



Ensuring Children's Right to Education

Guidance on the legal measures available
to secure regular school attendance

department for
children, schools and families

MAGISTRATES
ASSOCIATION



ADCS
Leading Children's Services

NASWE

For Every Child a Chance
Founded 1884

ASCL
Association
of School and
College Leaders



JCS

Justices' Clerks' Society
England and Wales



national
children's
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Ministry of
JUSTICE


Local Government Association



Youth Justice Board
Bwrdd Cyfiawnder Ieuencid

This guidance was produced in consultation with:

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Summary of contents

The purpose of this document is to provide information on the measures that are available under the law for ensuring regular school attendance in England. It is intended for local authorities, schools, magistrates, justices' clerks and all other organisations that might be involved in ensuring children's regular attendance at school.

This guidance replaces the 2003 edition. It is part of a suite of documents on managing attendance all of which are available on the Department's School Attendance Website:

www.dcsf.gov.uk/schoolattendance

This guidance explains:

- the roles and responsibilities of parents, schools and the local authority in ensuring children's regular school attendance;
- the law relating to school attendance;
- the range of legal interventions available to the authority and, in some circumstances, to the school to enforce school attendance;
- the procedure for bringing a prosecution against a parent who has failed to ensure their child's regular school attendance; and
- what happens at the Court hearing and the sentencing options available to the Court in the event that the parent is found guilty of an offence.

Where separate, detailed guidance is available on a particular measure, a reference is given in the text.

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Introduction

1. Non-attendance at school for any reason is an important issue that must be treated promptly and seriously. Every case is different and there is no standard path that can be followed in applying intervention strategies. In some cases, prosecution may be used as the last resort when other intervention strategies have failed to bring about an improvement in school attendance. In other cases prosecution may be the only appropriate response where acting early will prevent problems from worsening. In all cases of non-attendance it is essential that early action is taken.

Parental responsibility for school attendance

Note:

Throughout the document the term 'parent' means all natural parents, whether they are married or not; and includes any person who, although not a natural parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person; and any person who, although not a natural parent, has care of a child or young person.¹

2. Under section 7 of the Education Act 1996, parents are responsible for making sure that their children of compulsory school age² receive efficient full-time education that is suitable to the child's age, ability and aptitude and to any special educational needs the child may have. This can be by regular attendance at school, alternative provision, or by education otherwise (e.g. the parent can choose to educate their child at home).
3. The Department's Circular 7/90 Management of the School Day³ suggests the following recommended minima for weekly taught time:

- 21 hours for pupils aged 5–7 years (key stage 1)
- 23 hours and 30 minutes for pupils aged 8–11 years (key stage 2)
- 24 hours for pupils aged 12–13 years (key stage 3)
- 25 hours for pupils aged 14–16 years (key stage 4)

Taught time does not include breaks, registration or acts of collective worship.

4. Section 436A of the Education Act 1996 (inserted by section 4 of the Education and Inspections Act 2006) requires all local authorities to make arrangements to enable them to establish (so far as it is possible to do so) the identities of children residing in their area who are not receiving a suitable education. This duty came into force on 27 February 2007 and guidance is available at <http://www.everychildmatters.gov.uk/ete/childrenmissingeducation/>

¹ section 576 of the Education Act 1996

² Compulsory school age is defined as beginning from the start of the first term commencing after the child's fifth birthday (or on the fifth birthday). The start dates of each term being: 31 August, 31 December and 31 March. A child continues to be of compulsory school age until the last Friday of June in the school year that they reach sixteen.

³ <http://www.teachernet.gov.uk>

5. If it appears to the local authority that a child of compulsory school age is not receiving a suitable education, either by regular attendance at school or otherwise, then under section 437 of the Education Act 1996 they must begin procedures for issuing a School Attendance Order.

School Attendance Order (SAO)

6. School Attendance Orders (SAO) may be used to direct the parent to send their child to a specified school. An SAO should be used when a pupil is not on roll at any school and the parent has not made suitable arrangements to educate their child otherwise than at a school.
7. Before serving an SAO, Children's Services Officers should make every effort to engage the parent and help them get their children onto a school roll. This may include making sure the parent is aware of the location of schools in the area and explaining the admission, or admission appeal, arrangements where necessary.
8. If it is not possible to persuade the parent to make suitable arrangements for their child's education, then the parent should be served with a notice stating that they are failing in their duty to provide their child with education. The notice must inform them that they must satisfy the authority that they are providing an education at school or otherwise within a specified time period (but not less than 15 days beginning with the day the notice was served).
9. Upon expiry of the notice the authority should write to the parent referring them to the notice and informing them of the authority's intention to serve an SAO. The authority should inform the parent of schools that are suitable for the child to

attend and should also inform the parent that they have the right to educate their child at home if they choose to. The parent should be told that they have 15 days in which to take action or the authority will proceed to make an SAO. (The procedures allow for aligning school attendance orders with statements of special educational needs⁴).

10. It is good practice to provide the parent with detailed information explaining the law. The authority must consult the school before naming the school in any Order. This consultation needs to take into account the Special Educational Needs Code of Practice⁵ and the code of practice on school admissions⁶.
11. If the 15 days expire without the parent registering their child at a school then the authority should issue an SAO. The Order should specify which school the child should attend and inform the parent that they have 15 days to comply.
12. If a parent on whom an SAO has been served fails to comply with the requirements of the Order they are guilty of an offence under Section 443 of the Education Act 1996, unless they prove that the child is receiving a suitable education otherwise than at school. However, before instigating proceedings for this offence, the LA is required to give due consideration as to whether an Education Supervision Order should be sought in addition or instead (see paragraph 32). When wider child welfare concerns are involved, it might be more appropriate to go to the Family Proceedings Court in the first place.

