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Welsh Government

## Consultation Document

# Penalty notices for regular non-attendance at school

Date of issue: **30 November 2012**

Action required: Responses by **22 February 2013**

# Penalty notices for regular non-attendance at school

- Overview** The Welsh Government is consulting on proposals to introduce fixed penalty notices for regular non-attendance at school.
- How to respond** Responses should be e-mailed/posted to the address below to arrive by **22 February 2013** at the latest.
- Further information and related documents** Large print, Braille and alternate language versions of this document are available on request.  
The consultation documents can be accessed from the Welsh Government's website at [www.wales.gov.uk/consultations](http://www.wales.gov.uk/consultations)
- Contact details** For further information:  
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Cathays Park  
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## **Data protection**

### **How the views and information you give us will be used**

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

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## Introduction

1. It is widely recognised that regular school attendance plays a vital role in helping to ensure that children and young people are given the opportunity to achieve their full potential. Children who miss school often fall behind with their work and do less well.

2. The recently published *Improving schools* (2012) document sets out the Welsh Government's plans for improving the education system in Wales which includes continuing to progress activities to improve attendance. This consultation document sets out our proposals for the introduction of fixed penalty notices as an alternative option for addressing the issue of persistent unauthorised absences.

3. Targeted intervention and effective engagement plays a vital role in resolving issues of poor school attendance. However, where this fails to have the desired effect and attendance does not improve a number of options already exist to local authorities (LAs) and schools to try to help secure regular attendance.

4. In considering the most suitable strategy for improving attendance, particularly for unauthorised absences, it is proposed that penalty notices would, in some circumstances, provide a suitable quick and effective measure for improving levels of unauthorised absences.

5. These proposals seek to reduce the need for lengthy and costly prosecution cases. Although prosecution through the courts should still be considered for extreme cases of non-attendance, the use of penalty notices for less entrenched cases will help reduce the number of prosecutions and enable Education Welfare Services (EWS) to target their time and interventions more effectively.

6. Section 444A of the Education Act 1996 provides the legal basis for the introduction of penalty notices which can be used as an alternative to prosecution for regular non-school attendance. Penalty notices should be viewed as an **additional option** to the current intervention measures already available.

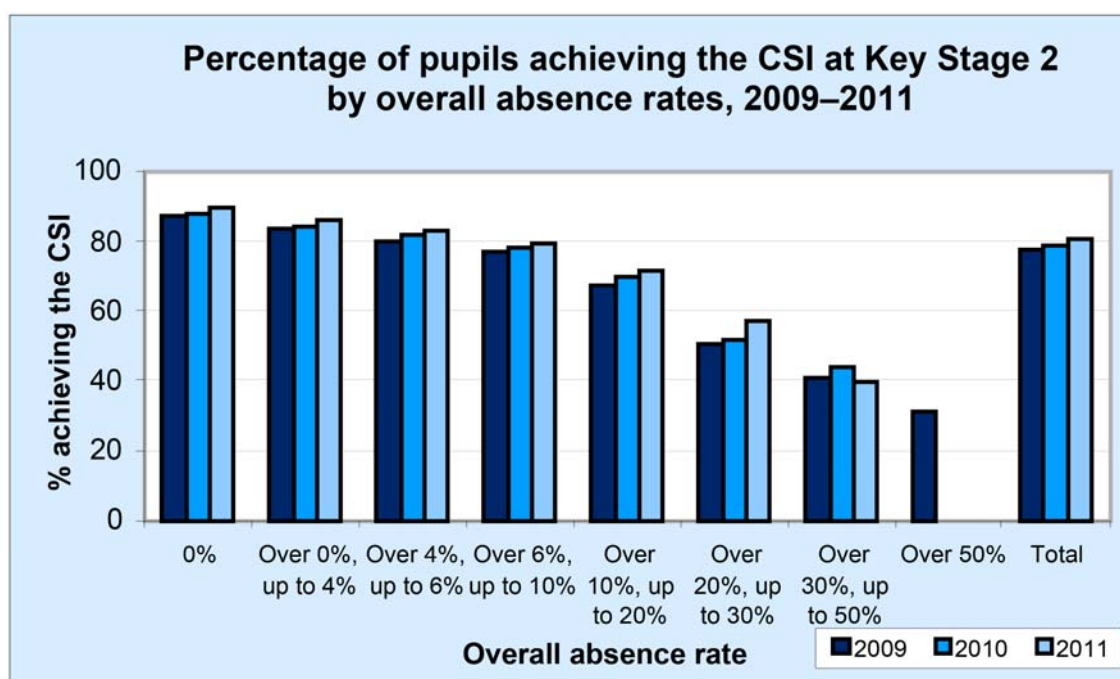
## Background

7. The Welsh Government have already put in place a number of measures to improve attendance in our schools such as a Behaviour and Attendance Analysis Framework which uses robust data to identify attendance problems at an early stage. The analysis framework also identified trends in absences making more specific targeted intervention more successful.

