



Education Act 1996

1996 CHAPTER 56

PART VI

SCHOOL ADMISSIONS, ATTENDANCE AND CHARGES

CHAPTER II

SCHOOL ATTENDANCE

School attendance orders

437 School attendance orders.

- (1) If it appears to a local education authority that a child of compulsory school age in their area is not receiving suitable education, either by regular attendance at school or otherwise, they shall serve a notice in writing on the parent requiring him to satisfy them within the period specified in the notice that the child is receiving such education.
- (2) That period shall not be less than 15 days beginning with the day on which the notice is served.
- (3) If—
 - (a) a parent on whom a notice has been served under subsection (1) fails to satisfy the local education authority, within the period specified in the notice, that the child is receiving suitable education, and
 - (b) in the opinion of the authority it is expedient that the child should attend school,

the authority shall serve on the parent an order (referred to in this Act as a “school attendance order”), in such form as may be prescribed, requiring him to cause the child to become a registered pupil at a school named in the order.

Status: Point in time view as at 01/09/2009.

Changes to legislation: Education Act 1996, Cross Heading: School attendance orders is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (4) A school attendance order shall (subject to any amendment made by the local education authority) continue in force for so long as the child is of compulsory school age, unless—
- (a) it is revoked by the authority, or
 - (b) a direction is made in respect of it under section 443(2) or 447(5).
- (5) Where a maintained ^{F1} . . . school is named in a school attendance order, the local education authority shall inform the governing body and the head teacher.
- (6) Where a maintained ^{F1} . . . school is named in a school attendance order, the governing body (and, in the case of a maintained school, the local education authority) shall admit the child to the school.
- (7) Subsection (6) does not affect any power to exclude from a school a pupil who is already a registered pupil there.
- (8) In this Chapter—
- [^{F2}“maintained school” means any community, foundation or voluntary school or any community or foundation special school not established in a hospital; and]
- ^{F3}
...

Textual Amendments

- F1** Words in s. 437(5)(6) repealed (1.9.1999) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 113(a), **Sch.31** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**
- F2** Definition substituted (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para. 113(b)** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**
- F3** Words in s. 437(8) repealed (27.2.2007 for E., 1.9.2009 for W.) by **Education and Inspections Act 2006** (c. 40), ss. 4(2), 188(3), **Sch. 18 Pt. 6**; S.I. 2006/3400, art. 6(a)(g); S.I. 2009/1027, art. 3(a)(d)

438 Choice of school: child without statement of special educational needs.

- (1) This section applies where a local education authority are required by virtue of section 437(3) to serve a school attendance order in respect of a child, other than a child for whom they maintain a statement under section 324.
- (2) Before serving the order, the authority shall serve on the parent a notice in writing—
- (a) informing him of their intention to serve the order,
 - (b) specifying the school which the authority intend to name in the order and, if they think fit, one or more other schools which they regard as suitable alternatives, and
 - (c) stating the effect of subsections (3) to (6).
- (3) If the notice specifies one or more alternative schools and the parent selects one of them within the period of 15 days beginning with the day on which the notice is served, the school selected by him shall be named in the order.
- (4) If—
- ^{F4}(a) within the period mentioned in subsection (3) the parent applies for the child to be admitted to a school maintained by a local education authority and, where

Status: Point in time view as at 01/09/2009.

Changes to legislation: Education Act 1996, Cross Heading: School attendance orders is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

that authority are not the authority by whom the notice was served, notifies the latter authority of the application, and]

(b) the child is offered a place at the school as a result of the application, that school shall be named in the order.

^{F5}[(5) If—

(a) within the period mentioned in subsection (3), the parent applies to the local education authority by whom the notice was served for education to be provided at a school which is not a school maintained by a local education authority, and

(b) the child is offered a place at the school and the authority are required by virtue of regulations under section 18(3) to pay the fees payable in respect of the education provided for him at the school,

that school shall be named in the order.]

(6) If, within the period mentioned in subsection (3)—

(a) the parent—

(i) applies for the child to be admitted to a school which is not maintained by a local education authority ^{F6} . . . , and in respect of which no application is made under subsection (5), and

(ii) notifies the local education authority by whom the notice was served of the application,

(b) the child is offered a place at the school as a result of the application, and

(c) the school is suitable to his age, ability and aptitude and to any special educational needs he may have,

that school shall be named in the order.

Textual Amendments

F4 S. 438(4)(a) substituted (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para. 114(a)** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**.

