

# EDUCATION AND SKILLS ACT 2008

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Local education authority*

#### *Legal background*

#### **Part 1: Duty to participate in education or training: England**

#### *Chapter 5: Attendance notices*

#### *Sections 45 to 50: Initial steps, attendance notices, attendance panels and appeals*

49. These sections set out the procedure that a local education authority may follow should it believe that a person is failing without reasonable excuse to fulfil the main duty to participate under section 2. The Government intends to issue guidance to local education authorities to assist them in interpreting what would be a reasonable excuse. [Section 45](#) makes clear that before commencing this process, the local education authority must ensure that appropriate support has been made available and that the young person has been given the opportunity to take advantage of services designed to support participation. It provides that the local education authority must then give the young person 15 days' notice in writing of its intention to issue an attendance notice. If the only way in which the young person is failing to fulfil the duty is that the relevant education or training in which he or she is participating is not "sufficient" (not enough hours in the relevant period), it is for the local education authority to show that there is no reasonable excuse for not having made such arrangements, putting the burden of proof on the local education authority rather than on the young person. This may arise, for example, where a young person needs to await results for one course before enrolling on a subsequent course.
50. If the young person fails to participate without reasonable excuse after the local education authority has given 15 days' notice in writing, [section 46](#) enables the local education authority to issue an attendance notice. The attendance notice must specify the type of provision that should be undertaken, a description of the course, and details of where and when the young person should attend. An attendance notice ceases to have effect when a young person is no longer subject to the duty to participate, for whatever reason.
51. [Section 47](#) provides that the education or training specified in the attendance notice must be a course provided at a school, college or other education establishment or a contract of apprenticeship, and be a way of fulfilling the section 2 duty. It must be suitable to the person, having regard to their age, ability and aptitude and any learning difficulty he or she may have, and the local education authority must consult the provider of education or training.
52. [Section 48](#) requires a local education authority to set up an attendance panel in accordance with regulations, with a chair that is not a member of the authority.

The panel's functions include hearing appeals against attendance notices (as set out in [section 49](#)), appeals against penalty notices (set out in [section 54](#)), making recommendations to local education authorities, and considering local education authorities' intentions to commence court proceedings. Regulations will specify how the panel must be constituted and its procedures in carrying out those functions. Regulations under section 48 may also apply sections 173 to 174 of the Local Government Act 1972 in relation to an appeals panel which put beyond doubt the kinds of allowances that could be paid.

53. [Section 50](#) provides that a local education authority can vary or revoke an attendance notice in certain circumstances, and can specify additional education or training. In particular, where the education or training specified in the notice ends, and the young person is still subject to the duty, the local education authority may specify additional education or training.

### ***Sections 51 to 60: Failure to comply with attendance notice***

54. [Section 53](#) enables a local education authority to issue a penalty notice which gives the young person the opportunity to make a payment to the local education authority in order to release him or her from the possibility of being convicted for the offence of failing to comply with an attendance notice. Regulations can be made to specify the contents of penalty notices and to set out the amount of the penalty (which can be different in different circumstances). The amount of the financial penalty must not exceed the maximum fine that could be imposed on conviction of the offence, which is level 1 on the standard scale of fines for summary offences.
55. There is an enforcement procedure if a young person fails to comply with an attendance notice. [Section 51](#) sets out that non-compliance is a criminal offence and liable to a fine of a maximum of level 1 on the standard scale. Currently level 1 is a maximum of £200, with the actual amount in each case being decided by the court in light of individual circumstances. [Section 52](#) provides that proceedings cannot be commenced unless a penalty notice has first been given under [section 53](#) and has not been paid. The attendance panel must have recommended that proceedings be instituted. Proceedings cannot be started after the young person has ceased to be subject to the duty to participate, or if the young person is participating in some way that is different from the provision specified in the notice but nevertheless fulfils the duty to participate.
56. [Section 54](#) sets up the procedure for appealing to an attendance panel against a penalty notice, which may be further provided for in regulations made under this section.
57. [Sections 55 to 60](#) provide that ordinary adult fine enforcement procedures will not apply in the case of a person who received a fine for an offence under clause 51 of failure to comply with an attendance notice without reasonable excuse.
58. [Section 56](#) applies to a person who reaches 18 after being given a fine. Once the individual turns 18, fine enforcement is transferred from the magistrates' court to a county court, provided that the magistrates' court is satisfied that the young person has the means to pay the fine (and any enforcement processes already begun have been completed). The magistrates' court's powers (apart from those relating to enforcement processes already started) cease when the person reaches 18, so that subsequent enforcement can take place only in a county court. The county court has no power to impose custody for non-payment. Any amount outstanding in relation to the surcharge and costs orders is transferred to the county court, together with the amount of the fine.
59. [Section 57](#) makes similar provision in respect of a person who is 18 when given a fine. In that case the fine (and associated surcharge and costs) is enforceable from the outset only in a county court.
60. [Subsection \(9\)](#) of section 56 and [section 58](#) provide for the Lord Chancellor to make further detailed provision by subordinate legislation about the orders, warrants and

statutory provisions relating to enforcement of fines, costs or surcharges or to any power to enforce payment of such sums that continue and cease to have effect after the young person reaches 18.

61. Where a person aged under 18 fails to pay a fine, a youth default order could be made under section 39 of the Criminal Justice and Immigration Act 2008. Paragraph 90 of Part 2 of Schedule 1 will amend Schedule 7 to that Act to allow the magistrates' court to revoke a youth default order relating to a fine in respect of an offence under section 51 once the young person reached the age of 18, and to state how much of the original fine is to be treated as remaining outstanding. In doing that the court can take into account the extent to which the young person has complied with the youth default order. That amount would (if the magistrates' court so ordered under section 56) be enforceable only in a county court.

***Section 60: Review of initial operation of Chapter***

62. Chapter 5 of Part 1 makes provision about the actions and proceedings that may be taken if a young person fails to fulfil their duty under clause 2 to participate in education or training. Section 60 provides for a review of, and report on, the initial operation of that Chapter. It is the Government's intention that this review will be conducted by a person independent of the Government. Under clause 173, Part 1 must be fully in force by the school leaving date for 2015 (and will have come into force for certain year groups before then). The period reviewed will, therefore, cover the first full year for which Part 1 is in force.