⁴ Guidance can be found at: <http://www.dcsf.gov.uk/publications/guidanceonthelaw/11-99/legal.htm>

⁵ Can be found at: <http://www.teachernet.gov.uk/wholeschool/sen/sencodeintro/>

⁶ Can be found at: <http://www.dcsf.gov.uk/sacode/>

13. The case should be taken to the Magistrates' Court where a summons can be obtained. The parent will be named on the summons and will have to appear before the Court or enter a guilty plea in writing.
14. The offence of failing to comply with an SAO is committed in the area where the parents live and should therefore be prosecuted by the local authority for that area and heard in the Magistrates' Court for that area.
15. Unless it is revoked, an SAO continues to be in force for as long as the child is of compulsory school age. In cases of continued failure to comply a further prosecution is not possible; another SAO has to be made before a second prosecution can be brought. Alternatively, the authority has two other options (depending on the circumstances of the case): it may refer the case to Children's Services for consideration of care proceedings; or an application can be made in the Family Proceedings Court for an Education Supervision Order (section 36 of the Children Act 1989).

Resolving school attendance problems

16. While the parent is primarily responsible for ensuring their school-registered child attends regularly, where school attendance problems occur, the key to successfully resolving these problems is engaging the child through effective case management and collaborative working between the pupil, parent, school and local authority.
17. The issues behind the non-attendance may be complex and the type of intervention required will depend on each individual case and an external agency assessment may be appropriate. The Common Assessment Framework (CAF) provides an appropriate framework for identifying the

issues. This should be the first assessment used unless there are concerns that suggest an urgent need for a specialist assessment to be done without delay. The CAF may lead to and inform a specialist assessment. For more information go to: <http://www.everychildmatters.gov.uk/deliveringservices/caf/>

Case management: Fast-track to attendance

18. The 'Fast-track' model is a time-focused approach to case management for absence (whether authorised or unauthorised), with flexibility to select the most appropriate and effective interventions from a range of possible responses at each stage of the process. The aim of 'Fast-track' is to promote early intervention by the school and, when necessary, by the local authority. The model is available to download at <http://www.dcsf.gov.uk/schoolattendance/goodpractice>

Local authorities are strongly encouraged to apply the 'Fast-track' principles either by the use of the model given or by applying an equally rigorous case management system.

The Role of schools: monitoring school attendance

19. It is often at the school, rather than the local authority level, that the biggest direct influence can be brought to bear on raising levels of attendance. Absence from school undoubtedly has a detrimental effect on a pupil's progress and attainment. Therefore schools need to monitor and support pupils to maintain regular school attendance.
20. Schools are legally required to take an attendance register twice a day: at the start of the morning session and once during the afternoon session. The register must

show whether any absence is authorised or unauthorised. Authorised absence is where the head teacher has either given approval in advance for a pupil of compulsory school age to be away, or has accepted an explanation offered afterwards as satisfactory justification for absence. All other absences, including persistent lateness, must be treated as unauthorised. Absence can only be authorised by a person designated to do so by the proprietor [see The Education (Pupil Registration) (England) Regulations 2006 (SI No. 2006/1751) – reg 7(1)].

The accuracy of the register is of paramount importance both to provide a solid foundation for analysis of absence and to support any statutory interventions that may be required.

21. It is an offence not to maintain accurate registers. Head teachers may be called to Court as witnesses and explain their registration processes and in particular the marking of a register in question. *The Pupil Registration Regulations, Keeping Pupil Registers (Guidance on applying the Regulations)* and *Guidance on the use of the Attendance and Absence Codes* are all available at <http://www.dcsf.gov.uk/schoolattendance/legislation/>

School-level action to improve school attendance

22. All schools should have effective systems and procedures for encouraging regular school attendance and investigating the underlying causes of poor attendance which should be set out in an attendance policy. Schools should:
- review their attendance policy and practice against *Effective Attendance Practice in Schools – an Overview* <http://www.dcsf.gov.uk/schoolattendance/goodpractice/>;

- ensure there is a clear escalation of intervention within the school which is understood by all teaching and non-teaching staff, pupils and parents;
- identify clear triggers, pupil/parent contact points and decision making points for their case management process, for example, when to consider using a parenting contract (see paragraph 28);
- agree with the local authority at what point or points it should become involved in individual cases; and
- regularly review their processes adjusting these as appropriate, for example, the absence levels that trigger school-level actions.

The role of the local authority: working with schools

23. Parents are responsible for ensuring that their child is receiving a suitable education either by regular attendance at school or otherwise and local authorities have a duty to make provision for such education. Authorities should:
- review their current attendance policy and practice against Effective Attendance Practice at Local Authority Level <http://www.dcsf.gov.uk/schoolattendance/goodpractice/index.cfm>;
 - identify clear triggers and decision making points for each stage of their case management process, for example, when to consider issuing a penalty notice, in accordance with the Local Code of Conduct;
 - agree with schools at what point or points the local authority should become involved in individual cases;

- co-ordinate any multi-agency and cross-border intervention required, for example by agreeing respective roles and responsibilities of key participants, fixing the date and venue of any meetings and securing agreement to implement identified solutions;
- work with magistrates, schools and other stakeholders as appropriate, for example, by communicating clearly the rationale for the process and disseminating any other information required;
- keep their schools' systems for managing absence under review;
- ensure that there is a clear system in place to measure the impact of actions and interventions (short and long term) on attendance used by the local authority; and
- establish, or where appropriate, review, cross-border protocols with neighbouring authorities. Where the pupil attends school in one local authority and lives in another, the local authority where the pupil attends school should, in the absence of an agreement to the contrary, take the lead in any local authority level action necessary to improve the pupil's attendance. In such cases, the local authority where the pupil lives and the local authority where he or she attends school will need to work closely together. If a parenting order is made following prosecution, consideration should be given to referring the parent to a parenting programme in the local authority where the pupil lives. For guidance on cross-border working go to: <http://www.dscf.gov.uk/school-attendance/goodpractice/index.cfm>

