



# 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*Status: Point in time view as at 01/09/1999.*

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- (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 <sup>F1</sup> . . . 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 <sup>F1</sup> . . . 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—
- [<sup>F2</sup>“maintained school” means any community, foundation or voluntary school or any community or foundation special school not established in a hospital; and]
- “suitable education”, in relation to a child, means efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have.

#### 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

### 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—
- [<sup>F3</sup>(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

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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.

[<sup>F4</sup>(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 <sup>F5</sup>, 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

**F3** 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**.

**F4** 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**

**F5** 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 [<sup>F6</sup>fixed in accordance with section 93 of the School Standards and Framework Act 1998 (fixing 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.

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- (3) Subsection (1) does not prevent a local education authority specifying in a notice under section 438(2) any maintained <sup>F7</sup> . . . school if—
- (a) there is no maintained <sup>F7</sup> . . . 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.
- [<sup>F8</sup>(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 <sup>F7</sup> . . . 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 <sup>F7</sup> . . . 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

- F6** 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, ar. 2(1), Sch. 1
- F7** 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**.
- F8** 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**

#### Modifications etc. (not altering text)

- C1** S. 439 modified (temp. from 1.9.1998) by S.I. 1998/1948, reg. 3, **Sch. para. 8**

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- 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

#### **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<sup>F9</sup> . . . 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—
- [<sup>F10</sup>(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<sup>F11</sup> . . ., 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.

#### **Textual Amendments**

- F9** 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**.
- F10** 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**
- F11** 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**

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**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, in accordance with paragraph 10 of Schedule 27, amend the statement so that it specifies the name of a school, and
  - (b) that school shall then be named in the order.
- (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.

**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.
- (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.

*School attendance: offences and education supervision orders*

**443 Offence: failure to comply with school attendance order.**

- (1) If a parent on whom a school attendance order is served fails to comply with the requirements of the order, he is guilty of an offence, unless he proves that he is causing the child to receive suitable education otherwise than at school.
- (2) If, in proceedings for an offence under this section, the parent is acquitted, the court may direct that the school attendance order shall cease to be in force.

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- (3) A direction under subsection (2) does not affect the duty of the local education authority to take further action under section 437 if at any time the authority are of the opinion that, having regard to any change of circumstances, it is expedient to do so.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**444 Offence: failure to secure regular attendance at school of registered pupil.**

- (1) If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, his parent is guilty of an offence.
- (2) Subsections (3) to (6) below apply in proceedings for an offence under this section in respect of a child who is not a boarder at the school at which he is a registered pupil.
- (3) The child shall not be taken to have failed to attend regularly at the school by reason of his absence from the school—
  - (a) with leave,
  - (b) at any time when he was prevented from attending by reason of sickness or any unavoidable cause, or
  - (c) on any day exclusively set apart for religious observance by the religious body to which his parent belongs.
- (4) The child shall not be taken to have failed to attend regularly at the school if the parent proves—
  - (a) that the school at which the child is a registered pupil is not within walking distance of the child's home, and
  - (b) that no suitable arrangements have been made by the local education authority<sup>F12</sup> . . . for any of the following—
    - (i) his transport to and from the school,
    - (ii) boarding accommodation for him at or near the school, or
    - (iii) enabling him to become a registered pupil at a school nearer to his home.
- (5) In subsection (4) “walking distance”—
  - (a) in relation to a child who is under the age of eight, means 3.218688 kilometres (two miles), and
  - (b) in relation to a child who has attained the age of eight, means 4.828032 kilometres (three miles),in each case measured by the nearest available route.
- (6) If it is proved that the child has no fixed abode, subsection (4) shall not apply, but the parent shall be acquitted if he proves—
  - (a) that he is engaged in a trade or business of such a nature as to require him to travel from place to place,
  - (b) that the child has attended at a school as a registered pupil as regularly as the nature of that trade or business permits, and
  - (c) if the child has attained the age of six, that he has made at least 200 attendances during the period of 12 months ending with the date on which the proceedings were instituted.

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- (7) In proceedings for an offence under this section in respect of a child who is a boarder at the school at which he is a registered pupil, the child shall be taken to have failed to attend regularly at the school if he is absent from it without leave during any part of the school term at a time when he was not prevented from being present by reason of sickness or any unavoidable cause.
- (8) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (9) In this section “leave”, in relation to a school, means leave granted by any person authorised to do so by the governing body or proprietor of the school.

#### Textual Amendments

**F12** Words in S. 444(4)(b) repealed (1.9.1999) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 117, **Sch.31** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**.

#### 445 Presumption of age.

- (1) This section applies for the purposes of any proceedings for an offence under section 443 or 444.
- (2) In so far as it is material, the child in question shall be presumed to have been of compulsory school age at any time unless the parent proves the contrary.
- (3) Where a court is obliged by virtue of subsection (2) to presume a child to have been of compulsory school age, section 565(1) (provisions as to evidence) does not apply.

#### 446 Institution of proceedings.

Proceedings for an offence under section 443 or 444 shall not be instituted except by a local education authority.

#### 447 Education supervision orders.

- (1) Before instituting proceedings for an offence under section 443 or 444, a local education authority shall consider whether it would be appropriate (instead of or as well as instituting the proceedings) to apply for an education supervision order with respect to the child.
- (2) The court—
  - (a) by which a person is convicted of an offence under section 443, or
  - (b) before which a person is charged with an offence under section 444,
 may direct the local education authority instituting the proceedings to apply for an education supervision order with respect to the child unless the authority, having consulted the appropriate local authority, decide that the child’s welfare will be satisfactorily safeguarded even though no education supervision order is made.
- (3) Where, following such a direction, a local education authority decide not to apply for an education supervision order, they shall inform the court of the reasons for their decision.



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- (4) Unless the court has directed otherwise, the information required under subsection (3) shall be given to the court before the end of the period of eight weeks beginning with the date on which the direction was given.
- (5) Where—
- (a) a local education authority apply for an education supervision order with respect to a child who is the subject of a school attendance order, and
  - (b) the court decides that section 36(3) of the <sup>M1</sup>Children Act 1989 (education supervision orders) prevents it from making the order,
- the court may direct that the school attendance order shall cease to be in force.
- (6) In this section—
- “the appropriate local authority” has the same meaning as in section 36(9) of the <sup>M2</sup>Children Act 1989, and
  - “education supervision order” means an education supervision order under that Act.

**Marginal Citations**

**M1** 1989 c. 41.

**M2** 1989 c. 41.

*Exemption*

<sup>F13</sup>**448** .....

**Textual Amendments**

**F13** S. 448 repealed (1.9.1999) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 118, **Sch.31** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**.

**Status:**

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**Changes to legislation:**

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