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STATUTORY INSTRUMENTS

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**2004 No. 181**

**EDUCATION, ENGLAND**

**The Education (Penalty Notices) (England) Regulations 2004**

*Made* - - - - 29th January 2004  
*Laid before Parliament* 4th February 2004  
*Coming into force* - - 27th February 2004

The Secretary of State for Education and Skills, in exercise of the powers conferred upon him by sections 444A, 444B and 569 of the Education Act 1996(1) hereby makes the following Regulations:

**Citation, commencement, interpretation and application**

1.—(1) These Regulations may be cited as the Education (Penalty Notices) (England) Regulations 2004 and shall come into force on 27th February 2004.

(2) In these Regulations —

“the Act” means the Education Act 1996;

“recipient” means a person to whom a penalty notice is given in accordance with section 444A(1) of the Act.

(3) These regulations apply only in relation to England.

**Form and content of penalty notices**

2. A penalty notice shall give such particulars of the circumstances alleged to constitute the offence to which the notice relates as are necessary to give reasonable information as to the offence and shall contain —

- (a) the name and address of the recipient;
- (b) the name and address of the child who is failing to attend school regularly, and the name of the school where he is a registered pupil;
- (c) the name and official particulars of the authorised officer issuing the notice;
- (d) the date of the offence and of the issue of the notice;
- (e) the amount of the penalty which is to be paid, and any variation in the amount under regulation 3;

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(1) 1996 c. 56 Sections 444A and 444B were inserted by section 23 of the Anti-Social Behaviour Act 2003 (2003 c. 38)

- (f) the name and the address of the local education authority to which the penalty is to be paid and to which any correspondence relating to the penalty notice may be sent, being the local education authority in whose area is the school at which the recipient's child is a registered pupil;
- (g) the method or methods by which payment of the penalty may be made;
- (h) the period for paying the penalty, in accordance with regulation 3;
- (i) a statement that payment will discharge any liability for the offence;
- (j) the consequences of the penalty not being paid before the expiration of the period for paying it; and
- (k) the grounds on which the notice may be withdrawn.

### **Amount and payment of penalty**

3. The amount of the penalty to be paid shall be —
- (a) £50 where the amount is paid within 28 days of receipt of the notice;
  - (b) £100 where the amount is paid within 42 days of receipt of the notice.

4.—(1) The penalty shall be payable to the local education authority named in the penalty notice.

(2) A certificate purporting to be signed by the proper officer or the chief education officer of a local education authority to the effect that the recipient of a penalty notice has or has not paid the amount due on or before a date stated in the certificate shall be received in evidence in any legal proceedings and shall be evidence of the matters stated in it.

### **Effect of issue of penalty notice**

5. The period prescribed for the purposes of section 444A(3) of the Act shall be 42 days.

6. If the penalty is not paid in full before the expiry of the period for paying it the local education authority named in the notice shall either institute proceedings against the recipient for the offence to which the notice relates or shall withdraw the notice in accordance with regulation 7.

### **Withdrawal of penalty notice**

7.—(1) A penalty notice may be withdrawn by the local education authority in any case in which that authority determines that —

- (a) it ought not to have been issued, or
- (b) it ought not to have been issued to the person named as the recipient.

(2) Where a penalty notice has been withdrawn in accordance with paragraph (1) —

- (a) notice of the withdrawal shall be given to the recipient;
- (b) any amount paid by way of penalty in pursuance of that notice shall be repaid to the person who paid it; and
- (c) 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 Act arising out of the same circumstances.

### **Authority to issue penalty notices**

8. A head teacher may authorise a deputy or assistant head teacher to issue penalty notices.

9. An authorised staff member may only issue a penalty notice in respect of a child who is a registered pupil at his school.

10. An officer of a local education authority may only issue a penalty notice in respect of a child who is a registered pupil at a school in the area of —

- (a) that local education authority; or
- (b) another local education authority which has an agreement to that effect with his local education authority.