The offence of failing to ensure regular school attendance⁷

24. There are two offences relating to parental responsibility for ensuring regular attendance at school or alternative provision: if a registered pupil is absent without authorisation from school or alternative provision then the parent is guilty of an offence under section 444(1) of the Education Act 1996; if the parent knows that his child is failing to attend regularly at the school and fails to cause him to do so, he is guilty of an offence under section 444 (1A) of the Education Act 1996.
25. No offence is committed if the parent proves any of the following statutory grounds:
 - the pupil was ill or prevented from attending by any unavoidable cause;
 - the pupil's absence was authorised by the school or, in the case of alternative provision, by a person authorised to grant leave by the school or local authority (as appropriate);
 - the absence was on a day exclusively set aside for religious observance by the religious body to which the parent belongs;
 - the local authority are under a duty to provide transport to the school and have failed to do so, or in certain circumstances, that the school is not within walking distance of the child's home and the local authority has made no suitable arrangements for:
 - the child's transport to and from school (unless it is a non-qualifying independent school);
 - boarding accommodation at or near the school; or

⁷ Please see annex A for the relevant extract of the Education Act 1996

- enabling the child to attend a school nearer to their home;⁸
 - If the child has been excluded under section 52 of the Education Act 2002 (as they do not have to attend the school they are excluded from) providing that the child attends alternative provision as directed;
 - If the child is receiving education otherwise than by regular attendance at school (for example, by home education);⁹ or
 - If the child has no fixed abode and the parent can show that their trade or business requires them to travel, and the child has attended school as regularly as the nature of the trade or business permits, and (if the child is 6 or over) the child has attended school for at least 200 sessions during the preceding twelve months from the date on which the proceedings were instituted.
- and, in a case of a child who is excluded but remains a registered pupil at the school, where the child is required by the governing body to attend alternative provision outside the school.
- In the case of a child not registered at a school the parent will have a defence to the offence if he proves that he is providing suitable education at home or by other means.

Parenting contracts

28. Parenting contracts were introduced by section 19 of the Anti-social Behaviour Act 2003. Parenting contracts can be used in case of irregular attendance at school or at alternative provision. Parenting contracts are useful tools in identifying and focusing the problems behind non-attendance.
 29. A parenting contract, in this case, is a formal written agreement between a parent and either the local authority or the governing body of a school and should contain:
 - a statement by the parent that they agree to comply for a specified period with whatever requirements are specified in the contract; and
 - a statement by the local authority or governing body agreeing to provide support to the parent for the purpose of complying with the contract.
 30. Entry into a parenting contract is voluntary. The parent cannot be compelled to enter into a parenting contract and there is no obligation on the local authority or governing body to offer one.
26. Section 444ZA¹⁰ to the 1996 Act applies section 444 to attendance at alternative provision. The parent must first have been given notice in writing, or by other effective means, of the alternative provision.
 27. Section 444ZA applies in the case of a child who:
 - is not a registered pupil at any school, where the LA has made arrangements for the child to be educated otherwise than at school;

Regular attendance at alternative provision

8 (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.

9 The Department's guidelines to LAs on elective home education are available at: <http://www.dcsf.gov.uk/localauthorities/index.cfm?action=subject&subjectID=7>

10 Inserted by Section 116 of the Education Act 2005 which came into force on 1 September 2005

Detailed guidance on parenting contracts is in *Guidance on Education-related Parenting Contracts, Parenting Orders and Penalty Notices* available from DCSF publications on 0845 6022260 (quoting ref: 00530-2007BKT-EN) and to download at www.dcsf.gov.uk/schoolattendance

Penalty notices

31. Sections 444A and 444B of the Education Act 1996 (introduced by section 23 of the Anti-social Behaviour Act 2003) introduced penalty notices as an alternative to prosecution under section 444(1). Parents may discharge potential liability for conviction for an offence under section 444(1) by paying a penalty. There is no legal requirement for there first to have been a penalty notice before proceeding to prosecution. Detailed guidance on penalty notices is in *Guidance on Education-related Parenting Contracts, Parenting Orders and Penalty Notices* available from DCSF publications on 0845 6022260 (quoting ref:00530-2007-BKT-EN) and to download at www.dcsf.gov.uk/schoolattendance

Education Supervision Order (ESO)

32. An authority may apply for an Education Supervision Order (ESO) instead of, or as well as, prosecuting the parents. An authority is under a duty to consider applying for an ESO before commencing legal proceedings against parents. If the local authority chooses not to apply for an ESO, it should record/provide evidence of the consideration and the reasons why it is not thought appropriate.

33. An authority may apply to the Family Proceedings Court for an ESO as a means of attempting to ensure regular school attendance, whether or not the child is enrolled at a school. An ESO makes the

authority responsible for advising, supporting and giving 'directions' to the supervised child and his/her parents in such a way as to ensure that the child is properly educated. Before instituting proceedings for an offence of irregular attendance or failure to comply with a school attendance order, local authorities must consider (section 447 of the Education Act 1996) whether it would be appropriate to apply for an ESO instead of, or as well as, prosecuting the child's parents.

34. When a child is made subject of an ESO, whilst it is a requirement to take into account the parents' and child's views, the parent loses the right of appeal against admissions decisions and certain rights to educate the child in a manner of their choosing.

