

ANTI-SOCIAL BEHAVIOUR ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Parental Responsibilities

Section 18: Parenting Orders under the 1998 Act

52. This section amends the existing power to make parenting orders contained in section 8 of the Crime and Disorder Act 1998 by removing the restriction that guidance and counselling sessions cannot be provided more than once in any week. The term “sessions” is replaced by the term “programme”. The new section also inserts a new power to allow a programme to consist of or to include a residential course provided the court is satisfied that this is likely to be more effective than a non-residential course and that any interference with family life is proportionate.

Section 19: Parenting contracts in cases of exclusion from school or truancy

53. This section sets out provisions for schools and local authorities to enter into parenting contracts. Local education authorities (LEAs) and schools will not be required to use parenting contracts and parents will not be required to sign them. For parents, signing a contract will be voluntary.
54. *Subsections (1) and (2)* explain the circumstances in which a school-related parenting contract can be made. They are where a pupil has:
- been excluded from school for a fixed period or permanently; or
 - failed to attend regularly at the school at which he is registered.
55. *Subsection (3)* enables local education authorities and schools to make such contracts with parents. *Subsection (4)* defines a parenting contract as a document containing (a) a statement by the parent that he agrees to comply with the requirements laid down by the contract for the specified period; and (b) a statement by the local education authority or school governing body that they will provide or arrange support to the parent to help them comply with the requirements. *Subsection (5)* provides for the requirements to include attending counselling or guidance sessions. *Subsection (6)* defines the purpose of the requirements as improving the pupil’s behaviour and/or securing his regular attendance at school. *Subsection (8)* means that parenting contracts cannot result in certain types of legal action by either party – these are actions for breach of contract and for civil damages.
56. This section complements section 25, which enables youth offending teams to arrange parenting contracts for parents of children who have engaged or are likely to engage in criminal conduct or anti-social behaviour.

Section 20: Parenting orders in cases of exclusion from school

57. Existing legislation provides for parenting orders for parents convicted of school attendance offences. This section complements that provision by enabling LEAs to

apply to magistrates' courts for parenting orders for parents of children who have been excluded from school.

58. *Subsection (1)* defines the circumstances in which parenting orders in cases of exclusion from school may be made. These are where a pupil has been excluded from school for a fixed term or permanently and where conditions prescribed by regulations made the Secretary of State for Education and Skills for England or the National Assembly for Wales are met.
59. *Subsection (2)* and *subsection (3)* enables local education authorities (LEAs) to apply for parenting orders in such circumstances and magistrates' courts to make them. *Subsection (4)* defines a parenting order as an order that requires the parent to comply with the requirements specified in the order for a period of up to one year, and with one exception, set out in *subsection (5)*, attend a counselling or guidance programme specified by the LEA or school representative overseeing the order (the responsible officer) for up to three months. *Subsection (5)* makes the requirement to attend a counselling or guidance programme an optional part of an order made for a parent who has already been subject to a parenting order. *Subsections (6) to (8)* state that the counselling or guidance programme may include a residential component when the court considers that this is likely to be more effective than a non-residential course and where any interference with family life is proportionate.
60. An LEA may apply for a parenting order as a first response or it may make an application following a parent's refusal to sign, or breach of, a parenting contract. This section complements section 26, which enables youth offending teams to apply for parenting orders for parents of children who have engaged or are likely to engage in criminal conduct or anti-social behaviour.

Section 21: Parenting orders: supplemental

61. This section relates to the process of making a parenting order under the previous section. *Subsection (1)* prescribes some of the things a court must take into account in deciding whether to make a parenting order; these include any previous refusal by the parent to sign a parenting contract, or any failure to comply with a contract which they have signed. *Subsection (2)* requires the court to obtain and consider information about a pupil's family circumstances and the effect on an order on those circumstances before making an order.
62. *Subsection (3)* applies section 9(3) to (7) of the Crime and Disorder Act 1998 (the Act that established parenting orders) to these parenting orders. These provisions:
 - require the court to explain to the parent the effect of the order and the consequences of breaching it;
 - specify that, as far as practical, the requirements in the order and directions given under it should not conflict with a parent's religious beliefs or interfere with a parent's work or education;
 - enable the court to discharge or vary the order; and
 - make parents convicted of failing to comply with requirements in or directions given under an order liable to a fine.
63. *Subsection (4)* enables regulations to be made by the Secretary of State for Education and Skills for England and the National Assembly for Wales to make provision as to how the costs associated with the requirements of a parenting order (including counselling or guidance sessions) should be met. *Subsection (5)* allows the Secretary of State for Education and Skills for England and the National Assembly for Wales to issue guidance which local education authorities and responsible officers would have to take into account in deciding whether to apply for a parenting order and what counselling or guidance sessions should be specified.

