalty is not paid in full by the end of the 42 days the LA must either prosecute for the offence or withdraw the notice.

This prosecution is for the offence of failing to secure attendance at school and not for non-payment of the fine. It is brought under section 444 of the Education Act 1996.

Withdrawal of the notice can only take place in very limited circumstances as set out in this code of conduct.

## **3. Who can issue a penalty notice**

A penalty notice may only be issued by **[refer to guidance for options]**.

An authorised officer has discretion when deciding whether to issue a penalty notice to one or more parents/carers of a child. The specific circumstances in each individual case will be the determining factor.

## **4. Circumstances for issuing a penalty notice**

A penalty notice can only be issued in cases of unauthorised absence.

Use of penalty notices will be restricted to **[insert relevant option]**.

Penalty notices may be issued in respect of more than one child in cases where there is more than one poorly attending pupil in a family.

Penalty notices may be considered appropriate in the following circumstances:

- truancy
- persistent lateness (after the register has closed and an unauthorised absence is created).

**[This list is not exhaustive – please refer to guidance when drafting Code of conduct.]**

## 5. Procedure for issuing a fixed penalty notice

**[Name of authority] [EWS]**, in consultation with schools, will be responsible for the decision to issue penalty notices. This will ensure:

- consistent delivery
- relationships between schools and parents/carers are maintained
- coordination with other enforcement sanctions
- coordination between agencies.

Schools, the police and neighbouring LAs are able to request the issue of a notice.

Penalty notices will only be issued by post.

**[Name of authority] [EWS]** will respond to all requests to issue a penalty notice within **[10–14]** school days of receipt and where all relevant information has been supplied.

## 6. Payment of penalty notice

Arrangements for payment will be detailed on the penalty notice.

Payment of the notice discharges the parent's/carer's liability for the period in question and they cannot be subsequently prosecuted under other enforcement powers for the period covered by the notice.

**[Name of authority]** retains any revenue from any penalty notice to cover enforcement costs. It is unlikely that revenue will be greater than enforcement costs. However, any surplus must be surrendered to the Welsh Consolidated Fund.

## 7. Non-payment of penalty notice

Non-payment of a penalty notice will trigger prosecution procedures brought under section 444 of the Education Act 1996.

## 8. Withdrawal of a penalty notice

There is no statutory right of appeal against issuing of a penalty notice.

Once issued a penalty notice may only be withdrawn by **[name of authority]** where:

- proof has been established that the penalty notice has been issued to the wrong person
- the notice ought not to have been issued, i.e. where it has been issued outside the terms of this code of conduct or no offence has been committed.

Where a penalty notice has been withdrawn in accordance with the above, a notice of the withdrawal shall be given to the recipient and any amount paid by way of penalty in pursuance of that notice shall be repaid to the person who paid it. No proceedings shall be continued or instituted against the recipient for the offence in connection with which the withdrawn notice was issued or for an offence under section 444(1A) of the Education Act 1996 arising out of the same circumstances.

## **9. Policy and publicity**

All school attendance policies should include information on issuing penalty notices. This should be brought to the attention of parents/carers.

## **10. Annual review and reporting**

**[Name of authority] [EWS]** will monitor the use of penalty notices as part of the quality assurance process. Data will also be made available to the Welsh Government on request.

This code of conduct will be reviewed on an annual basis and may be amended depending on the outcome of the previous year's operation.

## **11. How to get further information**

Further information on the operation of this code of conduct and penalty notices within **[name of authority]** is available from:

**[Address and contact details of the authority]**

## Annex B: Penalty notice pro-forma

### Penalty notice

#### Section 444A Education Act 1996

Please read the notes overleaf carefully.

#### Part 1

**[If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, or fails to attend regularly at alternative provision, the child's parent/carer is guilty of an offence under section 444 of the Education Act 1996.]**

To: **[Title]**

**[Forenames]**

**[Surname]**

Of: **[Address]**

**[Postcode]**

You are a parent/carer of **[name and address of child]** (called in this notice "the pupil") who **[is a registered pupil at [name of school] and has been directed to attend alternative provision]/[is not registered at a school but for whom the LA has made arrangements to attend alternative educational provision]**.

On **[date][dates]/between [date] and [date]** the pupil failed to attend regularly at the school.