35. Paragraph 12 of Schedule 3 to the Children Act 1989 empowers the supervising officer to give directions to the supervised child or the parent. Directions might include for example, a requirement for the parent and the child to attend meetings with the supervisor or with teachers at the school to discuss the child's progress.

36. Where parents persistently fail to comply with directions, and those directions are reasonable, they may be guilty of an offence. In such circumstances, the supervising officer must ensure that the matter is drawn to the attention of the Court. Upon conviction the parents will be liable to a fine not exceeding level 3 on the standard scale. Where a parent or a child persistently fails to comply with a direction given under the order, the supervising officer should ensure that the social services department is informed. In such cases, the department must investigate the circumstances of the child and consider whether it is appropriate for them to take any action to secure the welfare of the child (paragraph 19 of the Schedule).

Detailed guidance on ESOs is available at <http://www.dcsf.gov.uk/schoolattendance/publications/index.cfm>

Prosecution

37. Prosecution should be a planned intervention in those cases where it is identified to be appropriate (i.e. where the parent fails to cooperate in ensuring their child's regular school attendance). In order to effectively use prosecution as a planned intervention, the authority should follow the set of procedures outlined below in order to present the best possible case to the Court.
38. The Court must take account of any relevant guidelines. The Sentencing Guidelines Council guidelines "*New Sentences: Criminal Justice Act 2003*" and "*Overarching Principles: Seriousness*", available on the Council's website: <http://www.sentencing-guidelines.gov.uk/>, are relevant here.
39. The LA must be satisfied that prosecution is justified in terms of the *Attorney-General's Guidelines for Crown Prosecutors*. These guidelines set out the general principles which should be applied when making decisions about prosecutions to ensure that they are fair and consistent. To see the Code for Crown Prosecutors go to <http://www.cps.gov.uk/publications/prosecution/index.html>.

This explains how prosecution decisions are reached and is available in several different languages.

Conduct when investigating an offence

40. The Police and Criminal Evidence (PACE) Act 1984 sets out the conduct that Police or 'persons other than Police Officers who are charged with the duty of investigating

offences or charging offenders' should observe when carrying out these duties.

41. The PACE Act 1984 Code of Practice must be applied in the investigation of offences and failure to apply the Code could lead to evidence being ruled inadmissible. PACE also covers practice for the conduct of interviews and recording statements under PACE caution.
42. For more information about PACE and the PACE Codes go to <http://police.homeoffice.gov.uk/operational-policing/powers-pace-codes/pace-code-intro/>
43. There are very clear duties under The Police and Criminal Evidence Act 1984 on local authorities which require planning and proper resourcing (such as interpreters and translators). Guidance on local authorities' duties under PACE can be downloaded at: <http://www.dcsf.gov.uk/schoolattendance/prosecutions/index.cfm>

Authorities should take their own legal advice about the use of PACE in specific cases.

Formally notifying the parent

44. At the outset of casework the parent should be given a formal written notification stating that legal action may be taken by the authority. It is good practice to make sure parents understand the consequences of failing to ensure their child's regular attendance, in particular that the case could end up in Court. Conviction of an offence under s444 may result in a fine of £1,000. Under s444 (1A) conviction may result in a fine of £2,500 or a prison sentence.
45. Sometimes the prospect of prosecution may lead to a significant improvement in a child's attendance and Court proceedings may not be necessary if it is believed that the improvement will be sustained.

Commencing proceedings

46. It is highly advisable that authorities liaise with local Courts to ensure that there is a clear mutual understanding of the Court's powers and procedures.
47. The information must be laid before the Court within six months of the alleged offence. All authorities work differently in bringing information to the attention of the Court. In some authorities Legal Officers or solicitors are responsible for bringing cases to Court whereas in others the Children's Services bear the responsibility. The procedures outlined below should be followed regardless of who brings the case to Court.
48. In order to commence Court proceedings, an application must be made to the Magistrates' Court for a summons to be issued. This is done by "laying an information" before the Court ('information' is a brief description of the offence that has been committed, the name and address of the offender, the date of birth of the offender [where known], the dates of the offence and where it was allegedly committed). Courts need to bear in mind that local authorities will not necessarily have access to the parent's date of birth and are unable to enforce a request to the parents to provide this information. Authorities should use their best endeavours to ascertain such information and provide it to the Courts.
49. The information will then be considered to check that it contains all of the details above and that it is within the time limits of the offence. The information must be laid before Court within six months of the alleged offence. The date of the hearing must be arranged before the summons is issued. This can usually be arranged administratively without the need to attend Court.

50. The offence of failure to ensure regular attendance is committed at the school where the pupil is registered or, in the case of unregistered pupils, at the alternative provision made for them. Parents should be prosecuted by the local authority where the pupil goes to school or that has made the alternative provision (as applicable) and heard in the Magistrates' Court for the same area.

Serving the summons

51. When the Court has issued the summons, it must be served on the defendant. The authority should decide how the summons should be served (i.e. personally or by first class post).
52. The Court may require evidence of service of the summons. It is good practice to endorse the copy summons with a certificate of service. If the defendant turns up for the hearing, there is no need to produce evidence. If however the defendant fails to attend, the Court will require evidence that the summons has been served – a certificate of service would normally be sufficient.
53. In appropriate cases it may be possible for the Children's Services Officer working with the family to serve the summons by hand on the person named in the summons. However, due consideration should be given in every case to potential health and safety implications. Employers have a duty to ensure that appropriate precautions are taken to avoid exposing employees to hazardous situations and it is the responsibility of the authority to ensure that there has been a risk assessment prior to serving the summons.
54. First Class Post is deemed as good service by the Courts. Some Courts are often willing to accept certificates proving service, and so alternative methods of service which the authority may wish to

use include sending the summons by Recorded Delivery or using a Process Server.

