

Guidance on Education-Related Parenting Contracts, Parenting Orders and Penalty Notices

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department for
children, schools and families

Guidance on Education-Related Parenting Contracts, Parenting Orders and Penalty Notices

Guidance and regulations relating to parenting contracts in cases of exclusion from or misbehaviour at school or truancy; parenting orders in cases of exclusion from or serious misbehaviour at school; and penalty notices for parents in cases of truancy or in connection with the whereabouts of their child when excluded.

The main changes made in this version of the guidance

This guidance has been revised to take account of the changes to education-related parenting contracts, parenting orders and penalty notices made by the Education and Inspections Act 2006. These changes allow:

- schools to apply for parenting orders direct to the Magistrates' Court;
- parenting contracts to be offered to parents at an earlier stage where pupils have misbehaved in school;
- parenting orders to be applied for where there has been serious misbehaviour which would warrant exclusion; and
- penalty notices to be issued to parents in relation to the whereabouts of excluded pupils (in the first 5 days of exclusion).

The new provisions will take effect from 1 September 2007.

This version of the guidance replaces the February 2004 and September 2005 editions.

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Overview of the Guidance

This guidance applies to England only.

The guidance in relation to parenting contracts and orders covers only those arising from truancy and exclusion from or misbehaviour at school. Separate guidance on parenting orders and contracts arising from criminal conduct and/or anti-social behaviour is published by the Ministry of Justice and the Respect Task Force¹.

Local authorities (LAs), school governing bodies (GBs), school staff, and the police, including community support officers and accredited persons, are required by law to have regard to the relevant parts of this guidance when carrying out their functions in relation to parenting contracts, parenting orders and penalty notices, including making decisions on:

- entering into a parenting contract following a pupil's exclusion from, or misbehaviour at, school or truancy under section 19 of the Anti-social Behaviour Act 2003 (GBs and LAs);
- applying for or monitoring a parenting order following a pupil's exclusion from, or serious misbehaviour at, school under section 20 of the Anti-social Behaviour Act 2003 (LAs and schools) or monitoring a parenting order imposed following prosecution under section 444 of the Education Act 1996 (LAs); and
- issuing a penalty notice under section 444A of the Education Act 1996 or section 105 of the Education and Inspections Act 2006² (LAs, head teachers and deputy and assistant heads authorised by them³, the police, including community support officers and accredited persons) and, in the case of LAs, when making local protocols and administering the penalty notice scheme.

This means that while the guidance does not have the force of statute, there is an expectation that it will be followed unless there is good reason to depart from it. The guidance is not exhaustive and judgements will need to take account of the circumstances of individual cases.

1 www.justice.gov.uk and www.respect.gov.uk.

2 Inserted into the Education Act 1996 by section 23 Anti-social Behaviour Act 2003.

3 Regulations limit those who may be authorised by head teachers to issue penalty notices to deputy head teachers and assistant head teachers.

Part 1 of the guidance highlights overarching considerations which practitioners should take into account when using any of the provisions covered in the guidance.

Part 2 briefly outlines the law relating to school attendance and behaviour and discipline.

Part 3 explains how and when parenting contracts should be used in cases of non-attendance, misbehaviour or exclusion.

Part 4 explains the processes for applying for a 'free-standing' parenting order under section 20 of the Anti-social Behaviour Act 2003 and how parenting orders in general should be monitored.

Part 5 explains how and when penalty notices should be used in cases of non-attendance or in relation to the whereabouts of excluded pupils.

1. Considerations to take into account in applying the measures

Purpose of the Measures

1. Parenting contracts, parenting orders and penalty notices are amongst the interventions available to promote better school attendance and behaviour. Better behaviour and attendance are essential to improve children's educational prospects and to avoid putting them at risk of criminal or anti-social behaviour.
2. These measures will help parents to fulfil their responsibilities to ensure their children regularly attend school and behave well when they get there, providing support as appropriate. As such, it is important that professionals involved in applying the measures are aware of the different types of strategies and support that will be appropriate in engaging different parents.
3. The measures themselves are described in detail later in this guidance but in order to be helpful to those implementing the measures some reminders about other relevant legislation and good practice are set out in the paragraphs below.

Monitoring and Evaluation

4. LAs and schools should make use of data to help them monitor and evaluate the effectiveness and appropriateness of their use of parenting contracts, parenting orders and penalty notices.

Human Rights Act 1998 (HRA)

5. LAs, schools and the police must apply their powers fairly and consistently, having regard to this guidance and, in the case of penalty notices, the local code of conduct issued by the relevant LA. Inconsistency or unfairness may lead to legal challenges including under the HRA. Further information on the HRA can be found at www.justice.gov.uk/whatwedo/humanrights

Race Equality

6. In addition to the duty not to discriminate on racial grounds, the Race Relations Act 1976⁴ places a general duty on all public authorities, including LAs, schools and the police to have due regard to the need to eliminate unlawful racial discrimination and promote equality of opportunity and good relations between people of different racial groups. The Race Relations Act 1976 (Statutory Duties) Order 2001 also places a number of specific duties on LAs, schools and the police, including duties to assess the impact of their policies on minority groups and to monitor the operation of those policies by ethnicity and make that information publicly available.
7. LAs, schools and the police should therefore monitor the application of their powers to ensure that there is no underlying bias which would lead to disproportionate, unequal or unfair treatment on account of ethnicity. For example, schools and LAs should consider the reasons behind any disproportionate number of Black or ethnic minority pupils excluded when using their powers in respect of parenting contracts and orders in cases of exclusion from school.
8. The law also recognises the special position of Gypsy, Roma and Traveller families in relation to prosecution for irregular attendance. Penalty notices should not be issued in circumstances where a parent would have a defence to prosecution under section 444(6) Education Act 1996.
9. See the Commission for Race Equality's web-site for further information: www.cre.gov.uk.

Gender Equality

10. Section 76A of the Sex Discrimination Act 1975 (inserted by section 84(1) of the Equality Act 2006) places public authorities under a duty to have due regard to the need to eliminate unlawful discrimination and harassment, and to promote equality of opportunity between women and men.

Disability

11. The amended Disability Discrimination Act 1995 applies to education and the functions of public authorities. LAs and school governing bodies will have to be mindful of their responsibilities under that legislation as they exercise their powers. Public authorities have duties to eliminate discrimination and harassment of disabled people and promote equality of opportunity, positive attitudes and inclusion. They must assess and monitor the impact of their policies involving disabled people in this process.
12. The definition of disability under the Act covers pupils with physical, sensory, intellectual or mental impairments. It is unlawful for schools or LAs, without justification, to discriminate against disabled pupils and prospective pupils for a reason related to their

4 As amended by the Race Relations (Amendment) Act 2000.

disability in the provision of education and associated services. Discrimination means treating disabled pupils less favourably than other pupils without justification. It also means failing to take reasonable steps to ensure that disabled pupils are not placed at a substantial disadvantage compared to their non-disabled peers. What constitutes a reasonable step will depend on the circumstances of each case. The Disability Discrimination Act makes specific provision in respect of exclusions and provides mechanisms for claims of discrimination to be made in relation to allegations of discrimination. LAs and school governing bodies should bear in mind that a pupil's parent may be disabled and they may owe duties under the Disability Discrimination Act to the parent whether or not the pupil is disabled.

13. Parenting contracts, parenting orders and penalty notices are not, and should not be used as, alternatives to taking reasonable steps to ensure pupils are not placed at a substantial disadvantage compared to their non-disabled peers.
14. For more information see the Disability Rights Commission's 'Code of Practice for Schools – Disability Discrimination Act 1995: Part 4' or go to the Disability Rights Commission website at www.drc.org.uk.

Special Educational Needs

15. Behaviour and attendance problems could, in some instances, relate to a child's special educational needs (SEN). School governing bodies have a statutory duty to use their best endeavours to ensure that the necessary provision is made for any pupil who has SEN. LAs have specific duties in relation to identifying, assessing and making provision for pupils with SEN, including those with behavioural, social and emotional needs. Statutory guidance on identifying, assessing and making provision for pupils with SEN, including those with behavioural, social and emotional needs, is given in the Special Educational Needs Code of Practice. Schools and LAs must have regard to this guidance.
16. Before proceeding to make a parenting contract, apply for a parenting order or issue a penalty notice schools and LAs should consider whether behaviour and/or attendance problems may be related to a pupil's special educational needs. Maintained schools should be able to demonstrate that they have used their best endeavours, acting in conjunction with the LA where appropriate, to make appropriate provision for the pupil's needs. This may include action to support the pupil through School Action and School Action Plus in the SEN Code of Practice or asking the LA to carry out a statutory assessment of the pupil's needs. Early identification and intervention, accurate assessment and the arrangement of appropriate provision to meet pupils' SEN usually leads to better outcomes.
17. Parenting contracts, parenting orders and penalty notices are not, and should not be used as, alternatives to taking appropriate action to meet a pupil's special educational needs.

Information for Parents

18. LAs, schools and other professionals involved in applying the measures will need to ensure that parents in the area have access to clear, accurate information about the measures and their rights and responsibilities. Parent guides to behaviour legislation and school attendance legislation (*Is your child missing out?*) and to parenting contracts are available on <http://www.parentscentre.gov.uk/publications/> and from DCSF publications (0845 6022260 or dcsf@prolog.uk.com). The leaflets are downloadable in several different languages but, depending on the LA area, practitioners may need to make these leaflets and other such documentation available in additional languages.

Engaging Parents

19. *The Report of the Practitioners' Group on School Behaviour and Discipline, 2005* (known as the Steer Report) recognised the need for good relationships with parents if attendance and behaviour, and hence learning, is to improve in our schools. It acknowledged that most parents want to work with the schools for the good of their children and that some will turn to schools for help when they are experiencing problems with their children's behaviour at home.
20. Materials produced by the Department on *Involving Parents, Raising Achievement* are available on the TeacherNet website⁵.

Involvement of Children and Young People

21. LAs, schools and the police should seek to involve the pupil as much as possible in any discussions around the pupil's behaviour and attendance. Schools and LAs should also seek, subject to the pupil's age, maturity and understanding, to involve the pupil in the discussions leading to a parenting contract and in the drawing up of the contract itself. A contract can be combined with a pastoral support programme (PSP). For guidance on PSPs go to: <http://www.dcsf.gov.uk/behaviourandattendance/uploads/Pastoral%20Support%20Programme%20Guidance.doc>
22. For further information and guidance on involving pupils, please refer to the guidance "*Working Together: Giving children and young people a say*", available from DCSF publications (0845 6022260 or dcsf@prolog.uk.com) under reference DfES/0492/2003.