11. Where there is more than one person liable for the offence a separate notice may be issued to each person.

### **Codes of conduct**

12. Each local education authority shall draw up a code of conduct which sets out measures to ensure consistency in the issuing of penalty notices, including —

- (a) means of avoiding the issue of duplicate notices;
- (b) measures to ensure that a notice is not issued when proceedings for an offence under section 444 of the Act are contemplated or have been commenced by the local education authority;
- (c) the occasions when it will be appropriate to issue a penalty notice for an offence;
- (d) a maximum number of penalty notices that may be issued to one parent in any twelve month period; and
- (e) arrangements for co-ordination between the local education authority, neighbouring local education authorities where appropriate, the police and authorised officers.

13. In preparing the code of conduct the local education authority shall consult governing bodies, head teachers and the chief officer of police for a police area which includes all or part of the area of the local education authority, and shall have regard to any guidance issued by the Secretary of State.

14. Any person issuing a penalty notice shall do so in accordance with the code of conduct drawn up by the local education authority.

15. The Secretary of State may at any time direct a local education authority —

- (a) (if it has not already drawn up a code of conduct under regulation 12) to prepare a draft code for his approval by the date specified in the direction; or
- (b) (if it has already drawn up such a code but the code appears to the Secretary of State to make inappropriate provisions) to prepare a draft of revisions to the code for his approval by the date specified in the direction.

16. The Secretary of State may approve a draft code or draft revisions to the code submitted under regulation 15 with or without modifications and —

- (a) where a draft code has been approved (pursuant to regulation 15(a) and this regulation) it shall have effect as approved; and
- (b) where draft revisions to the code have been approved (pursuant to regulation 15(b) and this regulation) the code shall have effect with the approved revisions.

### **Information**

17. A person issuing a penalty notice shall forthwith provide a copy to the local education authority which is named in the notice.

18. A local education authority shall keep records of penalty notices which shall include —

- (a) a copy of each notice issued;
- (b) a record of all payments made and on what dates;
- (c) whether the notice was withdrawn and on what grounds;
- (d) and whether the recipient was prosecuted for the offence for which the notice was issued.

**19.** A local education authority shall supply to the Secretary of State such information as he may require in respect of penalty notices.

**Service of notices**

**20.**—(1) A penalty notice may be served by —

- (a) giving it to the recipient; or
- (b) leaving it at the recipient’s usual or last-known address; or
- (c) sending it to the recipient at that address by first class post.

(2) Service by post shall be deemed to have been effected on the second day after posting the notice by first-class post.

**Use of monies received**

**21.** Any sums received by local education authorities by way of penalties must be applied in meeting the costs of issuing and enforcing notices, or the cost of prosecuting recipients who do not pay.

29th January 2004

*Ivan Lewis*  
Parliamentary Under Secretary of State,  
Department for Education and Skills

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These regulations prescribe the necessary details for the operation of the penalty notice scheme under section 444A of the Education Act 1996 (inserted by the Anti-Social Behaviour Act 2003). They only apply in England.

Regulation 2 sets out the matters to be contained in a penalty notice. Regulations 3 and 4 prescribe the level of the penalty which is to be paid to the local education authority, and what is evidence of its payment or non-payment.

Regulation 5 prescribes 42 days as the period before which no proceedings can be commenced. If the penalty is not paid within that time, Regulation 6 requires the local education authority either to prosecute for the offence under section 444 or to withdraw the notice on one of the grounds set out in Regulation 7.

Regulations 8 to 11 set out details about the issuing of penalty notices.

Regulations 12 to 14 require the local education authority to draw up and consult on a code of conduct for the issuing of penalty notices. Regulations 15 and 16 provide for the Secretary of State to have power to direct a local education authority to draw up a draft code or revisions to a code and for the Secretary of State to approve the draft code or revisions.

Regulations 17 to 19 require records to be kept, a copy of any penalty notice issued to be given to the local education authority, and information to be given to the Secretary of State.

Regulation 20 sets out how penalty notices may be served on the recipient.

Regulation 21 requires local education authorities to use the sums received as penalties to meet the costs of operation and enforcement of the penalty notice scheme.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.