8. As a result, recently released data on secondary school absenteeism<sup>1</sup> shows attendance rates are moving in the right direction, improving 0.8 percentage points on last year. However, the level of unauthorised absences in Wales still remains a concern. Research has shown that a pupil who misses 17 days of school, authorised or unauthorised, can drop a GCSE grade across all subjects.

9. The most recent Academic Achievement by Pupil Characteristics<sup>2</sup> statistics, published in March 2012, demonstrate the statistical link between poor attendance and low attainment, as shown in the following tables.

**Table 1 – Percentage of pupils achieving the Core Subject Indicator (CSI)<sup>3</sup> at Key Stage 2 by overall absence rates, 2009–2011**



<sup>1</sup> [www.wales.gov.uk/topics/statistics/headlines/schools2012/120925/?lang=en](http://www.wales.gov.uk/topics/statistics/headlines/schools2012/120925/?lang=en)

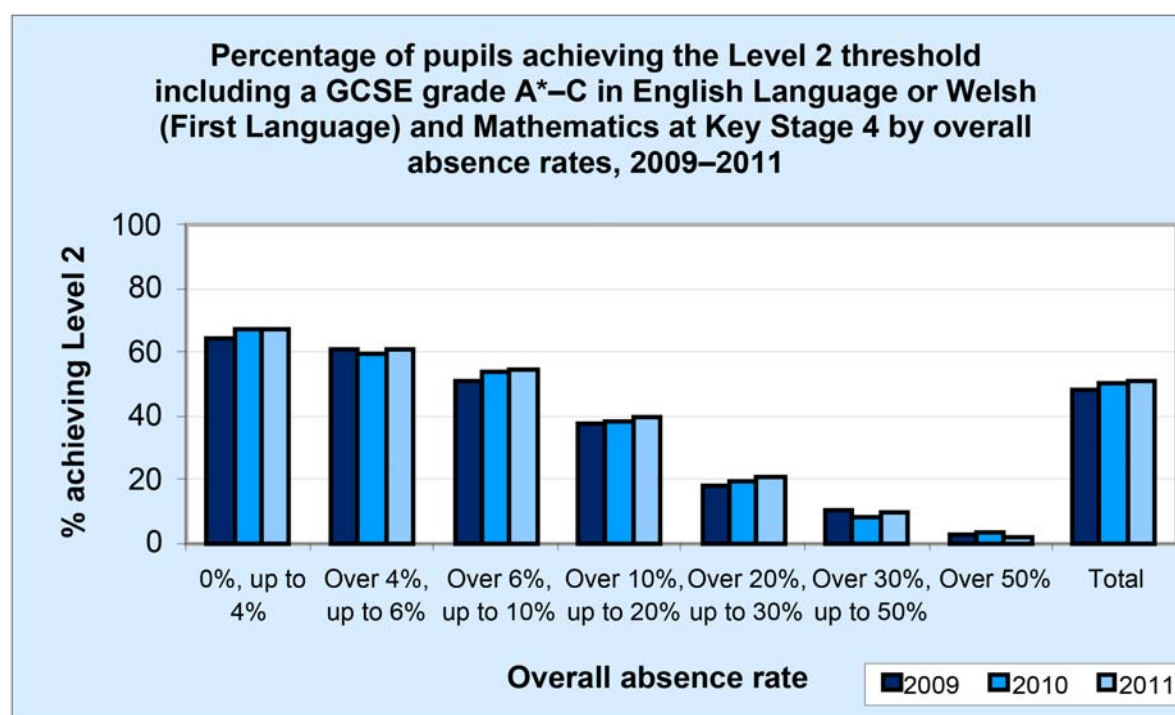
<sup>2</sup> [www.wales.gov.uk/topics/statistics/headlines/schools2012/120328/?jsessionid=E32B2BDC040EED0D20E95F43B2341CD6?lang=en](http://www.wales.gov.uk/topics/statistics/headlines/schools2012/120328/?jsessionid=E32B2BDC040EED0D20E95F43B2341CD6?lang=en)

<sup>3</sup> Core Subject Indicators – English, Welsh First Language, mathematics and science.