'Cross-border' Cases

23. Where the pupil attends school in one LA and lives in another, the LA where the pupil attends school should normally take the lead in any LA-level action necessary to improve the pupil's attendance or behaviour⁶. In such cases, the LA where the pupil lives and the

5 Department for Education and Skills, *Involving Parents, Raising Achievement*, (2003) <http://www.teachernet.gov.uk/wholeschool/familyandcommunity/workingwithparents/ipratoolkit/>

6 The exception is where a pupil is permanently excluded in which case the LA which is responsible for them (usually the one in which they live) should take the lead in any necessary action.

LA where he or she attends school will need to work closely together. If a parenting order is made, consideration should be given to referring the parent to a parenting programme in the LA where the pupil lives.

24. LAs are advised to draw up protocols setting out the basis under which cross-border working will take place.

Multi-agency Working and Information Sharing

25. Other agencies should be engaged where appropriate. The Children Act 2004 places a duty on LAs to make arrangements through which key agencies co-operate to improve the well-being of children. Detailed guidance on multi-agency working, information sharing and related matters is at <http://www.everychildmatters.gov.uk/>

Child Protection Issues

26. From time to time, the processes outlined in this guidance may lead practitioners to identify actual or potential child protection issues. Detailed guidance on child protection arrangements is available at <http://www.dcsf.gov.uk/acpc/publications/> and <http://www.teachernet.gov.uk/wholeschool/familyandcommunity/childprotection/>

The Definition of Parent

27. The education-related provisions of the Anti-social Behaviour Act 2003 apply to all parents who fall within the definition set out in section 576 of the Education Act 1996. '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. Having care of a child or young person means that a person with whom the child lives and who looks after the child, irrespective of what their relationship is with the child, is considered to be a parent in education law. For further information see *Schools, "Parents" and "Parental Responsibility"* DfEE 0092/2000 and at http://www.standards.dcsf.gov.uk/parentalinvolvement/pwp/parental_resp/.
28. Throughout this document, references to 'parent' mean each and every parent coming within the definition (whether acting jointly or separately) and should not be taken to mean that provisions only apply to 'parent' in the singular.

2. Context of the Measures

Outline of school attendance legislation

29. Under section 7 of the Education Act 1996, parents are responsible for making sure that their children of compulsory school age⁷ 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).
30. If it appears to the LA 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.
31. If a child of compulsory school age fails to attend regularly at a school at which they are registered or at alternative provision made for them then the parent may be guilty of an offence under section 444 of the Education Act 1996.
32. Under the Education Act 1996 (section 447) an LA must consider applying for an Education Supervision Order (ESO) under section 36 of the Children Act 1989 before prosecuting a parent under section 444. An LA may apply for an ESO instead of or as well as prosecuting the parent.
33. For further details, please see *Ensuring Children's Right to Education: Guidance on the Legal Measures to Secure Regular School Attendance* which, together with a suite of documents on managing attendance, is available on the Departments website:
www.dcsf.gov.uk/schoolattendance

Outline of school behaviour and discipline legislation

34. All schools are required by law to have a written behaviour policy⁸. The governing body of a school is responsible for ensuring that policies designed to promote good behaviour

⁷ 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). A child continues to be of compulsory school age until the last Friday of June in the school year that they reach sixteen.

⁸ Sections 88 and 89 of the Education and Inspections Act 2006.

and discipline on the part of its pupils are pursued at the school. It must also produce a written statement of general principles to which the head teacher must have regard in determining measures to secure good behaviour, and these policies, principles and the measures are referred to as the behaviour policy. The head teacher is responsible for ensuring the behaviour policy is implemented on a day-to-day basis.

- 35.** The Department provides guidance to help schools develop and implement effective policies to promote good behaviour. This guidance, which also explains legal powers and duties related to school discipline, is available at: <http://www.teachernet.gov.uk/wholeschool/behaviour/schooldisciplinepupilbehaviourpolicies/>
It is the centrepiece of a comprehensive suite of behaviour-related guidance that covers exclusions, bullying, alternative provision and parental responsibility measures. All this guidance can be accessed through:
<http://www.teachernet.gov.uk/wholeschool/behaviour/>

3. Parenting Contracts

Overview

36. A parenting contract is a formal written agreement between a parent and either the LA or the governing body of a school and should contain:
 - a) a statement by the parent that they agree to comply for a specified period with whatever requirements are specified in the contract; and
 - b) a statement by the LA or governing body agreeing to provide support to the parent for the purpose of complying with the contract.
37. Parenting contracts can be used in cases of misbehaviour or irregular attendance at school or alternative provision.
38. 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 LA or governing body to offer one.
39. Parenting contracts are not intended to replace existing practice but to provide additional options for working with the parent to bring about an improvement in the pupil's behaviour. Use of parenting contracts should form part of the school's behaviour policy.
40. Parenting contracts are a useful tool in identifying and focusing on the issues behind the non-attendance or the misbehaviour and in developing a productive relationship with parents to address these issues. Contracts are supportive interventions and should not be seen or used as a punitive measure against the parent.
41. All those recognised as a parent under section 576 of the Education Act (see Part 1) are parents for the purposes of these provisions. Parenting contracts can apply to each and any such parent with the exception of LAs who have parental responsibility as a result of being named in a care order ("corporate parents") who are not included.

When can a parenting contract be offered?

42. A parenting contract may be offered:
 - in cases where a pupil has failed to attend regularly⁹ at the school at which he is registered or the alternative provision made for him; or

⁹ Unauthorised absence.

- where a child is excluded from school, whether for a fixed period or permanently; or,
 - as an early intervention in response to emerging behaviour problems.
43. Where being offered as an early intervention, schools and LAs need to ascertain that there has been misbehaviour sufficient to trigger the statutory parenting contract. Sufficient misbehaviour is where the school or LA have reason to believe that a pupil has behaved in such a way as to:
- cause, or be likely to cause, significant disruption to the education of other pupils or significant detriment to the welfare of that pupil or other pupils or to the health or safety of any staff; or
 - form part of a pattern of behaviour which (if continued) could lead to the pupil being excluded.
44. The behaviour in question can take place at school, or elsewhere if reasonable for the school to regulate it. What is reasonable will depend on all the circumstances and will be set out in the school's behaviour policy. For example, it may be reasonable for schools to regulate pupil's behaviour: outside school on school business (e.g. on school trips or at sporting fixtures); where there is a clear link between that behaviour and maintaining discipline at the school (e.g. shoplifting in school uniform after school); and, in the vicinity of, or on the journey to and from, school. It may not be reasonable for the school to regulate behaviour where the misbehaviour is more removed from the life of the school, for example, where a pupil has had a fight during a weekend with a pupil from another school.
45. For advice on what behaviour may constitute behaviour which could lead to the pupil's exclusion, see *Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units 2007* at: www.dcsf.gov.uk/behaviourandattendance
46. Parenting contracts can apply to pupils at the schools listed below but, in the case of contracts for truancy, only to those of compulsory school age:
- a) a community, foundation or voluntary school or a community or foundation special school;
 - b) a maintained nursery school;
 - c) a city technology college;
 - d) a city college for the technology of the arts;
 - e) an Academy;
 - f) a pupil referral unit; or
 - g) alternative provision (only in cases of irregular attendance).

Assessing when a parenting contract is appropriate

47. In considering whether it would be appropriate to offer a parenting contract, LAs and school governing bodies should have regard to all their statutory duties and in particular to the points set out in Part 1 of this guidance.
48. The LA or governing body should consider all the issues behind the non-attendance or misbehaviour, in particular whether attendance or behaviour may be improved through working with the parent and providing support to them and, if so, what form this support should take. Contracts are most likely to be effective where the parent wishes to address their child's poor behaviour in school or irregular attendance but needs support to do so effectively.
49. The pupil and family may already be in contact with, or receiving support from, other agencies – for example, social services, the youth offending team or a voluntary organisation. Before the LA or the governing body of a school decide to enter into a parenting contract, they should identify and consult other agencies involved with the pupil and their parent to ascertain any underlying issues that should be taken into account when deciding whether a parenting contract would be appropriate and the type of support that could usefully be included if it is.
50. The LA or governing body should be responsive to the needs of the parent in deciding what type of support they will provide. The issues behind the non-attendance or behaviour may be a complex and the type of support required will depend on each individual case. The Common Assessment Framework (CAF) provides an appropriate framework for identifying these issues and we expect this to 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/>

Parenting contracts in cases of criminal conduct or anti-social behaviour

51. Section 25 of the Anti-social Behaviour Act 2003 as amended by the Police and Justice Act 2006 enables LAs, registered social landlords and youth offending teams to enter into parenting contracts in respect of criminal conduct and anti-social behaviour.
52. Governing bodies, LAs and youth offending teams should consider in each case whether the contract should cover the areas of misbehaviour, exclusion, truancy, criminal conduct and anti-social behaviour. If there is agreement that the contract should cover a combination of these areas, one agency should take on the role of the lead agency in offering the contract and arranging support. Local agreements will need to be made about co-operating and supplying resources for such cases.

At what point should the contract be arranged?

53. In cases of truancy, attendance should be assessed over a period of not less than 4 weeks during term-time before a parenting contract is arranged.
54. Otherwise, the parenting contract should be arranged as soon as possible after the misbehaviour or exclusion has occurred and, where appropriate, completion of any exclusions review and appeal process.
55. In the case of permanent exclusions this would be:
 - the date by which it is known that the parent does not wish to lodge an appeal against the head teacher's decision to exclude, which has subsequently been upheld by the governing body. This would be the date set out in the letter sent to the parent by the governing body informing the parent of their decision to uphold the permanent exclusion, as the date by which time the parent must have notified the LA that they wish to lodge an appeal; or
 - the date upon which the Independent Appeal Panel endorses the decision to exclude.
56. In the case of fixed period exclusions the date on which the review process is complete would be:
 - the date upon which the governing body endorses the head teacher's decision to exclude; or
 - if the exclusion is not considered by the governing body, the date on which the exclusion began.
57. For a Pupil Referral Unit, the review process is complete when the LA endorses the decision of the teacher in charge to exclude; or if the LA does not consider it, the date on which the exclusion began.