55. It is good practice to give at least ten working days notice of the hearing date to the defendant.
56. At the same time as serving the summons, it is also good practice for the authority to present the defendant with the evidence that it intends to present to the Court. This would take the form of a witness statement (section 9 of the Criminal Justice Act 1967), together with a Certificate of Attendance signed by the Headteacher/Principal.
57. The defendant should be presented with a notice explaining that the authority will not call the witness (i.e. the Children's Services Officer) to give evidence in person, unless the defendant indicates within seven days that they wish the witness to be present. Within this period, the defendant may also object to any of the content of the witness statement. If the authority intends to draw to the Court's attention any previous convictions that the defendant may have, details of these convictions should be included in the notice.
58. The defendant should also be sent a form on which he/she can indicate their plea, sign and return it to the Court.

The Court hearing

59. There are 2 types of bench that may sit: District Judge or Magistrates.
60. A District Judge is a trained barrister or solicitor who will usually sit alone.
61. When the Bench comprises magistrates (also known as Justices of the Peace), two or three will sit, one of whom will be the chairman. The bench is advised by a Legal Advisor, who is also known as a Court Clerk. The Legal Advisor advises the bench

on all matters of law, practice and procedure.

62. At the hearing the parent will be asked to state whether they plead guilty or not guilty to the offence.
63. It is possible that the parent, either themselves or through their solicitor if they are represented, will ask for an adjournment before they enter a plea of guilty or not guilty. The Court is always anxious to ensure that cases are dealt with at the earliest opportunity but must decide if it is in the interests of justice to grant an adjournment. The Court has to be satisfied that both the prosecution and the defence have equal opportunity to present their case. If it is considered that this has not happened then the case may be appealed.
64. If the parents plead not guilty, the case will be adjourned until a trial date set by the Court. This is to ensure that both parties are able to adequately prepare and present their case and that the Court has time to consider it. It is important that the prosecutor has the available dates of witnesses to assist the court with fixing a trial date in the event of a plea of not guilty. At the trial (a hearing to consider the contested case), the authority should be represented by a solicitor or barrister. The Children's Services' Officer (or similar officer from the Children's Service) must be available to be called as a witness, and may be questioned by the defence. The Head teacher may also be called if the defence question the authenticity or accuracy of the register. Other witnesses may also be called by either the prosecution or the defence.
65. If the parents plead guilty at the hearing, the authority representative will outline the case before the Court hears from the parent or their solicitor.

How guilty pleas can be dealt with in the absence of the defendant

66. Under Section 12 of the Magistrates' Courts Act 1980, pleas of guilty may be dealt with in writing without the need for the defendant to attend Court.
67. In order to invoke this section, at the same time as the summons, the authority MUST have presented the defendant with the evidence to be presented to the Court in writing prior to the Court hearing as a section 9 witness statement and/or with a statement of facts.
68. The defendant should also have indicated (in the form they were asked to sign) that they wish to plead guilty and would like the Court to deal with the case in their absence.

Failure to attend Court

69. If the parent fails to attend Court on a second occasion an application can be made for the case to proceed in their absence. The Court will then consider the facts and decide whether it is in the interests of justice to do so. The case can be proved on the first occasion in the absence of the defendant if the s9 statement has been served. The statement will be read to the Court.
70. Only information that has been served on the defendant can be referred to in Court. The witness statement will be read out along with any written statement made by the defendant. The Court may then sentence on the basis of what has been placed before it without seeing the defendant. The statement of facts (if served) or s9 statement will be read out

if the defendant sends a written plea of guilty.

71. If the defendant indicates a not guilty plea the case will be adjourned for trial. An adjournment notice would be sent to the defendant.
72. Where the defendant is being prosecuted under the more serious offence (444(1A)) the Court will usually wish to see the defendant in person and this procedure will not usually be appropriate. The local authority will wish to check with their local Court what the procedure is.

What happens if the defendant fails to attend the hearing

73. If the defendant fails to attend, the Court may exercise its discretion to proceed in the absence of the defendant¹¹. Alternatively, the case may be adjourned, in which case the parent will be sent an adjournment notice which sets out a new hearing date.
74. In order to hear the case in the absence of the parent, the Court must rely on the evidence presented to the defendant in the section 9 witness statement.
75. Where the prosecution is being brought under section 444(1A), the local authority may ask the Court to issue a warrant in order to compel the parent to attend Court. The legal adviser in Court should be consulted as to the procedure to be followed in each particular case.
76. The Court may choose to issue a warrant with or without bail. If a warrant is issued with bail then the defendant is arrested by the police and granted bail on the condition that they attend Court on the

¹¹ Amendment No.3 to the Consolidated Criminal Practice Direction

new date of the hearing. If a warrant is issued without bail then the defendant is arrested and placed before the next available Court where a decision is taken as to how to proceed with the case.

Evidence

- 77.** The authority's representative should present the Certificate of Attendance to the Court. The Court should be informed of the case work undertaken by Children's Services.
- 78.** A witness statement by the Children's Services Officer managing the case (including details of the family and home visits) should be presented to the Court.
- 79.** Documentary evidence may also include:
- medical certificates for all or part of the absence, if applicable;
 - copies of any warning letters/notices sent to the parents;
 - records of planning meetings held;
 - documentary evidence relating to the aggravating or mitigating circumstances; and
 - report from the school.
- 80.** Oral evidence must be recorded at the time of, or very shortly after in the form of notes. If prosecution seems likely, parents must be warned.
- 81.** In the event of a guilty plea, the defendant, either in person or through a legal representative, will also be given the opportunity to address the Court so that the magistrates have as much information as possible about the commission of the offence and the defendant in order to pass sentence.