Overall absence rates 2011	Core Subject Indicator %
0%	92.5%
Over 0% but 4% at most	88.4%
Over 4% but 6% at most	86.3%
Over 6% but 10% at most	82.2%
Over 10% but 20% at most	74.6%
Over 20% but 30% at most	56.1%
Over 30% but 50% at most	38.7%

- In 2011, pupils that hadn't missed any school sessions had the highest percentage of pupils achieving the Core Subject Indicator (92.5 per cent).
- Levels of attainment decreased as overall absence rates increased, with only 38.7 per cent of those pupils missing between 30 per cent and 50 per cent of sessions achieving the Core Subject Indicator.

**Table 2 – Percentage of pupils achieving the Level 2 threshold including a GCSE grade A\*–C in English Language or Welsh (First Language) and Mathematics<sup>4</sup> at Key Stage 4 by overall absence rates 2009–2011**



<sup>4</sup> English Language, Welsh First Language and Mathematics.

<b>Overall absence rates 2011</b>	<b>Level 2 threshold including a GCSE Grade A*–C in English Language or Welsh First Language and Mathematics</b>
0% to 4% at most	67.2%
Over 4% but 6% at most	61.3%
Over 6% but 10% at most	54.7%
Over 10% but 20% at most	40.1%
Over 20% but 30% at most	20.9%
Over 30% but 50% at most	9.7%
Over 50%	2.0%

- In 2011, pupils that missed between 0 per cent and 4 per cent of sessions had the highest percentage of pupils achieving the Level 2 threshold in English Language, Welsh First Language and Mathematics (67.2 per cent).
- Levels of attainment decreased as overall absence rates increased, with pupils missing over 50 per cent of sessions having the lowest attainment levels (2.0 per cent).

10. As demonstrated by the data in the tables the higher the attendance rate the higher the level of attainment. Addressing the issues of low level persistent absence quickly and effectively is key in ensuring that attendance rates continue to improve and as such the level of attainment of pupils.

11. Evidence shows that children with poor attendance are unlikely to succeed academically and they are more likely to be not in education, employment or training (NEET) when they leave school. NEET young people are likely to have a history of not attending school and to report higher rates of persistent absence during Years 10 and 11 than young people in general.

12. Recently released data on absence in secondary schools for 2011/12<sup>5</sup> shows that the overall attendance rate in Wales' secondary schools has improved by 0.8 percentage points on the previous year. This is the largest single year-on-year improvement seen over the last seven years for secondary schools, with attendance now standing at 92.2 per cent. However, the level of unauthorised absence in Wales still remains a concern.

13. The average rate for secondary schools in Wales for 2011/12 for unauthorised absences is 1.4 per cent with levels for nine LAs above this rate. The rate varies across all LAs, with the highest unauthorised absence at 2.7 per cent and the lowest at 0.4 of a percentage point. Although the overall rate of unauthorised absences has gradually reduced year-on-year this is only at a rate of 0.1 of a percentage point each year and as such no significant change is demonstrated.

14. The same can be said for primary schools. The most recent data on absences from primary schools for 2010/11<sup>6</sup> (data for 2011/12 is provisionally set to be

<sup>5</sup> [www.wales.gov.uk/topics/statistics/headlines/schools2012/120925/?lang=en](http://www.wales.gov.uk/topics/statistics/headlines/schools2012/120925/?lang=en)

<sup>6</sup> [www.wales.gov.uk/topics/statistics/headlines/schools2011/111214/?lang=en](http://www.wales.gov.uk/topics/statistics/headlines/schools2011/111214/?lang=en)



released in December 2012) shows that unauthorised absence in primary schools has remained at a consistent level and only changes by 0.1 of a percentage point up or down each year.

15. This data shows that the level of unauthorised absences for both primary and secondary schools remains at a consistent level and any significant improvement will improve the overall absence rates in Wales.

16. Targeted intervention and effective engagement between schools, families and the EWS can play a vital role in resolving issues of poor school attendance. Where this fails to have the desired effect and attendance does not improve a number of options already exist to LAs and schools to try to help secure regular attendance. These include parenting contracts, parenting orders, school attendance orders, education supervision orders as well as prosecution through the courts in extreme cases.

17. As part of the drive to improve attendance the Welsh Government met with each LA to discuss in detail their schools' attendance and behaviour performance. During these discussions a number of LAs raised the issue of protracted and ineffectual prosecutions for non-school attendance and asked the Welsh Government to consider the introduction of fixed penalty notices as an additional option in helping them secure regular school attendance.