Who is responsible for arranging and funding the parenting contract?

58. A school can arrange contracts with parents of pupils registered at that school.
59. LAs can arrange contracts with parents of pupils registered at schools within their area or where a pupil is permanently excluded with parents of such pupils living in their area. This does not prevent such LAs making agreements with other LAs to arrange contracts with the parents of those pupils.
60. Parenting contracts require the party arranging the contract to fund any cost of the supportive element of the contract. In the context of a school, this will be the governing body (which has control of the school budget under the School Standards and Framework Act 1998). Therefore it is the governing body's name that must appear on the contract and the governing body that will have ultimate responsibility for the parenting contract.

61. The governing body may delegate responsibility for parenting contracts to the head teacher and the head teacher may commit funds on behalf of the governing body where the governing body has chosen to delegate this power. However, the overall policy decision of whether parenting contracts should form part of the school's behaviour policy must remain with the governing body.

Types of support that might be included in a parenting contract

62. Parents will often be unaware of the different types of support available and the LA or governing body should provide information about this and give contact details of appropriate national and local agencies and helplines. Other useful support might include family group conferencing, peer mentoring, parenting classes, literacy classes, benefits and drugs/alcohol advice, provision of a key link worker for the parent and help with transport to and from school. This list is not exhaustive.
63. The LA or governing body may agree to provide support in the form of a parenting programme. The contract may specify that the parent is required to attend the sessions of any such programme. There is a wide range of parenting programme providers but any delivering these programmes should meet the National Occupational Standards for Work with Parents¹⁰. The LA should take a strategic role in mapping what provision exists in its area and in establishing what is available in neighbouring authorities (for 'cross-border' cases). For more information about sourcing parenting programmes go to:
<http://www.toolkit.parentinguk.org/> or
"How to Source Parenting Provision" at:
<http://www.dcsf.gov.uk/behaviourandattendance/guidance/ParentingProvision/index.cfm>

Contacting parents and drawing up a parenting contract with them

64. Once all agencies involved with the family have been consulted, the governing body or LA should arrange a meeting with the parent to discuss the pupil's misbehaviour or non-attendance and any related issues. In contacting the parent, the governing body or LA should give consideration to the best way to approach the parent, bearing in mind that some parents may find it harder to engage than others. Ideally all parents falling within the definition (see Part 1) should be invited to attend, whether resident with the child or not. However, it will be a matter of judgement for the governing body or LA to consider which parents should attend and whether it would be appropriate for parents to attend separate meetings.
65. Depending on their age and understanding, the pupil should also be invited to attend the meeting or part of the meeting.
66. The LA or governing body should write to the parent before the meeting outlining what a parenting contract is and making clear that it is not a punitive or compulsory measure, but

¹⁰ at http://www.lluk.org/standards/wwp_standards.html

intended to support the parent and improve the pupil's attendance or behaviour. Parent guides to parenting contracts are available on www.parentcentre.gov.uk and the LA or governing body may wish to send a copy to the parent.

67. At the meeting, the LA or governing body should explain the purpose of the meeting and the parenting contract and why they feel it may be helpful. The parent should be asked to outline their views on the pupil's behaviour and/or attendance at school, any underlying issues, how they believe these should be tackled and what they think of the idea of a parenting contract. They should also be given an opportunity to specify the type of support which they would find helpful. Parents will often be unaware of different types of support and the LA and governing body may need to list or summarise the different types of support available in the area to stimulate this discussion. Once again, depending on their age and understanding, the pupil should be encouraged to contribute to this discussion. A similar discussion should take place in respect of the requirements with which the parent will be expected to comply to ensure that any requirements specified in the contract are realistic and address the issues behind the non-attendance or behaviour. The aim should be to work in partnership in order to improve the behaviour or attendance of the child.
68. Once the requirements and support elements of the contract have been agreed, the governing body or LA and the parent should write up the contract together and sign it. The contract should be written in language that the parent can easily understand (including a translation where necessary). One parenting contract may be arranged with all parents, or in circumstances where it is desirable to have different requirements for each parent then a separate parenting contract could be arranged for each parent.
69. If the parent fails to attend the meeting without good reason or notification, further attempts should be made to contact them and arrange a meeting. A letter would be appropriate in these circumstances. All such attempts should be recorded.
70. The specified requirements for the parent under section 19(4)(a) of the Anti-social Behaviour Act 2003 should be devised to prevent unauthorised absence or poor behaviour which might lead to exclusion. Examples of specified requirements will depend on the particular circumstances of the case but may include: ensuring that the pupil attends school or alternative provision punctually and regularly, attending meetings with the school or LA, signing weekly behaviour reports and ensuring that the pupil does not contact certain pupils. This list is not exhaustive.
71. Where there is separate work being carried out with the pupil (for example, through a pastoral support plan) it may be desirable for the contract to support this or include work involving the parent and pupil together.
72. A further requirement might be that the parent attends some form of guidance or counselling programme based on an assessment of the parent's needs. This might

typically consist of a parenting support or parenting education programme but could be any form of support that might help the parent to improve their child's behaviour or attendance at school. In assessing the nature of any counselling or guidance programme, the LA or governing body should consider who will administer the sessions, the training and experience of the facilitators including their ability to engage with parents, the curriculum used, whether classes will be group or individually-based and whether there are particular cultural and social factors to be considered.

73. The governing body or LA's side of the contract is a statement that it agrees to provide the parent with support for the purpose of complying with the requirements and should specify the types of support that will be provided under the contract.
74. The parent and a representative of the governing body or LA (preferably the person who will deliver the governing body or LA's part of the contract) must sign the contract and all parties should be given a copy. It may also be appropriate to give a copy to other agencies working with the family.

Duration of contracts

75. There is no specified time limit for contracts in the Anti-social Behaviour Act so this is a question of what is reasonable and effective. We suggest that, as a matter of good practice, a parenting contract should last between 3 and 12 months. It may be desirable, however, to maintain some level of support after the contract has come to an end and schools and LAs will need to consider how to ensure that any such support is sustainable after the end of the contract.

Dealing with non-compliance

76. The LA or governing body (or those acting on their behalf) should be working with the parent to gain their co-operation and compliance with the contract but will have to judge whether any non-compliance is reasonable and whether the contract remains useful and should continue.
77. Failure, by parent, school or LA, to keep to the terms of the parenting contract cannot lead to action for breach of contract or for civil damages. There is no sanction for a parent's failure to comply with, or refusal to sign, a parenting contract. However, if the pupil's misbehaviour continues or escalates to such a level that the school or LA considers an application for a parenting order is appropriate, the court will be required to take any failure by the parent to comply with, or enter into, the contract into account in deciding whether to make the order. Similarly, if the pupil's irregular attendance continues or escalates to the point where a prosecution is deemed appropriate, any failure or refusal should be presented as evidence in the case.
78. It is therefore important that any non-compliance with the contract is recorded so that it can be presented to the court if necessary.

79. Every instance of non-compliance identified should have a response. The person responsible for overseeing the contract should contact the parent to seek an explanation within one working day of such a discovery. If the explanation is reasonable and the contract is still proving useful then this should all be recorded and the contract should continue as normal. If the explanation shows that the contract is proving difficult to comply with through no fault of the parent, then a meeting should be arranged with the parent to review the contract and amend it, if appropriate.
80. If no explanation is given or the individual responsible for overseeing the contract is not satisfied with the explanation, they should serve the parent with a warning, which may be in the form of a letter, and keep a record of this. If there are further instances, they should arrange a meeting with the parent to review the contract and discuss how it can be made to work.
81. In the light of this meeting, it should be decided whether the non-compliance is undermining the contract to the extent that it is no longer useful in which case an alternative course of action would need to be decided upon. The decision and reasons for that decision should be recorded. This can be used in any future application for a parenting order in cases of exclusion or misbehaviour or in any truancy prosecution.

Parents who refuse to enter into a parenting contract or with whom it is impossible to agree a contract

82. Parenting contracts are voluntary, but the LA or governing body should make all efforts to engage with the parent to negotiate a parenting contract if it considers that it would be appropriate and helpful to the parent to do so. If a parent refuses to enter into a contract then the LA officer or member of the governing body/senior school staff responsible for overseeing the contract should seek constructively to meet all legitimate concerns and ensure that a written record is kept of all efforts to negotiate a contract. This would include whether the parent was willing to meet to discuss the possibility and, if so, what was said. The record may be used in the event of a later application for a parenting order or truancy prosecution.

4. Parenting Orders

83. Parenting orders are amongst the range of strategies available for tackling poor behaviour and attendance at school and are intended to enable schools and LAs to draw, where necessary, on compulsory measures for engaging with parents.
84. Education-related parenting orders are available by direct application by a school or LA to the Magistrates' Court in cases either where exclusion has taken place or the necessary standard of misbehaviour has been met. They are also available as an ancillary order following a successful prosecution by the LA for irregular attendance or breach of a school attendance order. For information about bringing truancy prosecutions and school attendance orders see *Ensuring Children's Right to Education: Guidance on the Legal Measures Available to Secure Regular School Attendance* which is available on the Departmental website: www.dcsf.gov.uk/schoolattendance

Parenting orders in cases of exclusion or misbehaviour at school

Overview

85. Where a pupil has misbehaved or is excluded from school whether for a fixed period or permanently the LA or school may apply to the court for a parenting order.
86. Misbehaviour in this context means serious misbehaviour, that is behaviour which would warrant exclusion. Examples of such behaviour are set out in *Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units 2007* (at: www.dcsf.gov.uk/behaviourandattendance) and include: continual disruptive behaviour in the classroom, threatening behaviour, verbal abuse, assault (including sexual assault), damage to school property, theft from an individual or from the school, supplying an illegal drug and carrying an offensive weapon or replica. Bullying (including homophobic and racist abuse) could also constitute such behaviour. This list is not exhaustive. The serious misbehaviour need not have taken place within the school premises.
87. Parenting orders consist of 2 elements:
 - a requirement for the parent to attend counselling or guidance sessions (e.g. parenting education or parenting support classes) where they will receive help and support to

enable them to improve their child's behaviour. This is the core of the parenting order and lasts for up to 3 months; and

- a requirement for the parent to comply with such requirements as are specified in the order. This element can last up to 12 months.

