



# **Code of Conduct for Penalty Notices**

## **Irregular Attendance at School/ Alternative Education Provision**

## Legal Basis and Rationale

The Welsh Government (WG) Education (Penalty Notice)(Wales) Regulations 2013 states that Local Authorities (LAs) are required by law to adhere to the Education Act 1996 section 444 to include penalty notices as one of the interventions to promote better school attendance. 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” (Guidance Doc 2013 p3).

Regular and punctual attendance of pupils at school and alternative provisions 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 regular attendance at school / alternative provision 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 / education provision.

The LAs within ERW, the South West Consortium being, Powys, Ceredigion, Pembrokeshire, Swansea, Carmarthenshire and Neath Port Talbot have the prime responsibility for developing the protocol within which all partners named in the Education (Penalty Notices) (Wales) Regulations 2013 will operate and each LA will deliver this responsibility. Headteachers, including their authorised deputy and assistant head teachers and the police are able to request a penalty notice in relation to parent/carer of children who have unauthorised absence from school / alternative education provision. The issuing of penalty notices must comply with all the requirements of the Human Rights Act and all Equal Opportunities legislation.

The LAs within ERW will continue to investigate cases of irregular attendance from school / alternative education provision and follow appropriate casework, and will instigate legal action if appropriate. However, penalty notices offer a means of swift intervention which all ERW LAs may 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 be applied consistently and equitably across ERW. All persons authorised to issue (and request the issuing) of a penalty notice must comply with the guidance set out in this code of conduct.

## **Inclusion and equality issues**

The LAs within ERW are committed to the continual raising of achievement of all their pupils. There is an expectation that all its pupils, regardless of their individual circumstances or needs, are able to secure their entitlement to high quality teaching and learning. Regular attendance is therefore critical if all our pupils are to be successful and benefit from the opportunities presented to them. Regular attendance and punctuality are essential to allow children to achieve their full potential during term time at school. Regular attendance also ensures that children are safe and lessens the opportunities to become involved in truancing and associated anti-social activities.

Parents / carers and pupils are supported at a school / alternative education provision level to overcome barriers to regular attendance and 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 additional sanction is a means of enforcing attendance where there is a reasonable expectation that its use will secure an improvement.

## **Policy and Publicity**

In order to ensure parents and carers are fully aware of the penalty notice legislation, it is expected that all schools, with the support of their governing body, clearly outline penalty notice information in their attendance policy and provide information to parents in writing at the beginning of each academic year (Appendix 1).

Under section 576 of the Education Act 1996 a 'parent' means:

- all natural parents, whether married or not;
- any person who, although not a natural parent, has parental responsibility for the child;
- any person who, although not a natural parent, has care of the child.

## **Legal practicalities**

- A penalty notice is £60 if paid within 28 days of receipt of the notice;
- this rises 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 local authority must either prosecute for the offence or withdraw the notice.

The prosecution proceedings will be for the offence of failing to secure the child's regular attendance at school and not for non-payment of the penalty fine. The prosecution will be brought under section 444 of the Education Act 1996.

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

### **The Issue of a penalty notice**

In order to avoid the issuing of duplicate penalty notices the management and processing arrangements in ERW will remain the sole responsibility of each LA. An authorised officer will have the discretion to decide 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.

Each LA will work in consultation and partnership with schools and local police officers to ensure that:

- the child has to be registered as a pupil at the school at which the headteacher or his/her authorised deputy or assistant head teacher is making the request for the penalty notice;
- 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;
- the use of penalty notices will be restricted to the maximum of three notices per parent per pupil in a rolling 12 month period;
- penalty notices may be issued for more than one child in cases where there is more than one poorly attending pupil in a family;
- there will be no restriction on the number of times a parent may receive a formal warning of a possible penalty notice;
- if the recipient of a penalty notice moves to another LA area in Wales then the penalty notice moves with them;
- penalty notices cannot be issued if legal proceedings against the parent/carer under section 444 of the Education Act 1996 have commenced or are contemplated at the time of request (Regulations section 14 (b)).

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

The key criteria should be as follows:

- when a pupil has a minimum of 10 sessions (five school days) that have been lost due to unauthorised absences during the current term and this brings the pupils overall pupil attendance to below 90% in the school year to date (these absences do not have to be consecutive);

- unauthorised absences of at least 10 sessions (5 school days) due to holidays in term-time if the absences take the pupils overall school attendance to below 90% in the school year to date (these absences do not have to be consecutive);
- persistent late arrival at school i.e. after the register has closed ( 'U' code as in the Codes Guidance Document 2010). Persistent for the purpose of this document means at least 10 sessions of late arrival within a term; these do not need to be consecutive but should bring the pupils overall school attendance to under 90% in the school year to date;

It should be noted that penalty notices will only be issued by post and never as an instant action, e.g. during a Truancy Sweep. This will enable officers to ensure that all evidential requirements are in place and will limit the health and safety risks to individuals.

#### **School application for issuing a penalty notice**

Where a school has identified that a period of unauthorised absence has occurred, a request to the LA for a penalty notice can be submitted. Each headteacher can, on an annual basis, authorise their nominated deputy or assistant Head Teacher to request for penalty notices (Appendix 2).