Section 22: Parenting orders: appeals

64. *Subsection (1)* provides that an appeal against a school exclusion-related parenting order is to the Crown Court. *Subsection (2)* applies provisions of the Crime and Disorder Act 1998 to such appeals. These provisions:
- enable the Crown Court to make any orders needed to give effect to its determination of the appeal; and
 - require any order made by the Crown Court (other than an order for re-hearing by the magistrates' court) to be treated as an order by the magistrates' court from which the appeal was brought.

Section 23: Penalty notices for parents in cases of truancy

65. Parents of a registered pupil whose child fails to attend school regularly are guilty of an offence. At present, prosecution is the only available sanction. Fixed penalty notices will provide an alternative. This section enables authorised local education authority and school staff and the police to issue such notices, although there is no requirement for them to do so.
66. Section 444 of the Education Act 1996 provides that a parent commits an offence if his or her compulsory school age child who is a registered pupil fails to attend school regularly. Subsection (1) of this section adds two new sections (444A and 444B) after section 444.
67. New section 444A(1) enables an authorised officer to issue a penalty notice where he believes that a parent has committed an offence under section 444 and that the pupil in question is registered at a relevant school. New section 444A(2) specifies that a penalty notice offers the parent the opportunity of discharging any liability to conviction for the offence by paying a penalty in accordance with the notice (the notice will specify the amount to be paid and deadlines for payment). New sections 444A(3) and 444A(4) prevent the parent from being prosecuted for the particular offence for which the notice was issued until after the final deadline for payment has passed and from being convicted of that offence if he pays a penalty in accordance with the notice. New section 444A(5) provides for penalties to be paid to local education authorities. New section 444A(6) enables local authorities to use revenue for purposes specified in regulations. Local authorities will be able to use such revenue to pay for the administration and enforcement of penalty notices.
68. New section 444B(1) enables the Secretary of State to make regulations governing the form and content of penalty notices, the monetary value of penalties, how the local authority to which a penalty is payable will be decided, methods by which penalties may be paid, records to be kept and the types of staff whom local education authorities or headteachers may authorise to issue notices. The regulations will also govern the circumstances in which penalty notices may be issued, the withdrawal of penalty notices in prescribed circumstances and preventing or stopping prosecution for the particular offence for which the notice was issued, the issuing certificates confirming payment of the penalty, the action to be taken if a penalty is not paid and codes of conduct relating to penalty notices.
69. The Department for Education and Skills will consult local authorities, headteachers and the police about implementation before determining these details. Section 444B(2) allows the regulations provide for different penalty levels for different circumstances and payment periods. Among other things, this makes lower penalties for early payment possible. Section 444B(3) requires local education authorities, headteachers and all authorised officers to have regard to guidance on penalty notices published by the Secretary of State for Education and Skills.

*These notes refer to the Anti-Social Behaviour Act 2003
(c.38) which received Royal Assent on 20 November 2003*

70. *Subsection (2)* amends section 572 of the Education Act 1996 (which deals with the service of notices) to make it clear that a penalty notice may be handed to a parent as well as delivered to his home.
71. *Subsections (3) to (8)* amend Schedules 4 and 5 of the Police Reform Act 2002 to enable community support officers and accredited persons to issue penalty notices for truancy. They will be able to issue fixed penalty notices to parents in their police area regardless of where the child is at school. *Subsections (9) and (10)* allow the National Assembly for Wales to make an order applying these provisions to Wales. If such an order is made regulations for Wales will be made and guidance issued by the National Assembly.