88. Parenting orders available in cases of misbehaviour in, or exclusion from, school are civil orders available on application to the court. They are 'free-standing' parenting orders unlike those in irregular attendance cases which are available only following prosecution for a criminal offence.
89. The Education (Parenting Contracts and Parenting Orders) (England) Regulations 2007 are at Annex A of this guidance. A proforma application for a parenting order is attached at Annex B.
90. The applicant for a parenting order is responsible for all costs associated with it including the costs of the parenting programme though they may recover the costs from another LA or governing body by agreement. However, if the parenting order was made or applied for before 1st September 2007, the costs are borne by the LA.
91. The court can impose a parenting order on any or all parents coming within the definition (see Part 1) and their consent is not required.
92. All parenting orders must be supervised by a 'responsible officer'. This could be an officer of the LA, a head teacher or a person nominated by the head teacher.
93. If the parent fails to comply with a parenting order, then breach proceedings must be considered.

When can a parenting order be pursued?

94. In considering whether the necessary conditions for a parenting order are fulfilled, LAs and school governing bodies should have regard to all their statutory duties and in particular to the points set out in Part 1 of this guidance.
95. An LA or school may apply to a Magistrates' Court for a free-standing education-related parenting order when a pupil has:
 - (a) seriously misbehaved (see above); or
 - (b) been excluded from school whether for a fixed period or permanently; or
 - (c) been permanently excluded from school.
96. Parenting orders (whether arising from irregular attendance or behaviour) can apply to parents of pupils at the schools listed below but, in the case of orders for irregular attendance, only to those of compulsory school age:
 - a) a community, foundation or voluntary school or a community or foundation special school;

- b) a maintained nursery school;
- c) a city technology college;
- d) a city college for the technology of the arts;
- e) an Academy;
- f) a pupil referral unit; or
- g) alternative provision (only arising from a prosecution for irregular attendance).

Children in the care of the local authority or living in local authority accommodation

- 97.** Parenting orders in cases of misbehaviour or exclusion from school apply only to parents as individuals and not to corporate bodies. Therefore this type of parenting order cannot be made against LAs in respect of looked after children (i.e. children in the LAs direct care). It can however apply to foster parents.

Assessing when a parenting order is appropriate

- 98.** In deciding whether a parenting order might be appropriate, the LA or school must make a judgement about whether parenting is a significant factor in the pupil's misbehaviour, whether a parenting programme could remedy this, what other requirements might be useful in an order to address the pupil's behaviour and whether the parent can be engaged on a voluntary basis.
- 99.** Making any application for a parenting order will require close collaborative working between the school, LA and other agencies. Applicants should also make checks to find out what other agencies are involved with the family and should consult them to ascertain existing interventions, discuss any underlying issues and consider the types of requirements that might usefully be included in the parenting order.
- 100.** The Common Assessment Framework (CAF) provides an appropriate framework for identifying the issues and what support will be appropriate and we expect this to 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/>

Parenting orders in cases of criminal conduct or anti-social behaviour

- 101.** Section 26 of the Anti-social Behaviour Act 2003, as amended by the Police and Justice Act 2006, enables LAs, registered social landlords and youth offending teams to apply for parenting orders in respect of criminal conduct and anti-social behaviour. Governing bodies, LAs and youth offending teams should consider in each case whether the order should cover the areas of serious misbehaviour, exclusion, criminal conduct and anti-social behaviour. If there is agreement that the order should cover a combination of these areas,

one agency should take the lead in bringing the application and supervising the order. The lead agency will be determined by the circumstances of the case and local arrangements. Local agreements will need to be made about co-operating and supplying resources for such cases.

Timing of an application for a parenting order

102. An application for a parenting order must (unless there is a parenting contract – see above) be made within 40 school days of the date upon which the latest instance of serious misbehaviour occurred or, if applicable, the exclusion review and appeal process ends.
103. In the case of a permanent exclusion, the date on which the appeal process is complete would be:
 - the date by which it is known that the parent does not wish to lodge an appeal against the head teacher’s decision to exclude which has subsequently been upheld by the governing body. This would be the date set out in the letter sent to the parent by the governing body (covered in current exclusions guidance), informing the parent of their decision to uphold the permanent exclusion, as the date by which time the parent must have notified the LA that they wish to lodge an appeal; or
 - the date upon which the Independent Appeal Panel endorses the decision to exclude.
104. In the case of a fixed period exclusion, the date on which the review process is complete would be:
 - the day after the date upon which the governing body endorses the head teacher’s decision to exclude (or the LA in the case of a PRU); or
 - if there is no consideration by the governing body (or the LA in the case of a PRU), the date on which the exclusion began.
105. If there is no parenting contract in place, the LA or school has 40 school days to carry out any necessary assessment, prepare their evidence and make the application to the court. Applications should be made as soon as possible within this time limit to allow for quick and effective intervention.
106. If the parent has already entered into a parenting contract (or is offered and accepts a parenting contract in respect of the exclusion in question which subsequently proves to be ineffective), the LA or school may make an application for a parenting order within 6 months of the date on which the contract was signed.

Making the application

107. Applications must be made in accordance with the Magistrates’ Courts (Parenting Orders) (Amendment) Rules 2007¹¹, at Annex C, which specify the form of application that should

11 SI 2007/2222

be used. A copy of the specimen application form for a parenting order is included at the back of this guidance at Annex B.

Evidence that the pupil has seriously misbehaved and of any exclusion

- 108.** The applicant will need to prepare evidence in support of their application. Evidence of this misbehaviour or that the pupil has been excluded from school should take the form of a statement by the head teacher of the school, the minutes of the governing body (where applicable) and, in the case of permanent exclusions where the parent lodges an appeal, the minutes or decision letter of the independent appeal panel hearing.
- 109.** Supporting evidence might include statements from witnesses who saw the incident or physical evidence where appropriate.

Evidence that making the order would be desirable in the interests of preventing any further poor behaviour in school which may lead to exclusion

- 110.** The court has discretion to consider all the circumstances of the case in deciding whether it is desirable to make a parenting order including the evidence of parents and other witnesses in court. The assessments of the pupil and their parent by the applicant and details of the applicant's ability to deliver the parenting programme should be presented to support the application.

Disclosing evidence to the parent

- 111.** The applicant will need to disclose the supporting evidence to the parent, at the latest, once the summons has been issued.

Evidence regarding parenting contracts and reintegration interviews

- 112.** The applicant should also provide evidence of any experience of trying to engage the parent through a parenting contract. Magistrates are obliged to take into account any parental refusal to enter into, or failure to comply with, a parenting contract. This evidence is relevant to the consideration of whether the order is desirable in the interests of preventing further poor behaviour in school which may trigger an exclusion. If the parent will fully engage with support offered on a voluntary basis, a parenting order would not usually be desirable.
- 113.** The applicant should also provide evidence of any failure on the part of the parent to attend, without reasonable excuse, a statutory reintegration interview under section 102 of the Education and Inspections Act 2006. Magistrates are also obliged to take any such failure into account¹². More information about statutory reintegration interviews is in *Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral*

¹² Section 21(1A) of the Anti-social Behaviour Act 2003 as inserted by section 99(2) of the Education and Inspections Act 2006

Units 2007. Head teachers will need to maintain records of failure to attend reintegration interviews, and to seek and record explanations of non-attendance.

Hearsay evidence

114. Hearsay evidence may be admissible in these proceedings because of their civil nature. This may, for example, allow the identity of witnesses, who are too fearful to give evidence, to be protected. If there is an intention to rely upon hearsay evidence, the complainant must act in accordance with the Civil Evidence Act 1995 and the notice procedure set down by the Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999.

Providing information about family circumstances

115. Before making a parenting order where the pupil is under the age of 16, the court must obtain and consider information about the parent's family circumstances and the likely effect of the order on those circumstances.
116. The applicant should be prepared to provide information about the parent's family circumstances. They could submit a report along with the application for the parenting order. Alternatively, the court could rely on an oral report in court (e.g. where the family circumstances are known to the applicant), or ask questions of the parent or of the pupil if they are present in court. The format in which this information should be presented will be for the court to determine and will depend on the circumstances of the case.

Parental attendance at court

117. Magistrates' Courts, including Youth Courts, have power to enforce parental attendance at court, where appropriate, by issuing a summons. It will normally be desirable to ensure all parents falling within the definition (see Part 1) attend court and that all parents are involved in any parenting intervention.

Requirements of parenting orders

118. The requirements specified in the parenting order or in directions given under the order should, as far as practicable, avoid any conflict with the parent's religious beliefs and any interference with the times at which the parent normally works or attends an educational establishment. A balance will need to be struck between imposing requirements that address the problems which led to the imposition of the parenting order and these other issues.

Counselling or guidance programme

119. The core requirement of a parenting order is that the parent attends a counselling or guidance programme (e.g. a parenting support or parenting education programme) as

specified in directions given by the responsible officer. This requirement must be imposed in all cases when an order is made (except where the parent has previously received a parenting order) and the programme can last for up to three months.

