

EXPLANATORY MEMORANDUM TO
THE EDUCATION (PENALTY NOTICES) (ENGLAND) REGULATIONS 2007
2007 No. 1867

1. This explanatory memorandum has been prepared by the Department for Education and Skills and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Education (Penalty Notices) (England) Regulations 2007 SI No.1867 set out the detailed arrangements for those using education-related penalty notices. This Instrument revokes the Education (Penalty Notices) (England) Regulations 2004 (SI 2004 No. 181), the Education (Penalty Notices) (England) (Amendment) Regulations 2004 (SI 2004 No. 920) and the Education (Penalty Notices) (England) (Amendment) Regulations 2005 (SI 2004 No. 920) which came into force on 27 February 2004, 22 April 2004 and 1 September 2005, respectively.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 The 2004 and 2005 Regulations dealt with penalty notices for truancy issued under 444A of the Education Act 1996 (inserted by section 23 of the Anti-social Behaviour Act 2003). This Instrument is required to implement penalty notices in respect of the presence of an excluded pupil in a public place introduced by Chapter 2 of Part 7 of the Education and Inspections Act 2006 (section 105) and consolidates these with the previous Regulations.

5. Territorial Extent and Application

5.1 This Instrument applies to England only.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Education-related penalty notices for failure to attend regularly at school have been available since commencement of the relevant provisions in the Anti-social Behaviour Act 2003 on 27 February 2004. They were introduced to provide a quicker and cheaper alternative to prosecution. This was extended, by the Education Act 2005, to

include failure to attend regularly at alternative provision (section 116 of the 2005 Act inserted a new section in the Education Act 1996 at section 444ZA).

7.2 There is concern that exclusions are not an effective sanction on the pupil. They can be perceived as a 'reward' for poor behaviour in that the child gets time off school. Furthermore there is concern that some pupils when excluded may make a public nuisance of themselves and be drawn into anti-social behaviour. Section 103 of the Education and Inspections Act 2006 places a new duty on parents of excluded pupils to ensure that the pupil is not present in a public place during school hours in the first five days of any exclusion. Section 105 of the 2006 Act introduces penalty notices as an alternative to prosecution for the offence.

7.2 Education-related penalty notices enable parents to discharge potential liability for conviction for these offences by paying a penalty of £50 if paid within 28 days rising to £100 if paid after 28 but within 42 days. If the penalty is unpaid or paid in part at the end of the 42 day period, the local authority must withdraw the notice if it does not prosecute for the offence to which the notice relates. Education-related penalty notices are typically issued by local authorities but they can also be issued by schools and the police.

7.4 In October 2005 the Department for Education and Skills published a report *Learning Behaviour: The Report of the Practitioners' Group on School Behaviour and Discipline* (Steer Group) with recommendations to improve behaviour and discipline in schools. The group consisted of head teachers and other practitioners. The Government set out its response to the Steer Group report in the White Paper "*Higher Standards, Better Schools for All*" (Cm 6677 October 2005) and stated its intention to legislate to give effect to the recommendation to require parents to take responsibility for the whereabouts of their child in the first five days of any exclusion.

7.5 The new Regulations detail the administrative arrangements that must be in place for the efficient use of education-related penalty notices. The Department consulted key stakeholders, earlier this year, on the draft regulations and associated guidance. There were no negative comments on the regulations.

8. Impact

8.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is in relation to local authorities, schools and the police in England. Local authorities already have systems for issuing penalty notices for attendance. The Government envisages local authorities making use of these systems for issuing penalty notices for 'whereabouts'. 18,679 penalty notices for irregular attendance were issued between September 2004 and 31 December 2006 (the latest date for which figures are available). Children excluded for a fixed period (390,000 in 2004/05) or permanently (9,440) may be found 'out on the streets' by the police through existing measures such as truancy sweeps. The police power in section 16 of the Crime and Disorder Act 1998 to remove truants from public places has been extended to allow for the removal of excluded pupils. Schools are required to notify the local authority of all permanent exclusions and fixed period exclusions of five days or more straight away; and

shorter exclusions once a term¹. These measures are expected to have a nil or de minimis cost.

8.3 An Equality Impact Assessment has been prepared for this Instrument.

9. Contact

Peter Baldwinson at the Department for Education and Skills (tel: 020 7273 6152 or e-mail: peter.baldwinson@dfes.gsi.gov.uk) can answer any queries regarding the instrument.

¹ Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002 (SI 2002 No. 3178) at regulation 4(3).