



# Education and Skills Act 2008

## 2008 CHAPTER 25

### PART 1

#### DUTY TO PARTICIPATE IN EDUCATION OR TRAINING: ENGLAND

### CHAPTER 5

#### ATTENDANCE NOTICES

##### *Failure to comply with attendance notice*

#### **51 Offence of failure to comply with attendance notice**

- (1) It is an offence for a person to whom an attendance notice has been given to fail, without reasonable excuse, to comply with the requirements of the attendance notice.
- (2) It is a defence for a person charged with an offence under subsection (1) to show that he or she is, and since the giving of the attendance notice has been, fulfilling the duty imposed by section 2.
- (3) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

#### **52 Restrictions on proceedings for offences under section 51**

- (1) This section applies to proceedings for an alleged offence under section 51 relating to an attendance notice.
- (2) The proceedings may not be instituted except by the local education authority which gave the attendance notice.
- (3) The proceedings may not be instituted if the attendance notice has been—
  - (a) rescinded on an appeal by virtue of section 49, or

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- (b) revoked under section 50(8).
- (4) The proceedings may not be instituted unless—
  - (a) a penalty notice has been given under section 53 in respect of the alleged offence and has not been rescinded on an appeal by virtue of section 54,
  - (b) the penalty imposed by the notice has not been paid in accordance with the notice, and
  - (c) an attendance panel established by the local education authority under section 48 has, on being consulted by the local education authority about the question whether the proceedings should be instituted, recommended to the authority that the proceedings should be instituted.
- (5) Regulations—
  - (a) must make provision to secure that, before a recommendation under subsection (4)(c) is made by an attendance panel in a person's case, the person has an opportunity to make representations to the panel, and
  - (b) may make other provision as to the procedure to be followed in relation to the making of such recommendations.
- (6) The proceedings may not be instituted after this Part has ceased to apply to the person alleged to have committed the offence under section 51.
- (7) Subsection (6) does not affect proceedings for such an offence by a person which were instituted while this Part applied to the person.

### **53 Failure to comply with attendance notice: penalty notice**

- (1) Where a local education authority which has given an attendance notice to a person under section 46 has reason to believe that the person has committed an offence under section 51 relating to the notice, the authority may give the person a penalty notice in respect of the offence.
- (2) A penalty notice is a notice offering a person the opportunity of discharging any liability to conviction in respect of the offence to which the notice relates by payment of a penalty in accordance with the notice.
- (3) Where a person is given a penalty notice—
  - (a) proceedings for the offence to which the notice relates may not be instituted before the end of such period as may be prescribed; and
  - (b) the person cannot be convicted of the offence to which the notice relates if a penalty is paid in accordance with the notice.
- (4) Regulations may make—
  - (a) provision as to the form and content of penalty notices;
  - (b) provision as to the amount of any penalty and the time by which it is to be paid (but subject to subsection (6));
  - (c) provision as to the methods by which penalties may be paid;
  - (d) provision as to the records which are to be kept in relation to penalty notices;
  - (e) provision for or in connection with the withdrawal of a penalty notice, or its ceasing to have effect, in prescribed circumstances, including—
    - (i) provision about repayment of any amount paid by way of penalty under a penalty notice which is withdrawn or ceases to have effect; and

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- (ii) provision prohibiting the institution or continuation of proceedings for the offence to which such a notice relates;
  - (f) 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;
  - (g) provision as to the action to be taken if a penalty is not paid in accordance with a penalty notice;
  - (h) provision for or in connection with the preparation of codes of conduct in relation to the giving of penalty notices;
  - (i) such other provision in relation to penalties under penalty notices or in relation to penalty notices as the Secretary of State thinks necessary or expedient.
- (5) Without prejudice to section 166(6), regulations under subsection (4)(b) may make provision for penalties of different amounts to be payable in different cases or circumstances (including provision for the penalty payable under a penalty notice to differ according to the time by which it is paid).
- (6) The amount of any penalty payable by virtue of regulations under subsection (4)(b) must not exceed the amount for the time being specified as level 1 on the standard scale of fines for summary offences.