Section 25: Parenting contracts in respect of criminal conduct and anti-social behaviour

72. This section makes provision for parenting contracts to be entered into when a child has been referred to a youth offending team.
73. *Subsections (1) and (2)* set out the circumstances in which a parenting contract can be made. This is where a child or young person has been referred to a youth offending team and where a member of that team has reason to believe that he has engaged, or is likely to engage, in criminal conduct or anti-social behaviour.
74. *Subsection (3)* explains that a parenting contract is a document containing a statement by the parent that he will comply with the requirements specified in the contract and a statement by the youth offending team that it agrees to provide support to the parent to help him comply with the requirements of the contract. *Subsection (4)* states that this may include a requirement for the parent to attend a counselling or guidance programme.
75. *Subsection (5)* describes the purpose of a parenting contract being to prevent the child or young person from engaging in criminal conduct or anti-social behaviour or further criminal conduct or anti-social behaviour. *Subsection (6)* specifies that the contract must be signed by both the parent and on behalf of the youth offending team.
76. *Subsection (7)* sets out that there are no obligations in contract or tort for the breach of the contract. However, the youth offending team could use its experience of the parents' engagement during the contract process in any future application for a parenting order under section 26.
77. *Subsection (8)* requires youth offending teams to have regard to guidance on parenting contracts which may be issued by the Secretary of State.
78. This section complements section 19 which enables local education authorities or governing bodies to arrange parenting contracts for parents of children who have been excluded from school for a fixed period or have failed to regularly attend the school at which they are registered.

Sections 26 – 29: Parenting orders in respect of criminal conduct and anti-social behaviour

79. **Sections 26 - 29** make provision to extend the circumstances in which parenting orders in respect of criminal conduct or anti-social behaviour can be made under sections 8 to 10 of the Crime and Disorder Act 1998. *Subsections (1) and (2)* of section 26 outline the circumstances in which the youth offending team can apply to the court for a parenting order. *Subsection (3)* sets out the circumstances in which the court can make the order. *Subsection (4)* sets out what the requirements of the parenting order will be.
80. *Subsection (5)* of section 26 mirrors the provision in section 8(5) of the Crime and Disorder Act 1998 that a parent is not necessarily required to attend a counselling or guidance programme when a parent has already been subject to a parenting order. However, if a parent has entered into a parenting contract including a guidance

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or counselling programme he may still be required to attend such a programme by a parenting order. *Subsection (6)* allows the programme to include a residential component where the conditions set out in *subsections (7) and (8)* are met.

81. *Subsection (1)* of section 27 provides that in deciding whether to make a parenting order, the court must consider any refusal by the parent to enter into a parenting contract under section 25 or any failure to comply with the requirements of such a contract. *Subsection (2)* of section 27 requires that where the child or young person is below 16 the court must, before it makes the order, consider the likely effect of the order on his family circumstances. *Subsection (3)* of section 27 applies provisions of the Crime and Disorder Act 1998 to these parenting orders. These provisions:
- require the court to explain to the parent the effect of the order and the consequences of breaching it;
 - specify that, as far as practical, the requirements in the order and directions given under it should not conflict with a parent’s religious beliefs or interfere with a parent’s work or education;
 - enable the court to discharge or vary the order; and
 - make parents convicted of failing to comply with requirements in or directions given under an order liable to a fine.
82. *Subsection (4)* of section 27 requires youth offending teams to have regard to guidance on these parenting orders which may be issued by the Secretary of State.
83. *Subsection (1)* of section 28 specifies that appeals against parenting orders under section 26 will be to the Crown Court and *subsection (2)* applies the mechanisms for appeal set out in section 10 of the Crime and Disorder Act 1998.
84. **Section 29** sets out the meaning of terms used in sections 25-28. “Anti-social behaviour” means behaviour which causes or is likely to cause harassment, alarm or distress to one or more other persons not of the same household as himself and “criminal conduct” is defined to include behaviour by children below the age of criminal responsibility that would be criminal were they above that age.
85. “Child” and “young person” have the same meaning as in the Crime and Disorder Act 1998. A “child” is a person under the age of 14. A “young person” is a person who has attained the age of 14 and is under the age of 18. All reference to “parent” includes “guardian” which takes its meaning from the Children and Young Person Act 1933 and includes anyone who, in the opinion of the court, has for the time being the care of the child or young person.
86. A “youth offending team” has the same definition as in the Crime and Disorder Act 1998. The Crime and Disorder Act 1998 sets out that it is the duty of each local authority to establish for their area one or more youth offending teams. This will include at least one of the following:
- an officer of a local probation board;
 - a social worker of a local authority social services department;
 - a police officer;
 - a person nominated by a health authority any part of whose area lies within the local authority's area;
 - a person nominated by the chief education officer appointed by the local authority under section 532 of the Education Act 1996.
87. *Subsection (2)* of section 29 provides that the definition of “youth justice services” in section 38(4) of the Crime and Disorder Act will be amended to include youth offending

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teams performing functions relating to parenting contracts and orders under sections 25-27.