

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 51 to 60: Failure to comply with attendance notice

54. *Section 53* enables a local education authority to issue a penalty notice which gives the young person the opportunity to make a payment to the local education authority in order to release him or her from the possibility of being convicted for the offence of failing to comply with an attendance notice. Regulations can be made to specify the contents of penalty notices and to set out the amount of the penalty (which can be different in different circumstances). The amount of the financial penalty must not exceed the maximum fine that could be imposed on conviction of the offence, which is level 1 on the standard scale of fines for summary offences.
55. There is an enforcement procedure if a young person fails to comply with an attendance notice. *Section 51* sets out that non-compliance is a criminal offence and liable to a fine of a maximum of level 1 on the standard scale. Currently level 1 is a maximum of £200, with the actual amount in each case being decided by the court in light of individual circumstances. *Section 52* provides that proceedings cannot be commenced unless a penalty notice has first been given under *section 53* and has not been paid. The attendance panel must have recommended that proceedings be instituted. Proceedings cannot be started after the young person has ceased to be subject to the duty to participate, or if the young person is participating in some way that is different from the provision specified in the notice but nevertheless fulfils the duty to participate.
56. *Section 54* sets up the procedure for appealing to an attendance panel against a penalty notice, which may be further provided for in regulations made under this section.
57. *Sections 55 to 60* provide that ordinary adult fine enforcement procedures will not apply in the case of a person who received a fine for an offence under clause 51 of failure to comply with an attendance notice without reasonable excuse.
58. *Section 56* applies to a person who reaches 18 after being given a fine. Once the individual turns 18, fine enforcement is transferred from the magistrates' court to a county court, provided that the magistrates' court is satisfied that the young person has the means to pay the fine (and any enforcement processes already begun have been completed). The magistrates' court's powers (apart from those relating to enforcement processes already started) cease when the person reaches 18, so that subsequent enforcement can take place only in a county court. The county court has no power to

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

impose custody for non-payment. Any amount outstanding in relation to the surcharge and costs orders is transferred to the county court, together with the amount of the fine.

59. *Section 57* makes similar provision in respect of a person who is 18 when given a fine. In that case the fine (and associated surcharge and costs) is enforceable from the outset only in a county court.
60. *Subsection (9)* of section 56 and *section 58* provide for the Lord Chancellor to make further detailed provision by subordinate legislation about the orders, warrants and statutory provisions relating to enforcement of fines, costs or surcharges or to any power to enforce payment of such sums that continue and cease to have effect after the young person reaches 18.
61. Where a person aged under 18 fails to pay a fine, a youth default order could be made under section 39 of the Criminal Justice and Immigration Act 2008. Paragraph 90 of Part 2 of Schedule 1 will amend Schedule 7 to that Act to allow the magistrates' court to revoke a youth default order relating to a fine in respect of an offence under section 51 once the young person reached the age of 18, and to state how much of the original fine is to be treated as remaining outstanding. In doing that the court can take into account the extent to which the young person has complied with the youth default order. That amount would (if the magistrates' court so ordered under section 56) be enforceable only in a county court.