F5 S. 438(5) substituted (1.9.1999 for certain purposes, otherwise prosp.) by 1998 c. 31, ss. 140(1), 145(3), **Sch. 30 para. 114(b)** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**

F6 Words in s. 438(6)(a)(i) repealed (1.9.1999) by 1998 c. 31, s. 140(1)(3), **Sch. 30 para. 114(c)**, **Sch.31** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**

439 Specification of schools in notices under section 438(2).

(1) Subject to subsection (3), a local education authority shall not, if it appears to them that subsection (2) applies in relation to any school, specify the school in a notice under section 438(2) unless they are responsible for determining the arrangements for the admission of pupils to the school.

(2) This subsection applies where, if the child concerned were admitted to the school in accordance with a school attendance order resulting from the notice, the number of pupils at the school in the child's age group would exceed the number [^{F7} [^{F8} determined in accordance with section 89 of the School Standards and Framework Act 1998 (determination of admission numbers))] as the number] of pupils in that age group which it is intended to admit to the school in the school year in which he would be admitted.

Status: Point in time view as at 01/09/2009.

Changes to legislation: Education Act 1996, Cross Heading: School attendance orders is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (3) Subsection (1) does not prevent a local education authority specifying in a notice under section 438(2) any maintained ^{F9} . . . school if—
- (a) there is no maintained ^{F9} . . . school in their area which—
 - (i) the authority are not (apart from this subsection) prevented by subsection (1) from specifying, and
 - (ii) is, in the opinion of the authority, a reasonable distance from the home of the child concerned, and
 - (b) in the opinion of the authority, the school in question is a reasonable distance from the home of the child concerned.
- (4) A local education authority shall not specify in a notice under section 438(2) a school from which the child concerned is permanently excluded.
- ^{F10}[(4A) A local education authority shall not specify a school in a notice under section 438(2) if the admission of the child concerned would result in prejudice of the kind referred to in section 86(3)(a) of the School Standards and Framework Act 1998 (parental preferences) by reason of measures required to be taken as mentioned in subsection (4) of that section.]
- (5) Before deciding to specify a particular maintained ^{F9} . . . school in a notice under section 438(2) a local education authority shall consult—
- (a) the governing body, and
 - (b) if another local education authority are responsible for determining the arrangements for the admission of pupils to the school, that authority.
- (6) Where a local education authority decide to specify a particular maintained ^{F9} . . . school in a notice under section 438(2) they shall, before serving the notice, serve notice in writing of their decision on—
- (a) the governing body and head teacher of the school, and
 - (b) if another local education authority are responsible for determining the arrangements for the admission of pupils to the school, that authority.
- (7) A governing body or local education authority on whom notice is served under subsection (6) may, within the period of 15 days beginning with the day on which the notice was received, apply to the Secretary of State for a direction under this section and, if they do so, shall inform the local education authority which served the notice.
- (8) Where the Secretary of State gives a direction under this section, the school or schools to be specified in the notice under section 438(2) shall be determined in accordance with the direction.

Textual Amendments

- F7** Words in s. 439(2) substituted (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para. 115(2)** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), Sch. 1
- F8** Words in s. 439(2) substituted (1.10.2002 for E., 1.2.2006 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 4 para. 14** (with ss. 210(8), 214(4)); S.I. 2002/2439, art. 3 (with art. 4, Sch. paras. 310); S.I. 2006/172, art. 4, Sch.
- F9** Words in s. 439(3)(5)(6) repealed (1.9.1999) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 115(3), **Sch.31** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**.
- F10** S. 439(4A) inserted (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para. 115(4)** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**

Status: Point in time view as at 01/09/2009.

Changes to legislation: Education Act 1996, Cross Heading: School attendance orders is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Modifications etc. (not altering text)

- C1** S. 439 modified (temp. from 1.9.1998) by S.I. 1998/1948, reg. 3, **Sch. para. 8**
- C2** S. 439 applied (with modifications) (18.10.1999) by S.I. 1999/2666, reg. 8, **Sch. paras. 1(a), 2-8**
s. 439 applied (with modifications) (1.9.1999) by S.I. 1999/2800, reg. 7, **Sch. paras. 1, 2-8**
- C3** S. 439 applied (with modifications) (E.) (8.5.2003) by **The New School (Admissions) (England) Regulations 2003 (S.I. 2003/1041), regs. 1(1), 9, Sch. para. 1(a)**
- C4** S. 439 applied (with modifications) (W.) (1.2.2006) by **The New School (Admissions) (Wales) Regulations 2006 (S.I. 2006/175), regs. 1(1), 9, Sch. (with reg. 2(2))**
- C5** S. 439(2) transitional provisions for effects of 2002 c. 32, Sch. 4 para. 14 (W.) (1.2.2006) by **The Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2006 (S.I. 2006/173), regs. 1(1), 9**