18. Penalty notices would mainly be applied for unauthorised absences, such as:

- obvious truancy (including pupils caught on truancy sweeps)
- excessive holidays in term time
- excessive delayed return from extended holidays without prior school agreement
- persistent lateness (after the register has closed and an unauthorised absence is created)
- parentally condoned absence, including:
  - days away from school for Christmas or shopping trips
  - absences owed to avoiding perceived unfairness to a pupil that has to attend school while their sibling who attends another school that has an Inset day does not have to
  - medical or dental appointments where the appointment takes place early morning or late afternoon and the pupil is kept away from school all day.

## **Effectiveness of penalty notices**

19. The most recent study in the UK into the effectiveness of penalty notices for regular non-attendance at school was commissioned in 2010 by the then

Department for Children, Schools and Families in England (now the Department for Education)<sup>7</sup>.

20. Some of the key findings included the following.

- Penalty notice warning letters were found to contribute to positive impacts on pupils' attendance. In particular, they were perceived to contribute to improvements in attendance for pupils who have less entrenched attendance issues and for whom there are no specific issues or reasons underpinning their low attendance.
- The threat of the penalty notice was often considered to be sufficient to improve attendance without one actually being issued.
- Penalty notices were found to be an effective approach to dealing with punctuality issues and for cases where there were no complex issues or there did not appear to be underlying reasons for poor attendance.
- Penalty notices were less effective in circumstances where there were underlying family issues or where attendance issues were more entrenched.

21. While schools and LAs should explore all options available to them, it is the Welsh Government's view that fixed penalty notices have the potential to help improve attendance in less complex cases as part of a wider package of support and intervention.

22. The fixed penalty notice system provides another option that can be utilised before prosecution procedures are initiated. Schools and LAs should consider each case individually and assess the level of support and intervention required before deciding on the most suitable strategy for improving an individual pupil's attendance.

## **Application of penalty notices**

23. A penalty notice is a suitable intervention in circumstances where the parent/carer<sup>8</sup> is deemed capable of securing their child's attendance but is not willing to take responsibility for doing so. Penalty notices are for use only where parental cooperation in this process is either absent or deemed insufficient to resolve the problem. They are used as a means of enforcing attendance.

24. The proposed penalty notice system would enable parents/carers to avoid stricter sanctions (such as an education supervision order) by paying a penalty of £60 if paid within 28 days rising to £120 if paid after 28 but within 42 days.

25. If the penalty is unpaid or paid in part at the end of the 42-day period, the LA must either proceed to seek prosecution for the offence or withdraw the notice if it does not prosecute for the offence to which the notice relates.

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<sup>7</sup> [www.education.gov.uk/publications/standard/publicationDetail/Page1/DFE-RR041](http://www.education.gov.uk/publications/standard/publicationDetail/Page1/DFE-RR041)

<sup>8</sup> A parent as defined in section 576 of the Education Act 1996.

26. A penalty notice could only be issued in cases of unauthorised absence. Although the following is not an exhaustive list it would be considered appropriate to serve a notice where:

- a child has been referred to the EWS and casework is in progress but the parents/carers are not supporting the school's or EWS' attempts to bring about improved attendance and no other legal sanctions are underway
- parents/carers persistently fail to ensure their children attend school and attendance is below a set percentage agreed within the authority for an identified period with no acceptable reason and no other legal sanctions are underway
- attendance falls below a set percentage agreed within the authority for a given period without justification and parental non-attendance prosecution under section 444 of the Education Act 1996 would not be in the public interest
- parenting contracts and/or parenting orders have been unsuccessful or not complied with
- parents/carers are unwilling to sign a contract offering support and attendance is below 85 per cent over a set period without reasonable justification
- term-time leave is taken without agreement with, or notification to, the school following previous term-time leave and the parents/carers have been warned that a fixed penalty notice may result
- term-time leave is taken during examination periods when parents/carers have been notified in advance and warned that a fixed penalty notice may result
- a pupil is persistently late and arrives after the register has closed
- a pupil regularly comes to the attention of the police during school hours for being absent from school without an acceptable reason or is involved in criminal activity while truanting from school
- pupils are located on truancy sweep initiatives, unless there is a justifiable reason for their absence from school.

## **The proposals**

27. LAs would be responsible for the administration of the penalty notice system and as such must issue a local code of conduct to ensure the smooth administration and operation of the scheme and consistent operation across the LA area.

28. Headteachers, police (including community support officers) and accredited persons would be empowered to issue penalty notices. Headteachers and the police must comply with the local code of conduct issued by the relevant LA when issuing penalty notices and provide to the LA a copy of any notice issued.