82. Where a not guilty plea is entered, after the authority has given evidence and the prosecution case is closed, the defendant may give evidence and call witnesses to give evidence who may be cross-examined by the prosecution. The Court would then decide if the defendant was guilty. If the defendant is acquitted this would mark the end of the proceedings. If the defendant were found guilty the Court would then proceed to sentence.

83. It should be noted that the 444(1) offence is an absolute offence (*Crump V Gilmore* 1969) and if one of the defences referred to in para. 25 above does not apply, and then the Court will have to find the defendant guilty, if they find the child's attendance not to be regular.

Sentencing options available to the Court

- 84.** In reaching their sentence the magistrates will consider all of the information presented to the Court.
- 85.** Before deciding upon a sentence the magistrates will need to consider the aggravating and mitigating factors of the offence in the context of the Magistrates' Court Sentencing Guidelines. These can be found at: http://www.jsboard.co.uk/magistrates/adult_court/index.htm

The Court must take account of any relevant guidelines. The Sentencing Guidelines Council guidelines "New Sentences: Criminal Justice Act 2003" and "Overarching Principles: Seriousness", available on the Sentencing Guidelines Council's website: <http://www.sentencing-guidelines.gov.uk/>, are relevant here.

86. On conviction the Court can choose from the various disposals available to it. They may consider:

- **Adjournment:**
After conviction a case may only be adjourned for up to four weeks at a time for enquiries to be made and to determine the most suitable method of dealing with the case. In addition, prior to conviction the case may be adjourned, usually for a fixed period. At the end of that period the parent would have to re-appear before the court, unless the child's attendance had improved and the authority had decided to discontinue the case against the parent.

- **Absolute Discharge:**
Where a case is proved but the Court believes that the parent is not deserving of a punishment, this disposal may be used. This can be cited in future prosecutions.

- **Conditional Discharge:**
This disposal lasts for a fixed period of time, up to three years. If the defendant is convicted of another offence during the period fixed then they could be sentenced for the original offence.

In the case of non-attendance at school, it could be used if the child's attendance has improved. As long as the parent does not re-offend within the discharge period no further action is taken.

- **Fine:**
For an offence under Section 444(1) this could be up to £1,000 (level 3). Where the offence is under Section 444(1A) the fine could be up to £2,500 (level 4). In considering the level of fine, the magistrates must take into account the means of the offender to pay.

- **Deferred Sentence:**
This is likely to be used in very limited circumstances. A deferred sentence enables the Court to review the conduct of the defendant before passing sentence, having first set certain conditions.

- **Community Orders:**
Before passing a community sentence the Court must be of the opinion that the offence is serious enough to warrant such a sentence. If it is not, a fine or a discharge will be appropriate.

The community order, available for those aged 18 or over, must not exceed three years. It must also include at least one of the following twelve requirements.

1. **Unpaid Work:** *This involves the offender being required to carry out unpaid work for between 40 to 300 hours, to be carried out normally within twelve months.*
2. **Specified Activity:** *This requires that the offender must present himself at a place or places, for a specified number of days, and/or participate in specified activities, which may be for the purpose of reparation.*
3. **Programme:** *the offender must participate in a specified accredited programme, aimed at changing the offender's behaviour.*
4. **Prohibited Activity:** *The offender must refrain from participating in the activities stated at the times and for the durations specified.*
5. **Curfew:** *The offender is to be present at a certain place for between two and twelve hours a day for a specified period of up to six months. There is a statutory presumption that compliance will be monitored electronically.*

6. **Exclusion:** *The offender is prohibited from entering the place specified for the period stated, up to a maximum of two years.*
7. **Residence:** *The offender must be resident at the place specified, for the period stated.*
8. **Mental Health Treatment:** *The offender consents to submit to treatment by or under the supervision of a registered medical practitioner or a chartered psychologist, during the period stipulated, with a view to the improvement of the offender's mental condition.*
9. **Drug Rehabilitation:** *The offender consents to submit to treatment for the period specified, with a view to reducing dependency on, or the propensity to misuse, drugs.*
- 10 **Alcohol Treatment:** *The offender consents to submit to treatment for the period specified, not less than six months, with a view to reducing dependency on alcohol.*
11. **Supervision:** *The offender must attend appointments for the purpose of promoting the offender's rehabilitation. A supervision requirement lasts the whole length of the order.*
12. **Attendance Centre:** *The offender, when aged under 25, is required to attend an attendance centre for the number of hours specified, which must be between 12 and 36 hours, for no more than three hours a day.*

The Court will normally order a pre-sentence report to be prepared by the Probation Service before imposing a community sentence. A Fast Delivery Report may be prepared on the day, but a standard delivery report will require the case to be adjourned.

- **Custodial Sentence** (only available under Section 444(1A)):

This could be for a period currently up to three months. This could rise to 51 weeks once the 2003 amendment comes into force. The offence must be considered so serious that that neither a fine alone nor a community sentence can be justified for the offence (s.152 [2] CJA 2003). A custodial sentence will not be imposed in the absence of the parent. The Court will normally ask the probation service to prepare a pre-sentence report before considering a custodial sentence. The Court could instead impose a suspended sentence order, suspending a custodial sentence of up to six months for a period of between six months to two years subject to the successful completion of requirements in the community.