- 120.** The counselling or guidance programme may be provided by the responsible officer or by another provider, such as a local voluntary sector organisation working with parents. There is a wide range of parenting programme providers but any delivering these programmes should meet the National Occupational Standards for Work with Parents (at: http://www.lluk.org/standards/wwp_standards.html). The LA should take a strategic role in mapping what provision exists in its area and in establishing what is available in neighbouring authorities (for 'cross-border' cases). For more information about sourcing parenting programmes go to <http://www.toolkit.parentinguk.org/> or "*How to Source Parenting Provision*" at: <http://www.dcsf.gov.uk/behaviourandattendance/guidance/ParentingProvision/index.cfm>
- 121.** The court will decide the length of this requirement (up to three months) but the applicant should make a recommendation to the court as to how long this should be. It should be such as to allow for a sufficient number of sessions, any time needed for preparatory work with the parent, any waiting time before the programme can start and a contingency for catching up on any missed sessions. Details of the programme itself are specified in directions given by the responsible officer. Experience suggests that such a programme should be at least 14 hours per parent made up of individual sessions, group work and/or family counselling as appropriate.
- 122.** The period of up to three months for this requirement must run concurrently with the overall length of the order (up to twelve months) and any specific requirements but, taking account of the availability of an appropriate counselling and guidance programme, does not have to run from the date the order is made. If the only requirement to be included in the order is to attend a counselling or guidance programme then the court can still make the order last for twelve months if it considers it reasonable to do so to allow for the possibility of the order being breached and varied to require the parent to attend a new counselling or guidance programme.
- 123.** The responsible officer will need, in consultation with the provider of any parenting course or group where appropriate, to make an assessment about the nature of the counselling or guidance programme in which the parent should take part. In making this assessment, the responsible officer should consider who will administer the sessions, the training and experience of the facilitators including their ability to engage with parents, the curriculum used, whether classes will be group or individually-based and whether there are particular cultural and social factors to be considered.
- 124.** During the course of the parent's attendance at the counselling or guidance programme the parent, the responsible officer and the programme provider (if different) will need to consider the progress which is being made – the frequency of this will depend on the

extent to which the responsible officer is directly involved in the delivery of the programme. The parent might also find it helpful to be involved in some voluntary follow-up work when the order has been completed; this might involve attending a parent support group or similar activity.

Residential requirement

- 125.** A parenting order can include a residential course but only if two conditions are met:
- a) that the attendance of the parent at a residential course is likely to be more effective than their attendance at a non-residential course in preventing their child from engaging in a repetition of the behaviour which led to the making of the order; and
 - b) that any likely interference with family life is proportionate in all the circumstances.
- 126.** This is designed to ensure that any residential component to a parenting order would be proportionate under Article 8 of the European Convention on Human Rights – right to respect for private and family life. Applicants should therefore consider whether the interference with the Article 8 rights is justifiable, to avoid a breach.
- 127.** If an applicant wishes to recommend or apply for a parenting order with a residential component they should provide evidence that these conditions are met. An example would be where the parent’s home life is so chaotic that they need a structured setting where sustained counselling and guidance can be undertaken.
- 128.** In order for the court to decide whether any likely interference with family life is proportionate the applicant will need to inform the court what the programme will be. It need not be continuous. A small number of residential weekends structured within a wider non-residential programme may be suitable. Arrangements for the care of the child (and any siblings and dependants) will be a crucial consideration. Voluntary attendance by the child and siblings may be desirable as intensive family work can be particularly effective.

Specific requirements

- 129.** The court may also include in a parenting order a requirement for the parent to comply for a period of not more than 12 months with such requirements as are specified in the order.
- 130.** The applicant should make a recommendation to the court as to how long the parenting order should be imposed for. This will depend on the circumstances of the case. In many cases it will be desirable to recommend to the court that the parenting order should last for the full 12 month period. The imposition of a parenting order for this time period is more likely to bring about a sustained improvement as a consequence of the ongoing support and monitoring delivered through the order.

131. Any requirements specified in the order may be such as the court considers desirable in the interests of preventing any repetition of the misbehaviour. The applicant should recommend to the court what these requirements should consist of; and these should, if possible, be linked to any work being undertaken by the LA or school with the pupil. Possible requirements might include: setting and reinforcing agreed boundaries at home; ensuring the pupil's regular attendance at school or alternative provision; signing regular behaviour reports or updates; or, attending regular meetings with the pupil's education provider. This list is not exhaustive.
132. When deciding on specific requirements it is important to consider that breach of the order is a criminal offence. It is therefore vital to ensure that the requirements are realistic, specific, measurable and clear enough for a parent to know when they are breaching them and for the responsible officer to be able to monitor the parent's compliance.

Managing parenting orders and dealing with breaches

Role of the responsible officer

133. A parenting order must specify a responsible officer who, in the case of an order made following serious misbehaviour or exclusion from school, will usually be an officer of the LA, a head teacher or a member of staff nominated by the head teacher. The order must name an individual person.
134. The responsible officer will provide or arrange for the provision of the counselling or guidance programme, and will supervise any other requirements included in the order. The responsible officer will also need to identify and liaise with other agencies involved with the pupil or family (e.g. children's services, adult social services, the youth offending team, any voluntary organisations) to ensure that all interventions fit together well and are complementary.
135. In deciding who is best placed to act as the responsible officer for a parenting order, the applicant should take into account the skills that will be required to supervise the order properly and the time commitment required. The responsible officer will need to be sensitive to the needs of the pupil and the parent. Ideally they should have training, experience or a qualification in social work issues, a knowledge of education law, policy and practice and some familiarity with court procedures.
136. Head teachers may only accept responsibility for acting as a responsible officer (either on their own behalf or on behalf of a member of the school staff) where they have consulted and received the backing of the school's governing body. In considering whether it would be appropriate for a member of school staff to act as the responsible officer, head teachers should have regard to the time commitment, skills and experience necessary to supervise the order effectively. Applicants may only designate a head teacher or a person nominated by the head teacher to be the responsible officer if they are satisfied that the school's governing body is supportive of this arrangement.

- 137.** It is good practice for the initial contact between the responsible officer and the parent to take place before the end of the next working day after the order is made. The initial meeting should be an opportunity for the responsible officer to explain further to the parent the nature of the parenting order, its purpose and how it will work in practice (and provide them with a copy of the order). The practical details of the requirements will need to be set out, the monitoring arrangements described and the consequences of failure to comply with any requirements explained. If the counselling or guidance programme under the order are to be provided by someone other than the responsible officer, a pre-meeting between the parent and that person should take place no more than two weeks before the sessions are due to start.
- 138.** The success of the relationship between the parent and the responsible officer will be a key feature of the successful completion of the order. Whilst the requirements of the parenting order are in force, the responsible officer should maintain regular contact with the parent. This should enable the responsible officer to determine the extent to which the parent is complying with the requirements set by the court. If the requirements are proving difficult to comply with through no fault of the parent, the responsible officer may consider the need to apply to the court for the order to be varied, and the parent may also apply for the order to be varied.

Monitoring compliance and dealing with breaches

- 139.** Monitoring compliance with a requirement to attend a parenting programme will be straightforward. Any failure by the parent to attend should be immediately reported by the programme provider if different from the responsible officer. Where a parent has failed to fully comply with the requirement to attend the programme as directed by the responsible officer, the responsible officer can direct the parent to attend enough sessions to make up the missed sessions or, if that is impractical, a whole new programme if there is enough time left in the order for the new programme to take place.
- 140.** How the responsible officer monitors specific requirements will depend on the circumstances. For example, where attending school is a requirement, the responsible officer should ask the school authorities to inform him or her of any non-attendance.
- 141.** If a parent fails to comply with a requirement of the order the responsible officer should contact the parent within one working day by visit, telephone or letter. Any letter should be sent by registered post and a copy placed on file. Any conversation should be recorded on file.
- 142.** What constitutes a reasonable excuse will depend on circumstances and the responsible officer will need to make a judgement on each occasion taking into account all the circumstances. In some cases it may be reasonable to expect the parents to provide evidence to support their explanation – for instance a doctor’s note where illness prevents them from complying.

143. Where non-compliance relates to a specific requirement, the responsible officer will need to consider the extent to which the parents have tried to meet the requirement and how far they are able to control their child's behaviour. Where the parents have made all reasonable efforts to control the child, even if he or she commits a further offence, this will not constitute a breach of a specific requirement.
144. Other agencies working with the family may be aware of extenuating circumstances and should be consulted as appropriate.
145. If the parent has good reason for the failure to comply with the requirements of the parenting order, it may be appropriate for the responsible officer to consider whether to apply to the court for the terms of the order to be varied.

Warnings

146. If there is no acceptable reason for the failure, the responsible officer should give the parent a written warning and if possible a warning in person. Details should be recorded and a copy of any letter kept on file. The purpose of the warning is to secure the parent's compliance for the remainder of the order.

Review meeting

147. If there is more than one unacceptable failure to comply within three months the responsible officer should meet the parent to review the order and how it can be made to work. It may be appropriate to draw up a new plan with the parents better suited to their needs and circumstances. If the responsible officer cannot make contact with the parents or agree a positive way forward the responsible officer should consider whether the failure should be reported to the police for investigation. Whatever is decided, the responsible officer should ensure that a full record is kept.
148. If a parent continues to fail to comply following a review meeting it will usually be appropriate to refer the case to the police.

Referral to the police

149. The police are responsible for investigating the alleged breach. Where they consider there is sufficient evidence they may refer the case to the Crown Prosecution Service (CPS) or administer a caution.
150. If the responsible officer decides to refer the parent to the police, he/she should provide a chronology of events, a copy of the parenting order, a copy of the directions he or she has set, details of the proceedings that surrounded the making of the order, details of any compliance as well as failures to comply with the order, evidence of any warnings issued to the parent, details of any repetition of the kind of behaviour by the child that led to the parenting order, a copy of the parenting plan (if there is one) and copies of correspondence with the parent.

151. The police will then ask the responsible officer to make a statement. The police investigation should establish whether the parent failed to comply with a requirement and if so whether they had a reasonable excuse. Normally this will consist of interviews with the parent, the responsible officer, and any other witnesses (such as the programme provider if different from the responsible officer).
152. Unless the order has expired or been discharged, the parent will still be required to comply with the order and the responsible officer should continue to monitor compliance. The responsible officer should update the police about any changes in the parent's attitude to the order and any further breaches or compliance.
153. Police have power under section 110 of the Serious and Organised Crime and Police Act 2005 to arrest a person they have reasonable grounds for suspecting of committing an offence provided the officer has reasonable grounds to believe the arrest is necessary for one of the reasons specified in s110 (5). The most likely relevant reason would be "to allow the prompt and effective investigation of the offence or of the conduct of the person in question." This reason might be relevant where a parent has refused to co-operate when the responsible officer has tried to establish any reasons for non-compliance.

Cautions

154. Where a parent admits to breaching a parenting order and there is sufficient evidence to bring a charge the police have discretion to caution the parent if this would be in the public interest. Key considerations should include whether the parent has substantially complied with the order, whether the parent is of previous good character and whether there has been any repetition of the kind of behaviour by the child which led to the order being made.
155. The decision to proceed by way of a simple caution can be taken by either the police or CPS. There is no requirement for the police to consult CPS before issuing a caution although they may wish to do so. If the police do issue a caution they should inform the responsible officer. Where the parenting order has not expired, the responsible officer should continue to try and work with the parent who, following the caution, may be prepared to comply with the remainder of the order.
156. The responsible officer should immediately report to the police for investigation any further unreasonable failures to comply. If a parent continues to fail to comply with an order after receiving a caution the public interest is more likely to favour a prosecution.