#### **54 Penalty notices: appeal arrangements**

- (1) A local education authority in England must make arrangements for enabling a young person to whom a penalty notice is given by the authority under section 53 to appeal against the notice.
- (2) The arrangements must provide for any appeal under the arrangements to be to an attendance panel established under section 48.
- (3) Regulations may make provision about the making of appeals under arrangements under this section, including provision—
  - (a) as to the procedure on such appeals; and
  - (b) as to the powers of an attendance panel in relation to such appeals.

#### **55 Non-participation fines: interpretation**

- (1) In this section and sections 56 to 59—
  - “non-participation fine” means a fine imposed—
    - (a) for an offence under section 51, or
    - (b) in respect of a failure to comply with any sentence imposed for such an offence;
  - “the relevant sum”, in relation to a non-participation fine, means—
    - (a) the non-participation fine,
    - (b) any surcharge ordered under section 161A of the Criminal Justice Act 2003 (c. 44) (surcharges) to be paid solely in relation to the offence, and

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(c) any costs ordered by a court to be paid by the person on whom the fine was imposed in connection with the offence or proceedings relating to the offence or any sentence imposed (including proceedings on appeal); “relevant local education authority”, in relation to a non-participation fine, means the local education authority which issued the penalty notice under section 53 in respect of the offence to which the fine relates.

(2) References in those sections to a fine being imposed are, in the case of a fine varied or confirmed on appeal, references to its being varied or confirmed.

## **56 Enforcement of non-participation fine etc: person reaching 18**

(1) This section applies where—

- (a) a non-participation fine has been imposed on a person aged under 18, and
- (b) the relevant sum, or any part of it, remains unpaid when the person reaches the age of 18.

(2) When the person reaches the age of 18, the relevant sum ceases to be enforceable as a sum adjudged to be paid by a conviction of a magistrates' court.

(3) Accordingly, after the person has reached the age of 18—

- (a) the normal enforcement provisions do not apply in relation to the relevant sum, and
- (b) the normal enforcement powers are not exercisable in relation to the relevant sum,

except so far as necessary to permit current enforcement processes to be concluded.

(4) Any order or warrant made or issued in relation to the non-participation fine, other than—

- (a) an order under section 75 of the Magistrates' Courts Act 1980 (c. 43) (power to dispense with immediate payment),
- (b) an order under section 85A of that Act (variation of instalments of sum adjudged to be paid by conviction), or
- (c) a current enforcement process,

ceases to have effect when the person reaches the age of 18.

(5) A magistrates' court may, after the person has reached the age of 18, order that payment of so much of the relevant sum as remains unpaid may be enforced as if it were a sum due to the relevant local education authority in pursuance of a judgment or order of a county court.

(6) An order under subsection (5) may not be made unless—

- (a) the person appears to the court to have sufficient means to pay the sum forthwith, and
- (b) any current enforcement processes have been concluded.

(7) For the purposes of this section, “current enforcement process” means an order or warrant mentioned in paragraph (a), (b) or (c) and any reference to its conclusion is to be read in accordance with that paragraph—

- (a) a warrant of control—

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- (i) issued under section 76 of the Magistrates' Courts Act 1980 (warrants of control etc) for the purpose of recovering the relevant sum (or any part of it), and
    - (ii) by virtue of which an enforcement agent has, before the person reaches the age of 18, taken control of any goods of the person under Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (c. 15) (taking control of goods),is concluded when property in all goods of the person has, in accordance with paragraph 6 of that Schedule, ceased to be bound by virtue of the warrant;
  - (b) an order in force when the person reaches the age of 18 under—
    - (i) section 81(1)(b) of the Magistrates' Courts Act 1980 (enforcement of fines imposed on young offenders), or
    - (ii) section 137(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (power to order parent or guardian to pay fine, costs, compensation or surcharge),requiring that the relevant sum (or any part of it) be paid by a parent or guardian of the person is concluded when it is revoked;
  - (c) an order in force when the person reaches the age of 18 under section 39 of the Criminal Justice and Immigration Act 2008 (c. 4) (youth default orders) in respect of the relevant sum (or any part of it) is concluded when it is revoked.
- (8) Subsection (2) does not affect the exercise of any power, or any order made, in respect of the offence before the person reached the age of 18.
- (9) The Lord Chancellor may by order amend subsection (4) or (7) by—
- (a) adding to it provision about any warrant or order that may be issued or made, or step that may be taken, in relation to a non-participation fine before the person on whom it is imposed reaches the age of 18, or
  - (b) removing any such provision for the time being made by that subsection.