Parenting order

87. The Court may make a parenting order following a conviction for an offence under section 443 or 444 of the Education Act 1996. The Court must be satisfied that the order would be desirable in the interests of preventing the commission of any further offence under those sections. The parenting order is an ancillary order and cannot be a sentence in its own right – therefore, if given, will be in addition to any other penalty imposed.
88. Detailed guidance on parenting contracts is in *Guidance on Education-related Parenting Contracts, Parenting Orders and Penalty Notices* available from DCSF publications on 0845 6022260 (quoting ref: 00530-2007BKT-EN) and to download at www.dcsf.gov.uk/schoolattendance
89. Additional Guidance on Parenting orders can be found on Teachernet at:

[http://www.teachernet.gov.uk/whole school/behaviour/exclusion/parenting orders/](http://www.teachernet.gov.uk/whole-school/behaviour/exclusion/parenting-orders/)

and on the Home Office webpage. at:

<http://www.crimereduction.homeoffice.gov.uk/youth/youth51.htm>

Annex A

Updated October 2007

Extract of Education Act 1996

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.

(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.

(1A) If in the circumstances mentioned in subsection (1) the parent knows that his child is failing to attend regularly at the school and fails. . . to cause him to do so, he is guilty of an offence.

(1B) It is a defence for a person charged with an offence under subsection (1A) to prove that he had a reasonable justification for his failure to cause the child to attend regularly at the school.

(2) Subsections (2A) 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.

(2A) The child shall not be taken to have failed to attend regularly at the school by reason of his absence from the school at any time if the parent proves that at that time the child was prevented from attending by reason of sickness or any unavoidable cause.

(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, or

(b) ...

(c) on any day exclusively set apart for religious observance by the religious body to which his parent belongs.

(3A) Subsections (3B) and (3D) apply where the child's home is in England.

(3B) The child shall not be taken to have failed to attend regularly at the school if the parent proves that—

- (a) the local education authority have a duty to make travel arrangements in relation to the child under section 508B (1) for the purpose of facilitating the child's attendance at the school and have failed to discharge that duty, or
- (b) the local education authority have a duty to make travel arrangements in relation to the child by virtue of subsection (2) (c) of section 508E (school travel schemes) for the purpose of facilitating the child's attendance at the school and have failed to discharge that duty.

(3C) For the purposes of subsection (3B)—

- (a) the reference to “travel arrangements” in paragraph (a) has the same meaning as in section 508B, and
- (b) the reference to “travel arrangements” in paragraph (b) has the same meaning as in paragraph 3 of Schedule 3

(3D) Where the school is an independent school which is not a qualifying school, the child shall not be taken to have failed to attend regularly at the school if the parent proves—

- (a) that the school is not within walking distance of the child's home,
- (b) that no suitable arrangements have been made by the local education authority for boarding accommodation for him at or near the school, and
- (c) that no suitable arrangements have been made by the local education authority for enabling him to become a registered pupil at a qualifying school nearer to his home.

(3E) For the purposes of subsection (3D), “qualifying school” has the same meaning as it has for the purposes of Schedule 35B (meaning

of “eligible child” for the purposes of section 508B).

(3F) Subsection (4) applies where the child's home is in Wales.

(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. . . 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 subsections (3D) and (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, subsections (3B), (3D) and (4) shall not apply, but it is a defence for the parent to prove—

- (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.

(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 unless the parent proves that at that time the child was prevented from being present by reason of sickness or any unavoidable cause.

(7A) Where—

- (a) a child of compulsory school age has been excluded for a fixed period on disciplinary grounds from a school in England which is—
- (i) a maintained school,
 - (ii) a pupil referral unit,
 - (iii) an Academy,
 - (iv) a city technology college, or
 - (v) a city college for the technology of the arts,
- (b) he remains for the time being a registered pupil at the school,
- (c) the appropriate authority make arrangements for the provision of full-time education for him at the school during the period of exclusion, and
- (d) notice in writing of the arrangements has been given to the child's parent,

the exclusion does not affect the application of subsections (1) to (7) to the child's attendance at the school on any day to which the arrangements relate.

(7B) In subsection (7A) (c) “the appropriate authority” means—

- (a) in relation to a maintained school, the governing body of the school,
- (b) in relation to a pupil referral unit, the local education authority, and
- (c) in relation to any school mentioned in subsection (7A) (a) (iii) to (v), the proprietor of the school.]

(8) A person guilty of an offence under [subsection (1)] is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(8A) A person guilty of an offence under subsection (1A) is liable on summary conviction—

- (a) to a fine not exceeding level 4 on the standard scale, or
- (b) to imprisonment for a term not exceeding 51 weeks,

or both.

(8B) If, on the trial of an offence under subsection (1A), the Court finds the defendant not guilty of that offence but is satisfied that he is guilty of an offence under subsection (1), the Court may find him guilty of that offence.

(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.

“444 A Penalty notice in respect of failure to secure regular attendance at school of registered pupil

(1) Where an authorised officer has reason to believe—

- (a) that a person has committed an offence under section 444(1), and
- (b) that the offence relates—
 - (i) to a relevant school in England,
 - (ii) in a case falling within subsection (1) of section 444ZA, to a place at which education is provided by a local education authority in England, or
 - (iii) in a case falling within subsection (2) of that section, to a place at which a child is required to attend by the appropriate authority (within the meaning of that section) for a relevant school in England,”.

he may give the person a penalty notice in respect of the offence.

(2) A penalty notice is a notice offering a person the opportunity of discharging any liability to conviction for the offence under section 444(1) to which the notice relates by payment of a penalty in accordance with the notice.

(3) Where a person is given a penalty notice, proceedings for the offence to which the notice relates (or an offence under section 444(1A) arising out of the same circumstances) may not be instituted before the end of such period as may be prescribed.

(4) Where a person is given a penalty notice, he cannot be convicted of the offence to which the notice relates (or an offence under section 444(1A) arising out of the same circumstances) if he pays a penalty in accordance with the notice.

