

EDUCATION AND SKILLS ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Local education authority

Legal background

Part 1: Duty to participate in education or training: England

Chapter 5: Attendance notices

Sections 45 to 50: Initial steps, attendance notices, attendance panels and appeals

49. These sections set out the procedure that a local education authority may follow should it believe that a person is failing without reasonable excuse to fulfil the main duty to participate under section 2. The Government intends to issue guidance to local education authorities to assist them in interpreting what would be a reasonable excuse. [Section 45](#) makes clear that before commencing this process, the local education authority must ensure that appropriate support has been made available and that the young person has been given the opportunity to take advantage of services designed to support participation. It provides that the local education authority must then give the young person 15 days' notice in writing of its intention to issue an attendance notice. If the only way in which the young person is failing to fulfil the duty is that the relevant education or training in which he or she is participating is not "sufficient" (not enough hours in the relevant period), it is for the local education authority to show that there is no reasonable excuse for not having made such arrangements, putting the burden of proof on the local education authority rather than on the young person. This may arise, for example, where a young person needs to await results for one course before enrolling on a subsequent course.
50. If the young person fails to participate without reasonable excuse after the local education authority has given 15 days' notice in writing, [section 46](#) enables the local education authority to issue an attendance notice. The attendance notice must specify the type of provision that should be undertaken, a description of the course, and details of where and when the young person should attend. An attendance notice ceases to have effect when a young person is no longer subject to the duty to participate, for whatever reason.
51. [Section 47](#) provides that the education or training specified in the attendance notice must be a course provided at a school, college or other education establishment or a contract of apprenticeship, and be a way of fulfilling the section 2 duty. It must be suitable to the person, having regard to their age, ability and aptitude and any learning difficulty he or she may have, and the local education authority must consult the provider of education or training.
52. [Section 48](#) requires a local education authority to set up an attendance panel in accordance with regulations, with a chair that is not a member of the authority.

*These notes refer to the Education and Skills Act 2008
(c.25) which received Royal Assent on 26 November 2008*

The panel's functions include hearing appeals against attendance notices (as set out in [section 49](#)), appeals against penalty notices (set out in [section 54](#)), making recommendations to local education authorities, and considering local education authorities' intentions to commence court proceedings. Regulations will specify how the panel must be constituted and its procedures in carrying out those functions. Regulations under section 48 may also apply sections 173 to 174 of the Local Government Act 1972 in relation to an appeals panel which put beyond doubt the kinds of allowances that could be paid.

53. [Section 50](#) provides that a local education authority can vary or revoke an attendance notice in certain circumstances, and can specify additional education or training. In particular, where the education or training specified in the notice ends, and the young person is still subject to the duty, the local education authority may specify additional education or training.