The school paperwork should comprise of:

- confirmation that information was sent to all parents at the start of the academic year which clearly states that parents may receive a penalty notice;
- if referring to a holiday in term-time, then a record of the holiday request form.
- a copy of the pupil's registration document;
- completion of the penalty notice request form (Appendix 3).

A penalty notice will not be issued in respect of Looked After Children (LAC) who are subject to on-going LA intervention.

#### **Parental request for holidays in term time (unauthorised by school)**

Where the penalty notice is requested from a school in response to a parental request for unauthorised absence (holiday related unauthorised absence), the formal warning letter and 15 day improvement period will not apply.

The LA will only consider issuing penalty notices requested by a school in response to a parental request for unauthorised absence where the school has provided the necessary paperwork. This paperwork should comprise of:

- a copy of the information sent to all parents during the current academic year which clearly states that parents may receive a penalty notice;
- a copy of the holiday request form submitted by parent.
- relevant pupil attendance or registration certificate;
- completed penalty notice request form (Appendix 3).

### **Procedure for issuing a penalty notice**

The LA will respond to all requests to issue penalty notices within ten school days of receipt and where it is satisfied that all relevant information has been supplied and that the initiation of the penalty notice is appropriate (Appendix 4). Each LA within ERW has the prime responsibility for developing the protocol within which all partners named in the Education (Penalty Notices (Wales) Regulations 2013 will operate and each LA will deliver this LA responsibility. Requests can be generated by a headteacher, their nominated deputies, the police and neighbouring local authorities. The LA must ensure that issuing a penalty notice would not conflict with another legal intervention strategy contemplated or commenced under the Education Act 444(1) or 444(1A).

The procedure is as follows:

- LA receive a request for a penalty notice and relevant checks will be made (Appendix 3);
- LA to send a formal written warning to the parent/carer notifying them that they may receive a penalty notice. Absences that occur due to holidays in term-time will not receive a warning (Appendix 5).
- LA set a period of 15 school days to allow the parent/carer to respond. During the fifteen days, parents/carers would have the right to provide any evidence they may wish to present to the school, including medical evidence, to argue that the penalty notice should not be issued.
- It will be for the head-teacher/nominated person to determine whether the evidence is accepted and the register amended.

For example, if the absences are supported by medical evidence then the registers may have to be corrected using the appropriate code. In such cases the penalty notice may not be issued by the Local Authority.

If evidence is not provided or the head-teacher/nominated person does not accept the absences, then a penalty notice can be issued by the LA by first class post (Appendix 6);

- if the payment of £60 is made within 28 days of receipt of the notice there will be no further action;

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- if the payment of £60 is not made, this rises to £120 if paid after 28 days but within 42 days of receipt of the original notice;
- if payment of £120 is made within 42 days of receipt of the original notice there will be no further action;
- if payment is not made then the case will either be withdrawn or result in prosecution under Education Act 1996 section 444.

#### **Payment of a penalty notice**

- Arrangements for payment will be detailed on the penalty notice.
- Once paid the parent/carer's liability for the period in question is discharged and they cannot then be subsequently prosecuted under other enforcement powers (section 444 of the Education Act 1996) for the same period covered by the notice.
- The LA will retain the revenue from penalty notices to cover enforcement costs. However, any surplus must be surrendered to the Welsh Consolidated Fund.
- There is no facility for payment by instalment

#### **Non-Payment of a penalty notice**

Non-payment of a penalty notice may result in a prosecution under Section 444 of the Education Act 1996.

#### **Withdrawal of a penalty notice**

There is no statutory right of appeal against issuing of a penalty notice, but where a parent contests the issuing of a penalty notice they can submit any complaints to the LA and/or opt to face proceedings in the Magistrates' Court under section 444 of the Education Act 1996 where all of the issues relating to their penalty notice can be fully debated.

Once issued, a penalty notice can only be withdrawn if the LA is satisfied that:

- the penalty notice was issued to the wrong person;
- the penalty notice ought not to have been issued, i.e. where it has been issued outside of the terms of this Code of Conduct or no offence has been committed;
- the circumstances of the case warrant its withdrawal;
- the notice contains material errors.

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

### **Annual review and reporting**

The LA will evaluate the effectiveness of penalty notices every year and amend its general enforcement strategy as appropriate. This report will be made available to the head of service.

### **How to get further information**

Further information on the operation of this Code of Conduct and Penalty notices within **named LA is available from:**

**Education Department / Learning Services etc**

### **Appendices**

- Appendix 1: School letter
- Appendix 2: Headteachers authorisation form.
- Appendix 3: Penalty notice request form
- Appendix 4: LA checklist
- Appendix 5: Warning notice.
- Appendix 6: Penalty notice letter

### **References**

The Children Act 1989 - the definition of “parent”;  
“Parents” and “Parental Responsibility” (Welsh Government 2007)  
The Education Act 1996 – section 444;  
The Education (Penalty notices) (Wales) Regulations 2013;  
United Nations Convention on the Right of the Child (the right to an education Article 28).





