

## **EDUCATION ACT 2005**

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### **EXPLANATORY NOTES**

#### **COMMENTARY**

#### **Part 4: Miscellaneous**

#### **Attendance at alternative education provision**

##### ***Section 115: Power of governing body to make alternative provision for excluded pupils***

241. Section 29(3) of the Education Act 2002 gives the governing body of a school the power to direct a pupil in attendance at that school to attend alternative provision. However, pupils who are excluded from school for a fixed period or are appealing against a permanent exclusion cannot attend a school from which they have been excluded. As a result schools cannot direct such excluded pupils to attend alternative educational provision. This section amends section 29(3) by extending the governing body's power to direct pupils to attend alternative educational provision if the pupil is not in attendance but is registered at the school.

##### ***Section 116: Failure of a parent to secure regular school attendance of a child at alternative provision***

242. This section inserts a new section (section 444ZA) in the Education Act 1996. New section 444ZA extends the circumstances in which a parent or a carer can be issued with a penalty notice or be prosecuted for failing to ensure that a child for whom he is responsible attends the alternative provision that has been made for the child. This is achieved by applying section 444 of the 1996 Act to these circumstances.
243. *Subsection (1)* of the new section outlines the circumstances in which sanctions may be used against parents of children who are not registered at a school. This applies to children for whom the local education authority have made arrangements to be educated otherwise than at a school. Should these children not attend alternative provision made for them, local education authorities would have the same powers to prosecute or to issue a penalty notice as they would if the child did not attend the school at which he was registered. It does not apply to children for whom parents have made educational provision in accordance with section 7 of the Education Act 1996.
244. *Subsections (2) and (3)* of the new section make provision for the use of these sanctions when a pupil is excluded from a school for a fixed period, or is still on the register awaiting an appeal following a permanent exclusion. In the case of pupils excluded from a maintained school or a pupil referral unit under section 52 of the Education Act 2002 this applies where they have been required to attend alternative provision under section 29(3) of that Act.
245. *Subsections (4) and (5)* of the new section provide that notice of alternative provision may be given to a child's parents by any effective means (in addition to the notice in writing required by subsection (1)(b) or (2)(d)). Use of sanctions as provided for by

*These notes refer to the Education Act 2005 (c.18)  
which received Royal Assent on 7 April 2005*

subsections (1) and (2) would only apply if a child regularly fails to attend the provision after notice to attend it was given.

246. *Subsection (6)* of the new section provides for a defence for a parent who proves that he is providing suitable education at home or by other means.
247. *Subsection (7)* of the new section outlines who may grant the child leave of absence from alternative provision.
248. *Subsection (8)* of the new section defines “relevant school”; the effect is that subsection (2) will apply to a pupil at a school maintained by a local education authority (including a pupil referral unit), an Academy, a city technology college, or a city college for the technology of the arts.

***Section 117: Further amendments***

249. This section introduces Schedule 18.

***Schedule 18: Further amendments related to Part 4***

250. **Paragraphs 1, 3 and 4** of this Schedule make consequential amendments to the Children Act 1989, the Education Act 1996 and the Anti-social Behaviour Act 2003, extending the relevant provisions of those Acts to pupils for whom alternative provision has been made and to whom new section 444ZA(1) or (2) of the Education Act 1996 (as inserted by section 116) could apply. The amended provisions relate to: supervision orders; penalty notices; certificates of attendance; and parenting contracts.
251. **Paragraph 4** has the effect of enabling the Assembly to make an order which applies to Wales the amended provisions regarding penalty notices.
252. **Paragraph 10** amends section 52 of the School Standards and Framework Act 1998 to make provision for the requirements upon local education authorities to prepare budget and outturn statements to relate to a period covering more than one academic or financial year. This would allow the Secretary of State to adjust the requirements in relation to both budget and outturn statements as necessary to reflect the determination of budgets on a three year, academic year basis.
253. **Schedule 18** also makes other amendments to primary legislation consequential on provisions contained in Part 4 of the Act.