Referral to the Crown Prosecution Service (CPS)

157. If the police decide to refer the case to the CPS the file should include a copy of the parenting order, the date on which it was made and details of the proceedings preceding the order, information about the order's duration, a copy of the responsible officer's directions to attend the programme, details of any compliance, admissible evidence of the

alleged breach including a statement by the responsible officer, evidence/copies of any warnings, details of any explanations given by the parent, details of any repeat of the behaviour by the child that led to the order; and a Police National Computer (PNC) print of any previous convictions/ cautions/ reprimands/ final warnings for the parent.

- 158.** The CPS is responsible for deciding whether there is a realistic prospect of conviction and whether or not the public interest favours a prosecution rather than a caution or taking no further action. The Code for Crown Prosecutors will be applied to all cases. Paragraph 6.4(1) of the Code lists breach of a court order as a common public interest factor in favour of prosecution, although crown prosecutors must have regard to all the circumstances of the case in reaching a decision. Crown prosecutors may decide the public interest favours a simple caution and refer the case back to the police.

Prosecution and court hearing

- 159.** Under section 127 of the Magistrates' Court Act 1980 there is a six month time limit for bringing breach proceedings. Proceedings can be brought after an order has expired but early action allows more opportunity to secure attendance at a programme and compliance with specific requirements for the remainder of the order.
- 160.** If a prosecution is brought and the parent pleads not guilty, there will be a summary trial to decide whether the parent has failed without reasonable excuse to comply with a requirement of a parenting order. This will be heard in the adult Magistrates' Court. Where the parent pleads guilty the case will proceed to sentence.
- 161.** If the parent is convicted, the court could impose any sentence available for a non-imprisonable offence – that is a fine not exceeding level 3 on the standard scale (up to £1,000), absolute or conditional discharge or community order. The decision on the nature and level of penalty to impose will be a matter for the court following consideration of all the facts of the case, such as the family circumstances and the means of the parents. The offence is not a recordable offence for the purposes of the Police and Criminal Evidence Act 1984 (PACE).

Further engagement with parents

- 162.** It is important for responsible officers to be informed of the outcome of the breach hearing. The court cannot make a new parenting order during breach proceedings but if the order has not expired or been discharged the parent will still have to comply with specific requirements and the responsible officer's directions to attend a parenting programme.

Variation and discharge

- 163.** While a parenting order is in force the court which made the order may, on the application of the responsible officer or the parent, vary or discharge it. Under Rule 114 of

the Magistrates' Courts Rules 1981 (inserted by Rule 4(4) of the Magistrates' Courts (Miscellaneous Amendments) Rules 1998), application is by complaint. These are civil procedures and are governed by sections 51–57 of the Magistrates' Courts Act 1980 and Rules 4 and 98 of the 1981 Rules. These sections and Rules deal with, amongst other things, the issuing of summonses and the non-appearance of the parties.

164. The order can be varied either by inserting in the order (in addition to or in substitution for any of its provisions) any provision that could have been included in the order if the court had then had the power to make the order and were exercising that power, or by cancelling any provision included in the order. Parenting orders may be varied for a number of reasons, for example, where the family moves to another area or where the requirements are not proving effective.
165. An order may be discharged for instance if the parent has fully complied with the requirements and the behaviour or attendance of the child has improved.
166. Where an application for the discharge of a parenting order has been dismissed, no further application may be made without the court's consent. This is largely to prevent spurious or repeat applications.

Appeals

167. Where a parenting order in a case of misbehaviour or exclusion from school has been made, any appeal against the order is made to the Crown Court. Where a parenting order has been made following conviction under section 443 or 444 of the Education Act 1996, an appeal is made to the Crown Court as if it were an appeal against sentence.

5. Penalty Notices (for truancy and the whereabouts of excluded pupils)

Overview

Parental responsibility for regular school attendance

168. 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. Parents may discharge potential liability for conviction for an offence under section 444 by paying a penalty. There is no legal requirement for there first to have been a penalty notice before proceeding to prosecution.

Parental responsibility for the whereabouts of excluded pupils

169. Section 103 of the Education and Inspections Act 2006 places a duty on parents in relation to an excluded pupil. A parent has to ensure that their child is not present in a public place during school hours without reasonable justification during the first five days of each and every fixed period or permanent exclusion.

170. School hours mean a school session or a break between sessions on the same school day. A public place means any highway or any place to which the public has access. A school is not a public place for this purpose. A record should be kept of where the offence took place, and the exact time at which the pupil was observed, in the event of issuing a penalty notice.

171. The days of exclusion when this duty on parents applies are known as the “specified days of exclusion” and will be detailed in a notice given to the parent under section 104 of the 2006 Act. The parent is responsible for the child during the specified days upon receipt of the notice.

172. Sections 100 and 101 of the Education and Inspections Act 2006 place a duty on the school or LA to make provision for the excluded child’s full-time education from the sixth day of fixed period exclusion in a school year (in the case of a relevant school) or from the sixth day of each permanent exclusion (in the case of an LA) but they can make the provision earlier. Once the provision is made, the parent’s duty to ensure that their child is not in a public place becomes a duty to ensure the child regularly attends the provision.

- 173.** Section 105 allows for a penalty notice to be given to a parent guilty of an offence under section 103. The penalty notice allows a parent to pay a penalty as a way of discharging any liability for the offence of failing to ensure that their child is not present in a public place on the days specified in a notice given to them. The parent must have been notified by the school at the time of the exclusion of their duty and the days to which it relates. For more information about the notification requirements please see Part 3 of *Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units 2007* at: www.dcsf.gov.uk/behaviourandattendance
- A penalty notice need not be served before any prosecution can take place.

Once a penalty notice is issued

- 174.** The parent cannot be prosecuted for the particular offence for which a notice was issued until after the final deadline for payment has passed (42 days after receipt of the notice) and cannot be convicted of that offence if he pays a penalty in accordance with the notice. Penalties are to be paid to the LA.
- 175.** The penalty is £50 if paid within 28 days of receipt of the notice, rising to £100 if paid after 28 days but within 42 days of receipt of the notice (a notice served by first class post is deemed to have been received on the second working day after posting it by first class post unless it is shown otherwise). 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 applies or withdraw the notice.
- 176.** Prosecution is for the offence to which the notice relates rather than for non-payment of the notice. In the case of truancy if there is a prosecution it will follow the usual procedures of a prosecution for irregular attendance (including considering an education supervision order as an alternative, or in addition, to prosecution). Irregular attendance prosecutions will be brought by the LA under section 444 Education Act 1996. In the case of a prosecution of a parent who has failed to ensure that their child is not found in a public place during a specified day of exclusion the procedures, such as laying an information and serving a summons will be similar to those for truancy. The disposals available to the courts will generally be the same for either offence and include, for example, a level 3 fine, an absolute or conditional discharge, and, for the truancy offence, a parenting order under section 8 of the Crime and Disorder Act.
- 177.** LAs may only withdraw a penalty notice 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; or
 - it has been issued to the wrong person; or
 - it contains material errors.

By whom and to whom can a penalty notice be issued?

178. The provisions enable the following to issue penalty notices, although there is no requirement for them to do so:
- authorised LA staff;
 - head teachers and school staff authorised by them (limited by regulations to deputy and assistant heads); and
 - the police, community support officers and accredited persons.
179. These procedures apply to the parents of children of compulsory school age who are registered at a maintained school, a pupil referral unit, an Academy, a city technology college, or a city college for the technology of the arts and those attending alternative provision.
180. All those recognised as a parent under section 576 of the Education Act (see Part 1) are parents for the purposes of these provisions. As with prosecutions under section 444 Education Act 1996, a penalty notice may be issued to each parent liable for the offence or offences.
181. The Education (Penalty Notices) (England) Regulations 2007 at Annex D set out the framework for the operation of both penalty notice schemes.

Circumstances in which a penalty notice might be issued

182. In considering whether the necessary conditions for a penalty notice are fulfilled, LAs and school governing bodies should have regard to all their statutory duties and in particular to the points set out in Part 1 of this guidance.
183. The key consideration in deciding whether to issue a penalty notice for truancy will be whether it can be effective in helping to get the pupil who is truanting back into school or alternative provision. In the case of a parent who has failed to ensure their child is not found in a public place while excluded, the key consideration is whether it will be an appropriate sanction for that failure.
184. A penalty notice is a suitable intervention in circumstances where the parent is judged capable of securing their child's regular attendance or whereabouts but is not willing to take responsibility for doing so, for example where the parent has failed to engage with any voluntary or supportive measures proposed or failed to make adequate arrangements for the whereabouts of their child.
185. The usual response to a first offence might be a warning rather than a penalty. However, authorised officers have the discretion to issue a penalty notice for a first offence in circumstances where the parent's conduct is particularly blameworthy. In the case of an attendance related concern this could be where the unauthorised absence was for an

extended period and condoned by the parent, for example where the parent has chosen to take their child on holiday during term time without authorisation.

- 186.** 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. Penalty notices should be withdrawn only rarely. It is for LAs to set out in their local code of conduct:
- the levels of unauthorised absence above which a penalty notice may be issued (taking into account the level of unauthorised absence at which they will be willing and able to prosecute for the offence of irregular attendance); and
 - the circumstances in which a penalty notice may be issued to the parent of an excluded pupil. These may include: the number of occasions on which the child has been present in a public place; the parent's actions (or inactions) which have led the child to be in a public place at a proscribed time; the parent's justification if any; and the parent's attitude to having failed to meet their statutory responsibility.
- 187.** It will be for the parent to prove reasonable justification. A justification which is capable of being reasonable will depend on points of fact and proof: it is unlikely that any justification would be reasonable unless it stood up on the facts.
- 188.** LAs should not conclude that some justifications are automatically unreasonable. Some, such as a medical emergency are probably more straightforward: hospital records, doctor's certificate etc. will help in the consideration of an individual case. Other justifications, such as the pupil shopping for food or clothes, are without more evidence unlikely to be reasonable, for these activities could readily be carried out at the weekend, after school hours or after the first few days on which the duty applied. However, every case should be considered on its merits and all relevant evidence provided taken into account.
- 189.** Justifications such as financial hardship or fear or losing one's job will depend on the circumstances and merits of the individual case. Parents will need to prove reasonable justification. For example, as the parent/carer is not required personally to supervise the child but to make appropriate arrangements they will need to demonstrate the reasons which necessitated the child's presence in a public place at the relevant time. Parents who claim to be unable to control their child or to be physically intimidated by them will need to be able to prove that to be the case if it is not self evident.
- 190.** This guidance should not be interpreted as definitive: it is intended to set out some of the issues authorities should take into account when framing their local codes. Ultimately it will be for the court to determine if "reasonable justification" has been proved by the parent/carer.