440 Amendment of order at request of parent: child without statement of special educational needs.

- (1) This section applies where a school attendance order is in force in respect of a child, other than a child for whom the local education authority maintain a statement under section 324.
- (2) If at any time—
 - (a) the parent applies for the child to be admitted to a school maintained by a local education authority^{F11}. . . which is different from the school named in the order,
 - (b) the child is offered a place at the school as a result of the application, and
 - (c) the parent requests the local education authority by whom the order was served to amend it by substituting that school for the one currently named,the authority shall comply with the request.
- (3) If at any time—^{F12}
 - (a) the parent applies to the authority for education to be provided for the child at a school which is not a school maintained by a local education authority and which is different from the school named in the order,
 - (b) the child is offered a place at the school and the authority are required by virtue of regulations under section 18(3) to pay the fees payable in respect of the education provided for him at the school, and]
 - (c) the parent requests the authority to amend the order by substituting that school for the one currently named,the authority shall comply with the request.
- (4) If at any time—
 - (a) the parent applies for the child to be admitted to a school which is not maintained by a local education authority^{F13}. . . , which is different from the school named in the order and in respect of which no application is made under subsection (3),
 - (b) as a result of the application, the child is offered a place at the school, being a school which is suitable to his age, ability and aptitude and to any special educational needs he may have, and
 - (c) the parent requests the authority to amend the order by substituting that school for the one currently named,the authority shall comply with the request.

Status: Point in time view as at 01/09/2009.

Changes to legislation: Education Act 1996, Cross Heading: School attendance orders is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Textual Amendments

- F11** Words in S. 440(2)(a) repealed (1.9.1999) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 116(a), **Sch.31** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**.
- F12** S. 440(3)(a)(b) substituted (1.9.1999 for certain purposes, otherwise prosp.) by 1998 c. 31, ss. 140(1), 145(3), **Sch. 30 para. 116(b)** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**
- F13** Words in S. 440(4)(a) repealed (1.9.1999) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 116(c), **Sch.31** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**

441 Choice of school: child with statement of special educational needs.

- (1) Subsections (2) and (3) apply where a local education authority are required by virtue of section 437(3) to serve a school attendance order in respect of a child for whom they maintain a statement under section 324.
 - (2) Where the statement specifies the name of a school, that school shall be named in the order.
 - (3) Where the statement does not specify the name of a school—
 - (a) the authority shall, ^{F14} . . . , amend the statement so that it specifies the name of a school, and
 - (b) that school shall then be named in the order.
- [^{F15}(3A) An amendment to a statement required to be made under subsection (3)(a) shall be treated for the purposes of Schedule 27 as if it were an amendment proposed following a periodic review (within the meaning of that Schedule).]
- (4) Where—
 - (a) a school attendance order is in force in respect of a child for whom the local education authority maintain a statement under section 324, and
 - (b) the name of the school specified in the statement is changed,
 the local education authority shall amend the order accordingly.

Textual Amendments

- F14** Words in s. 441(3)(a) repealed (1.1.2002 (E.) and 1.4.2002 (W.)) by 2001 c. 10, s. 42(1)(6), Sch. 8 para. 15(2), **Sch. 9** (with s. 43(13)); S.I. 2001/2217, art. 5, **Sch. Pt. II** (as amended by S.I. 2001/2614, art. 4); S.I. 2001/3992, art. 5, **Sch. Pt. II**
- F15** S. 441(3A) inserted (1.1.2002 (E.) and 1.4.2002 (W.)) by 2001 c. 10, s. 42(1), **Sch. 8 para. 15(3)** (with s. 43(13)); S.I. 2001/2217, art. 5, **Sch. Pt. II** (as amended by S.I. 2001/2614, art. 4); S.I. 2001/3992, art. 5, **Sch. Pt. II**

442 Revocation of order at request of parent.

- (1) This section applies where a school attendance order is in force in respect of a child.
- (2) If at any time the parent applies to the local education authority requesting that the order be revoked on the ground that arrangements have been made for the child to receive suitable education otherwise than at school, the authority shall comply with the request, unless they are of the opinion that no satisfactory arrangements have been made for the education of the child otherwise than at school.

Status: Point in time view as at 01/09/2009.

Changes to legislation: Education Act 1996, Cross Heading: School attendance orders is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (3) If a parent is aggrieved by a refusal of the local education authority to comply with a request under subsection (2), he may refer the question to the Secretary of State.
- (4) Where a question is referred to the Secretary of State under subsection (3), he shall give such direction determining the question as he thinks fit.
- (5) Where the child in question is one for whom the authority maintain a statement under section 324—
 - (a) subsections (2) to (4) do not apply if the name of a school or other institution is specified in the statement, and
 - (b) in any other case a direction under subsection (4) may require the authority to make such amendments in the statement as the Secretary of State considers necessary or expedient in consequence of his determination.

Status:

Point in time view as at 01/09/2009.

Changes to legislation:

Education Act 1996, Cross Heading: School attendance orders is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.