**57 Enforcement of non-participation fine etc: fine imposed on person aged 18 or over**

- (1) This section applies where a non-participation fine is imposed on a person who has reached the age of 18.
- (2) Payment of the relevant sum may be enforced as if it were a sum due to the relevant local education authority in pursuance of a judgment or order of a county court.
- (3) The relevant sum is not enforceable as a sum adjudged to be paid by a conviction of a magistrates' court.
- (4) Accordingly—
- (a) the normal enforcement provisions do not apply in relation to the relevant sum, and
  - (b) the normal enforcement powers are not exercisable in relation to the relevant sum.
- (5) But subsections (3) and (4) do not prevent a magistrates' court, on imposing the fine, from—
- (a) making an order under section 75 of the Magistrates' Courts Act 1980 (c. 43) (power to dispense with immediate payment), or

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- (b) making an order under section 80 of that Act (application of money found on defaulter to satisfy sum adjudged) for the person to be searched before leaving the precincts of the court-house; and subsections (2) and (3) of that section apply in relation to a search in pursuance of any such order.

## **58 Enforcement of non-participation fine: further provisions**

- (1) In sections 56 and 57, “the normal enforcement provisions” means—
  - (a) Part 3 of the Magistrates' Courts Act 1980 (satisfaction and enforcement);
  - (b) sections 135 and 136 of that Act (committal and detention for short period);
  - (c) section 108 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (detention of persons aged at least 18 but under 21 for default or contempt);
  - (d) Schedules 5 and 6 to the Courts Act 2003 (c. 39) (collection of fines etc and discharge of fines by unpaid work); and
  - (e) section 300 of the Criminal Justice Act 2003 (c. 44) (power to impose unpaid work requirement or curfew requirement on fine defaulter).
- (2) In sections 56 and 57, “the normal enforcement powers”, in relation to any sum, means—
  - (a) any power of a magistrates' court or an officer of such a court—
    - (i) to enforce payment of the sum; or
    - (ii) which is exercisable in consequence of a default in payment of the sum or any part of it;
  - (b) in the case of a fine imposed, varied or confirmed by a decision of any other court on an appeal, any power of that other court to enforce the decision.
- (3) The Lord Chancellor may by order amend subsection (1) or (2) by—
  - (a) adding a reference to any statutory provision which relates to enforcement of fines, costs or surcharges, or to any power to enforce payment of such sums, or
  - (b) removing a reference to any provision or power for the time being listed in that section.
- (4) Where—
  - (a) a sum is payable at a time or times specified by—
    - (i) an order under section 75 of the Magistrates' Courts Act 1980 (c. 43) (power to dispense with immediate payment), or
    - (ii) orders under that section and section 85A of that Act (variation of instalments of sum adjudged to be paid by conviction), and
  - (b) the sum would (but for this subsection) be treated by virtue of section 56 or 57 as due to a local education authority in pursuance of a judgment or order of a county court,

the sum is to be treated as so payable to that authority at the time or times referred to in paragraph (a) by virtue of an order of the county court under section 71(1) of the County Courts Act 1984 (c. 28) (satisfaction of judgments and orders for payment of money).

## **59 Application of sums recovered by virtue of section 56 or 57**

- (1) The Lord Chancellor may by regulations make provision as to the application of amounts recovered by local education authorities by virtue of sections 56 and 57.

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- (2) Any such regulations must make provision for securing that any such amount recovered, so far as not—
  - (a) attributable to county court enforcement costs, or
  - (b) paid to a magistrates' court, or to an officer of such a court,is repaid to the person on whom the non-participation fine to which it relates was imposed (or other person who paid the amount).
- (3) Regulations under this section may make provision, in particular, as to—
  - (a) the extent to which amounts recovered by virtue of section 56 or 57 are attributable to county court enforcement costs;
  - (b) further payments, or repayments, to be made in consequence of any appeal, or of any remission or variation of a non-participation fine or any other amount required to be paid.
- (4) In this section, “county court enforcement costs” in relation to a non-participation fine means costs incurred by a local education authority in connection with the recovery of the relevant sum in a county court.