Formally notifying the parent

In cases of truancy

191. At the outset of casework by the school or LA the parent should be given a formal written notification explaining the actions that may be taken. It is good practice to make sure the parent understands the consequences of failing to ensure their child's regular attendance, in particular that the case could result in a penalty and/or prosecution. However, in circumstances such as those outlined in paragraph 184 above, a penalty notice may be issued without formal written notification.
192. It is good practice, where feasible, to warn the parent or parents of the possibility of a notice being issued and to allow 15 school days for the parent to improve the situation before issuing a notice or commencing proceedings.
193. Sometimes the prospect of a penalty or prosecution may lead to a significant improvement in a pupil's attendance and a penalty notice or court proceedings may not be necessary if it is believed that the improvement will be sustained.

In cases of exclusion

194. When a child is excluded from school – either for a fixed period or permanently – the parent will be responsible for ensuring that their child is not found in a public place during normal school hours on a specified day of exclusion. If the parent fails to secure the attendance of the child at the alternative provision then the parent will be liable under the truancy provisions. In order for the parent to incur either form of legal responsibility the school must give them notice informing them of the duty to ensure their child is not found in a public place, the days when this duty will apply and, as appropriate, of the arrangements for alternative provision. Ordinarily these notices will be combined with the notice the school must issue when a child is excluded (see *Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units 2007*, Part 3).
195. LAs should follow the spirit of this provision by ensuring that those looked after children for whom they are responsible are not present in a public place when excluded, even though, as a corporate parent, they are outside the scope of the legislation.

Roles and responsibilities of the local authority

196. LAs are responsible for the administration of the scheme and for bringing prosecutions and must therefore issue a local code of conduct (see below) to ensure the smooth administration and operation of the scheme and that it operates consistently across the LA area.
197. LAs may, in the absence of any other agreement, only issue penalty notices in respect of pupils registered at a school in that LA area or, in the case of an unregistered pupil, who resides in their area or for whom that LA has arranged alternative provision. LAs may only

issue penalty notices in respect of pupils registered at a school in another LA area or, in the case of an unregistered pupil, for whom another LA has arranged alternative provision if they have an agreement to that effect with the other LA. In the absence of any agreement it would, where a pupil is present in a public place in the first five days of a fixed period exclusion, be for the local authority of the school at which the child is registered to issue the penalty notice. Where the child has been permanently excluded, it would be the LA where the child resides.

Roles and responsibilities of schools

- 198.** Head teachers are empowered to issue penalty notices and to authorise their deputy and assistant head to do the same. They may only issue penalty notices to parents in respect of the irregular attendance, or a failure to ensure their child is not found in a public place during a day of relevant exclusion of a child registered at their school.
- 199.** Head teachers wishing to issue, or authorise their staff to issue, penalty notices should first discuss this with their governing body. It is good practice to include the use of penalty notices in the school's attendance (where applicable) and behaviour policies.
- 200.** Head teachers and deputy and assistant heads must comply with the local code of conduct issued by their LA when issuing penalty notices and provide to the LA a copy of any notice issued.

Roles and responsibilities of the police

- 201.** The police, including community support officers and accredited persons, are empowered to issue penalty notices.
- 202.** 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.

Holidays in term time

- 203.** Under the Education (Pupil Registration) Regulations 2006, head teachers are able to authorise absence for the purpose of family holidays during term time. Save in exceptional circumstances a parent shall not be granted more than ten school days leave of absence in any school year. It is for head teachers to determine if the request is reasonable. Each request can only be judged on a case by case basis and we expect that head teachers will use their discretion sparingly. Head teachers should not fetter their discretion by applying policies (for example, blanket bans) which prevent assessment of each application on its individual merits.

Truancy sweeps

- 204.** LAs should consider making use of penalty notices during (this will only be possible where the facts are already known), or as a follow up to, truancy sweeps during which instances

of parentally condoned truancy are identified. Truancy sweeps may also encounter children who, on a specified day of exclusion, should not be in a public place during normal school hours without reasonable justification.

Administration of the penalty notice scheme

- 205.** The detail of how penalty notice schemes must operate is set out in the Education (Penalty Notices)(England) Regulations 2007, attached at Annex D. A specimen notice is set out at Annex E. LAs are responsible for drawing up a penalty notice proforma and distributing this to those issuing them.
- 206.** The LA is responsible for the overall administration of the scheme. It may make such arrangements for the operation of the scheme, not provided for in this guidance or in the associated regulations, as it sees fit.

Local codes of conduct

- 207.** 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.
- 208.** 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 consulting as set out in the Penalty Notice Regulations.
- 209.** 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 specify that the following must be included in the local code:
- 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 Education Welfare Service 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.
 - In the case of the whereabouts of excluded pupils the code should set out what is likely and what is unlikely to amount to reasonable justification. Although the question of reasonableness will depend on all the circumstances of the individual case (and it is ultimately for the courts to make a finding on whether any justification was reasonable

in the circumstances), the codes should recognise that, in some circumstances, it may be necessary for a child to be in a public place during school hours on a day when they are excluded. For example, the child may have a pre-arranged medical appointment or there may be a medical emergency which needs immediate attention. Similarly, there may be a pressing need for the parent to seek medical help and may feel it inappropriate to leave their child alone in the home unattended and be unable to make alternative arrangements such as with a friend or a relative.

- The maximum number of penalty notices that can be issued to one parent in any twelve month period.
- Arrangements for co-ordination between the LA and its local partners.

- 210.** Although not specifically provided for in the regulations, the code could include any locally agreed criteria for authorising or not authorising absence (though head teachers should not fetter their discretion).
- 211.** It is good practice for LAs to publicise (i) the contents of local codes, for example by including them in any LA or school attendance policies; and (ii) methods by which the community can notify them if they observe what they believe to be an excluded pupil in a public place (e.g. through 'truancy buster' hotlines).

Retention of receipts and revenue collection

- 212.** Regulations provide that 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. Revenue is payable to the LA in respect of pupils registered at a school in their area or, in the case of an unregistered pupil, for whom they have arranged alternative provision.
- 213.** The LA should produce an auditor's statement as part of the usual audit procedure showing that income received from penalty notices does not exceed enforcement as defined above. The surplus, if any, must be surrendered to the consolidated fund.
- 214.** LAs should consider the possibility of making arrangements with another part of the local authority already involved in revenue collection to administer the collection of receipts from penalty notices. This will avoid having to establish new systems and procedures and allow for some economies of scale.

Penalty Notices as Evidence in Legal Proceedings

- 215.** Payment of a penalty notice discharges liability for prosecution for the offence to which the notice relates.
- 216.** This means that neither the fact that a penalty notice was issued and paid nor the pattern of unauthorised absence or presence in a public place of an excluded pupil to which a

paid notice relates can be submitted as evidence in a prosecution for any subsequent truancy or excluded pupil offence.

217. However, sections 98 to 101 of the Criminal Justice Act 2003 brought penalty notices within the definition of bad character in that legislation. Evidence of the issue of a paid penalty notice may therefore be introduced if any of the relevant conditions in sections 101 to 106 of the Criminal Justice Act 2003 are met. These include for example:

- if agreed by all parties; or
- if it is necessary to contradict a false impression given by the defendant; or
- if the defendant attacks the character of another person.

218. If a penalty is not paid, LAs may use the fact a notice was issued and unpaid as evidence in a subsequent prosecution. The unauthorised absence for which an unpaid notice was issued can be used as evidence for a prosecution in the usual way.

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STATUTORY INSTRUMENTS

2007 No. 1869

EDUCATION, ENGLAND

**The Education (Parenting Contracts and Parenting Orders)
(England) Regulations 2007**

<i>Made</i>	- - - -	<i>27th June 2007</i>
<i>Laid before Parliament</i>		<i>6th July 2007</i>
<i>Coming into force</i>	- -	<i>1st September 2007</i>

The Secretary of State, in exercise of the powers conferred upon him by sections 20(1) and (2A), 22A, 24(a) and 94 of the Anti-social Behaviour Act 2003(b), makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Education (Parenting Contracts and Parenting Orders) (England) Regulations 2007 and come into force on 1st September 2007.

(2) These Regulations apply only in relation to—

- (a) local authorities, and governing bodies of relevant schools, in England; and
- (b) pupils who are, or were immediately before permanent exclusion, registered pupils at schools in England.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Anti-social Behaviour Act 2003;

“the 2004 Regulations” means the Education (Parenting Orders) (England) Regulations 2004(c);

“local authority” means a local education authority;

“parenting contract” means a parenting contract under section 19 of the Act;

“parenting order” means a parenting order under section 20 of the Act;

“relevant behaviour” means behaviour of the kind mentioned in section 20(2A)(a) of the Act (as read with section 20(2B) of the Act); and

“school day” has the meaning given by section 579(1) of the Education Act 1996(d).

(2) For the purposes of these Regulations—

(a) Section 24 defines the “appropriate person” in relation to England as the Secretary of State.
(b) 2003 c. 38; section 20(2A) was inserted by section 98, and section 22A by section 99, of the Education and Inspections Act 2006 (c. 40).
(c) S.I. 2004/182.
(d) 1996 c. 56. There are amendments to section 579 not relevant to these Regulations.

- (a) an exclusion begins on the first day to which the exclusion relates (and, in relation to an exclusion, ‘beginning’, and cognate expressions, are construed accordingly); and
- (b) where the pupil is excluded during the course of a school day but before the beginning of any afternoon session on that day, that day is to be treated for these purposes as the first day to which the exclusion relates.