### **Local code of conduct**

29. In order to ensure the powers are applied consistently a local code of conduct must be developed. The purpose of the local code of conduct is to ensure that the powers are applied consistently and fairly across the LA area and that suitable arrangements are in place for the administration of the scheme. Local codes should contain a statement to this effect.

30. Anyone issuing a penalty notice must do so within the terms of the local code. It is the responsibility of each LA to draw up a code of conduct after holding a consultation on a proposed code of conduct within their area.

31. The local code of conduct is key to the successful use of penalty notices. It ensures consistency, fairness and transparency in the way penalty notices are applied and allows LAs to manage the system and tailor it to local needs and resources. The regulations will specify that the local code must include:

- means of avoiding the issuing of duplicate notices and of ensuring that notices are not issued when a prosecution for that particular offence is already being planned or is underway. A simple way of achieving this might be to include a requirement to check with the EWS before issuing
- when it will be appropriate to issue a penalty notice for an offence. In the case of truancy, this must include the level of unauthorised absence which is necessary to trigger a penalty notice. In considering this trigger, LAs should take into account the level of unauthorised absence at which it will be willing and able to prosecute for the offence of irregular attendance as the LA will normally be following this course of action where a penalty notice is not paid. Other criteria may be included
- the maximum number of penalty notices that can be issued to one parent/carer in any 12-month period
- arrangements for coordination between the LA and its local partners.

### **Who can receive a penalty notice?**

32. These procedures apply to the parents/carers of children of compulsory school age who are registered at a maintained school, a pupil referral unit and those attending alternative provision.

33. In the first instance the parent/carer should be given a formal written notification explaining the actions that may be taken. The notification should set out the consequences of failing to ensure their child's regular attendance, in particular that the case could result in a penalty notice and/or prosecution.

34. The key consideration in deciding whether to issue a penalty notice is whether it is likely to be effective in helping to get the pupil back into school or alternative provision.

35. The usual response to a first offence might be a warning letter rather than a penalty. However, a penalty notice could be issued for a first offence in circumstances where an extended period of absence is condoned by the parent/carer.

36. LAs should take great care to ensure that notices are properly issued and only issued for offences where the LA is willing and able to prosecute if the fine is not paid.

### **Once a penalty notice is issued**

37. A parent/carer cannot be prosecuted for the offence for which a notice was issued until after the final deadline for payment has passed. Neither can they be convicted of that offence if payment of a penalty is in accordance with the notice.

38. If the penalty is not paid in full by the end of the 42-day period the LA must either prosecute for the offence to which the notice relates or withdraw the notice.

39. A penalty notice may only be withdrawn where:

- it ought not to have been issued, i.e. where it has been issued outside the terms of the local code of conduct or where no offence has been committed
- it has been issued to the wrong person
- it contains material errors.

40. The LA can retain revenue from their penalty notice scheme to cover the costs of issuing or enforcing notices, or the cost of prosecuting recipients who do not pay. The surplus, if any, must be surrendered to the Welsh Consolidated Fund.

## **United Nations Convention on the Rights of the Child**

41. The United Nations Convention on the Rights of the Child (UNCRC) is an international agreement that protects the rights of children under the age of 18. By virtue of the Rights of Children and Young Persons (Wales) Measure 2011, the Welsh Ministers are required to have due regard to the UNCRC when bringing forward new policy proposals and legislation.

42. In considering these proposals we have had due regard to the UNCRC. For example, the right of the child to education. There is also a requirement to give children a voice in decision-making processes affecting them. The Welsh Government will take into account the views and ideas expressed by children when making decisions that have a direct impact upon their lives. As such, an easy-read version of this document has been produced.

## Responding to this consultation and next steps

43. A consultation response form accompanies this consultation document setting out specific questions designed to assist the Welsh Government in determining specific policy requirements for the introduction of penalty notices.

44. However, while the consultation response form seeks to address specific questions, responses are welcomed in any form and should be sent to the following addresses.

**e-mail:** [WELLBEINGshare@wales.gsi.gov.uk](mailto:WELLBEINGshare@wales.gsi.gov.uk)

**Post:** Pupil Wellbeing Branch  
Support for Learners Division  
Department for Education and Skills  
Welsh Government  
Cathays Park  
Cardiff  
CF10 3NQ

45. Following the consultation closure the responses will be analysed and a summary of responses will be published online. The Welsh Government will consider the responses to the consultation in developing its guidance and specific policy requirement for the introduction of the penalty notice system.

46. The proposals set out within this consultation document will be introduced through the Education (Penalty Notice) (Wales) Regulations. A Regulatory Impact Assessment and Explanatory Memorandum will be prepared to accompany the Regulations and will be subject to approval by the National Assembly for Wales.