(5) Penalties under this section shall be payable to local education authorities in England.

(6) Sums received by a local education authority under this section may be used by the authority for the purposes of any of its functions which may be specified in regulations but, to the extent that they are not so used, must be paid in accordance with regulations to the Secretary of State.

444B Penalty notices: supplemental

(1) Regulations may make—

- (a) provision as to the form and content of penalty notices,
- (b) provision as to the monetary amount of any penalty and the time by which it is to be paid,
- (c) provision for determining the local education authority to which a penalty is payable,
- (d) provision as to the methods by which penalties may be paid,
- (e) provision as to the records which are to be kept in relation to penalty notices,
- (f) provision as to the persons who may be authorised by a local education authority or a head teacher to give penalty notices,
- (g) provision limiting the circumstances in which authorised officers of a prescribed description may give penalty notices,
- (h) provision for or in connection with the withdrawal, in prescribed circumstances, of a penalty notice, including—
 - (i) repayment of any amount paid by way of penalty under a penalty notice which is withdrawn, and

- (ii) prohibition of the institution or continuation of proceedings for the offence to which the withdrawn notice relates (and any offence under section 444(1A) arising out of the same circumstances),
- (i) provision for a certificate—
 - (i) purporting to be signed by or on behalf of a prescribed person, and
 - (ii) stating that payment of any amount paid by way of penalty was or, as the case may be, was not received on or before a date specified in the certificate,

to be received in evidence of the matters so stated,

- (j) provision as to the action to be taken if a penalty is not paid in accordance with a penalty notice,
- (k) provision for or in connection with the preparation of codes of conduct in relation to the giving of penalty notices,
- (l) such other provision in relation to penalties or penalty notices as the Secretary of State thinks necessary or expedient.

(2) Without prejudice to the generality of subsection (1) or section 569(4), regulations under subsection (1)(b) may make provision for penalties of different amounts to be payable in different cases or circumstances (including provision for the penalty payable under a penalty notice to differ according to the time by which it is paid).

(3) Local education authorities, head teachers and authorised officers shall, in carrying out their functions in relation to penalty notices, have regard to any guidance which is published by the Secretary of State from time to time in relation to penalty notices.

(4) In this section and section 444A—

- “authorised officer” means—
 - (a) a constable,
 - (b) an officer of a local education authority in England who is authorised by the authority to give penalty notices, or
 - (c) an authorised staff member,
- “authorised staff member” means—
 - (a) a head teacher of a relevant school in England, or
 - (b) a member of the staff of a relevant school in England who is authorised by the head teacher of the school to give penalty notices,
- “penalty” means a penalty under a penalty notice,
- “penalty notice” has the meaning given by section 444A(2),
- “relevant school” means—
 - (a) a maintained school,
 - (b) a pupil referral unit,
 - (c) an Academy,
 - (d) a city technology college, or
 - (e) a city college for the technology of the arts.

444ZA Application of section 444 to alternative educational provision

(1) Where, in the case of a child of compulsory school age who is not a registered pupil at any school—

- (a) a local education authority has made arrangements under section 19 for the provision of education for him otherwise than at a school or at his home, and
- (b) notice in writing of the arrangements has been given to the child’s parent,

subsections (1) to (7) of section 444 have effect as if the place at which the education is provided were a school and the child were a registered pupil at that school.

(2) Where—

- (a) a child of compulsory school age has been excluded from a relevant school,
- (b) he remains for the time being a registered pupil at the school,
- (c) he is required by the appropriate authority for the school to attend at a place outside the school premises for the purpose of receiving any instruction or training, and
- (d) notice in writing of the requirement has been given to the child’s parent,

subsections (1) to (7) of section 444 have effect as if the place at which the child is required to attend were a school and the child were a registered pupil at that school (and not at the school mentioned in paragraph (b)).

(3) In relation to a maintained school or a pupil referral unit—

- (a) the reference in subsection (2) (a) to exclusion is a reference to exclusion under section 52 of the Education Act 2002, and
- (b) the requirement referred to in subsection (2) (c) is a requirement imposed under section 29(3) of that Act.

(4) A child shall not be taken to have failed to attend regularly—

- (a) in a case falling within subsection (1), at the place at which education is provided for him, or
- (b) in a case falling within subsection (2), at the place at which he is required to attend,

unless he has failed to attend regularly since the giving of the notice mentioned in subsection (1) (b) or (2) (d).

(5) Section 572, which provides for the methods by which notices may be served under this Act, does not preclude the notice mentioned in subsection (1)(b) or (2)(d) from being given to a child’s parent by any other effective method.

(6) In proceedings for an offence under section 444 in a case falling within subsection (1) of this section it is a defence for the parent to prove that the child is receiving suitable education otherwise than by regular attendance at a school or at the place mentioned in subsection (1).

(7) In section 444 “leave”—

- (a) in relation to a place at which education is provided as mentioned in subsection (1) of this section, means leave granted by any person authorised to do so by the local education authority;
- (b) in relation to a place at which a child is required to attend as mentioned in subsection (2)(c) of this section, means leave granted by any person authorised to do so by the appropriate authority for the school.

(8) In this section—

- (a) “relevant school” means—
 - (i) a maintained school,
 - (ii) a pupil referral unit,
 - (iii) an Academy,
 - (iv) a city technology college, or
 - (v) a city college for the technology of the arts;
- (b) “appropriate authority” means—
 - (i) in relation to a maintained school, the governing body,
 - (ii) in relation to a pupil referral unit, the local education authority, and
 - (iii) in relation to a school falling within paragraph (a) (iii), (iv) or (v), the proprietor of the school.

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