This notice gives you the opportunity to pay a penalty fine instead of being prosecuted for the offence given above. The amount of the penalty is £60. If you pay this penalty within the time limits set out below, no further action will be taken against you in connection with the offence as set out in this notice.

Payment should be made within 28 days. If paid after 28 days but within 42 days the penalty is doubled to £120. Payment should be made to **[LA name and address for payment]** and can be made in person at **[that address]** on **[office opening hours]**, or by posting this notice with a cheque or postal order to **[that address]**.

Late or part payments will not be accepted. No reminders will be sent.

**If payment is not received by [insert date 42 days from date of issue], you will be prosecuted for the offence and could be subject to a fine of up to [£2,500] [£1,000].**

This notice is issued by **[name] [official particulars]** of **[address/employer] [within name of LA]**.

**Date of issue:** .....

## **Part 2**

Please complete the following and return this notice with your payment to **[insert LA address]**:

**Name:** .....

**Address:** .....

I attach payment in the sum of £ .....

**Signed:** .....

**Date:** .....

## **Notes**

### **1. Contact details**

If you have any queries about this notice, please contact **[name of LA]** at **[insert job title and department of contact, telephone number, fax number and address]**.

### **2. Amount of penalty**

The amount of the penalty is as follows.

- If paid within 28 days: £60.
- If paid within 42 days: £120.

### **3. Code of conduct**

This notice is issued in accordance with a local code of conduct drawn up by the **[name of LA]**. Any questions or correspondence about the code should be addressed to the **[name of department within LA]** at **[address and phone no.]**.

#### 4. Withdrawal

This notice may be withdrawn by **[name of LA]** if it is shown that it should not have been issued to you or has not been issued to you in accordance with the local code of conduct. If you believe that the notice was wrongly issued you must contact **[name of LA]** as soon as possible to ask for it to be withdrawn, stating why you believe the notice to have been incorrectly issued. **[Name of LA]** will consider your request and contact you to let you know whether the notice is withdrawn. If the notice is not withdrawn and you do not pay, you will be liable to prosecution for the offence.

#### 5. Payment

You should complete the notice above and send or deliver it to the LA at the address given. **[Insert opening hours of offices, etc.]**

#### 6. Prosecution

If you do not pay the penalty, and the notice is not withdrawn, you will be prosecuted for the offence of **[failing to ensure your child's regular attendance at school]**. You will receive a separate summons for this which will give you notice of the time and date of the court hearing. You will be able to defend yourself and you would be advised to seek legal representation; in some circumstances you may be entitled to publicly funded legal advice/assistance.

## Annex C: Specific examples that local authorities in England have used in codes of conduct where a penalty notice might be issued

A penalty notice can only be issued in cases of unauthorised absence.

Notices should only be issued for offences where the LA is able and willing to prosecute. The LA should be satisfied that there is sufficient evidence to show the parent/carer has committed an offence under section 444(1) of the Education Act 1996.

LAs and schools should consider each pupil and case on an individual basis and assess the level of support and intervention required before deciding on the most suitable strategy for improving an individual pupil's attendance.

Although the following is not an exhaustive list of examples it might be considered appropriate to serve a notice in the following circumstances.

- A child has been referred to EWS and casework is in progress but the parents/carers are not supporting the school's or EWS's attempts to bring about improved attendance and no other legal sanctions are underway.
- Where parents/carers persistently fail to ensure their children attend school and attendance is below **[a set percentage agreed within the authority]** for an identified period with no acceptable reason, and no other legal sanctions are underway.
- Where attendance falls below **[a set percentage agreed within the authority]** for a given period without justification and parental non-attendance prosecution under section 444 of the Education Act 1996 would not be in the public interest.
- Where parents/carers are unwilling to sign a contract offering support and attendance is below an agreed acceptable level over a set period without reasonable justification.
- Term-time leave is taken without agreement with, or notification to, the school following previous term-time leave and the parents/carers have been warned that a fixed penalty notice may result.

- Term-time holidays not agreed by the school when the attendance rate for that child is already at least **[X%]** below the target for that academic year.
- Where a pupil is persistently late and arrives after the register has closed.
- Where a child regularly comes to the attention of the police during school hours for being absent from school without an acceptable reason.
- Pupils located on truancy sweep initiatives (this will only be possible where the facts are already known, e.g. where a child has a history of persistent absence) unless there is a justifiable reason for the absence from school.