Prescribed conditions for parenting orders where the pupil has been excluded

3.—(1) For the purposes of section 20(1)(b) of the Act, the prescribed condition is that the application must be made within the relevant period.

4.—(1) For the purposes of regulation 3, in the case of a pupil excluded for a fixed period, the “relevant period” is whichever of the following is applicable, and if both are applicable whichever expires the later—

- (a) the period of 40 school days beginning with the next school day after the day on which consideration of the exclusion was completed^(a) by the governing body (or in the case of an exclusion from a pupil referral unit, the local authority) or, if it was not so considered, the day on which it began;
- (b) the period of six months beginning with the day on which a parent of the pupil entered into a parenting contract.

(2) For the purposes of regulation 3, in the case of a pupil excluded permanently, the “relevant period” is whichever of the following is applicable, and if both are applicable whichever expires the later—

- (a) the period of 40 school days beginning with the next school day after—
 - (i) the day on which an appeal panel constituted under regulations made under section 52 of the Education Act 2002^(b) decided to uphold the exclusion;
 - (ii) the day on which the parent stated in writing that the parent does not intend to bring an appeal under those regulations;
 - (iii) the day on which an appeal brought within the time for bringing an appeal has been abandoned; or
 - (iv) if there was no appeal (and paragraph (ii) of this sub-paragraph does not apply), the last day on which an appeal could have been brought; or
- (b) the period of six months beginning with the day on which a parent of the pupil entered into a parenting contract.

Prescribed conditions for parenting orders where the pupil has engaged in relevant behaviour

5. For the purposes of section 20(2A)(b) of the Act, the prescribed condition is that an application must be made within the relevant period.

6. For the purposes of regulation 5, the “relevant period” is whichever of the following is applicable, and if both are applicable whichever expires the later—

- (a) the period of 40 school days beginning with the next school day after the day on which the relevant behaviour occurred (or, if the behaviour occurred over a period of more than one day, the next school day after the last day on which it occurred);
- (b) the period of six months beginning with the day on which a parent of the pupil entered into a parenting contract.

(a) The governing body of a maintained school considers the exclusion under regulation 5 of S.I. 2002/3178, and the local education authority considers a fixed term exclusion from a pupil referral unit under regulation 6 of S.I. 2002/3179.
 (b) 2002 c 32.

Limit on the power of a local authority to enter into a parenting contract or apply for a parenting order

7.—(1) Except in a case mentioned in paragraph (3), a local authority may not enter into a parenting contract or apply for a parenting order where the school by reference to which the contract would otherwise be entered into or the application would otherwise be made (“the school in question”) is not in the area of the authority.

(2) Except in a case mentioned in paragraph (4), a local authority may not enter into a parenting contract or apply for a parenting order where the child by reference to whom the contract would otherwise be entered into or the application would otherwise be made (“the child in question”) does not reside in the area of the authority.

(3) A local authority may enter into a parenting contract, or apply for a parenting order, where the school in question is not in the area of the authority where—

- (a) the authority has an agreement with the local authority where the school in question is situated that the first authority may enter into a parenting contract or apply for a parenting order in the circumstances; or
- (b) the child in question resides in the area of the authority and he has been permanently excluded.

(4) A local authority may enter into a parenting contract or apply for a parenting order where the child in question does not reside in the area of the authority if—

- (a) the school in question is in the area of the authority; and
- (b) the child—
 - (i) is a registered pupil at the school; or
 - (ii) has been permanently excluded from the school,

where the authority has an agreement with the local authority where the child in question resides that the first authority may enter into a parenting contract or apply for a parenting order in those circumstances.

Limit on the power of a governing body of a relevant school to apply for a parenting order

8.—(1) Except in a case mentioned in paragraph (2), where a pupil has been admitted to a relevant school^(a) after being permanently excluded from another relevant school—

- (a) the school to which the pupil has been admitted may apply for a parenting order; and
- (b) the school from which the pupil has been permanently excluded may not apply for a parenting order.

(2) Where the school to which the pupil has been admitted and the school from which the pupil has been excluded have entered into an agreement concerning application for a parenting order in respect of the pupil or applications for parenting orders generally, an application for a parenting order may be made by the school from which the pupil has been permanently excluded instead of by the school to which the pupil has been admitted, if the agreement so provides.

Duty to consult

9. Where in any case more than one relevant body has power to enter into a parenting contract or to apply for a parenting order, a relevant body proposing to exercise the power must consult each other relevant body.

(a) The definition of “relevant school” is in section 24 of the Act; it was inserted by section 161 of, and paragraph 4 of Part 2 of Schedule 16 to, 2006 c. 40.

Provision of information

10.—(1) Where a relevant body (“A”) proposes to enter into a parenting contract or apply for a parenting order they must, in relation to that entry or application, request information from any other relevant body (“B”) in relation to the child by reference to whom the contract is proposed to be entered into or application for the order made as is reasonably necessary to enable them to—

- (a) decide whether or not to enter into such contract or make such application (as the case may be);
- (b) avoid the entry into a parenting contract or application for a parenting order (as the case may be) where a parenting contract or parenting order exists in relation to that child or the entry into a parenting contract or application for a parenting order is pending; and
- (c) make an informed decision about the terms of such a contract or the content of the application (as the case may be) with a view to the most appropriate contract being entered into or order being made in all the circumstances of the case.

(2) B must, on receipt of a request under paragraph (1), provide to A such information in its possession or control as may be reasonably necessary for the purposes set out in paragraph (1).

(3) Where A makes a request for information pursuant to paragraph (1), they may disclose to B such information as may be reasonably necessary to enable B to fulfil their duty under paragraph (2).

Costs of parenting order or parenting contract

11.—(1) The costs associated with the requirements of parenting orders or the costs associated with parenting contracts, including in each case the costs of providing counselling or guidance programmes, must be borne by the relevant body making the application or entering into the contract.

(2) A relevant body may recover the costs they incur under paragraph (1) from another relevant body by agreement.

Revocation

12. Subject to regulation 13, the 2004 Regulations are revoked.

Transitional provisions

13.—(1) The 2004 Regulations continue to apply to parenting orders under section 20 of the Act made, or applied for, before 1st September 2007.

(2) Regulation 7 of these Regulations does not apply to a parenting contract entered into or a parenting order made, or applied for before 1st September 2007.

(3) Regulation 11 of these Regulations, insofar as it applies to the costs associated with parenting contracts, does not apply to such a contract entered into before 1st September 2007.

27th June 2007

Jim Knight
Minister of State
Department for Education and Skills

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to parenting orders and parenting contracts under Part 2 of the Anti-social Behaviour Act 2003 (“the Act”, as amended by Chapter 2 of Part 7 of the Education and Inspections Act 2006).

They prescribe conditions to be fulfilled before an application can be made for a parenting order under section 20 of the Anti-Social Behaviour Act 2003. Regulations 3 and 4 prescribe the condition in respect of both permanent and fixed term exclusions, namely that the application must be made within the relevant period. Regulations 5 and 6 prescribe the condition where it appears that the pupil has engaged in behaviour warranting exclusion. Again the application must also be made within the relevant period. Regulations 4 and 6 respectively define the relevant period.

Regulation 7 restricts a local authority, authority A, from entering into a parenting contract or applying for a parenting order, where the pupil concerned attends a school in the area of another authority, authority B, unless authority A has an agreement with authority B that authority A may do so, or the pupil lives in authority A's area and has been excluded permanently. It also restricts authority A from entering into a parenting contract or applying for a parenting order where the pupil whom it concerns attends a school in authority A's area and has been permanently excluded, but resides in authority B's area, unless authority A has an agreement with the authority B that authority A may do so.

Regulation 8 provides that where a permanently excluded pupil has moved between schools the default applicant school for a parenting order is the school to which the pupil has moved but this may be varied by agreement between the schools.

Regulation 9 obliges relevant bodies who may enter into parenting contracts or apply for parenting orders to consult one another before doing so.

Regulation 10 obliges relevant bodies to seek from one another information which they reasonably consider may be relevant to enable them to decide whether or not to enter into a parenting contract or apply for a parenting order, to avoid multiple contracts and orders in relation to the same child, and to determine the content of a contract or order.

Regulation 11 prescribes for the purpose of section 22A(2)(e) of the Act that relevant bodies are to fund the costs of parenting contracts and parenting orders, though they may recover these costs from one another by agreement.

In exercising their functions relating to parenting contracts and parenting orders, schools and local authorities must have regard to guidance issued by the Secretary of State pursuant to section 19(9) of the Act in relation to contracts and 21(5) of the Act in relation to orders.

Regulations 12 and 13 revoke the Education (Parenting Orders) (England) Regulations 2004 which these Regulations replace and make transitional provisions. The 2004 Regulations continue to apply to parenting orders made or applied for before 1st September 2007.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

Annex B: Specimen Application Form for a Parenting Order

Application for Parenting Order (Anti-social Behaviour Act 2003, section 20)

.....Magistrates' Court
(Code)

Date:

Child or young person:

Child or young person's address:

Child or young person's age and date of birth (or date on which they are believed to have been born):

Parent:

Parent's address:

which is in the area of [] Local Authority

Parent:

Parent's address:

which is in the area of [] Local Authority

Applicant:

[Local Authority:

[Governing Body of the []

School's address: []]

[School from which the pupil was excluded, if different:

School's address: []]

[School at which the behaviour which would warrant exclusion from school on disciplinary grounds took place, if different:

School's address: []]

It is alleged that:

- (a) [the child or young person has been excluded from school on disciplinary grounds;] [the child or young person has engaged in behaviour [insert details] which would warrant exclusion from school on disciplinary grounds;] [; and
- (b) the prescribed conditions are satisfied in that [insert details].

[The parent(s) entered into a parenting contract on [date].] [It is alleged that the parent(s) have failed to comply with the parenting contract, a copy of which is attached to this application form.

Short description of alleged failure to comply with parenting contract:

Evidence of this alleged failure to comply is attached.]

[It is alleged that the parent(s) have refused to enter into a parenting contract.]

[It is alleged that the parent(s) have failed without reasonable excuse to attend a reintegration interview.]

[The child or young person is under 16. Information as to the family circumstances of the child or young person is attached.]

[It is alleged that making the order would be desirable in the interests of preventing the child or young person from engaging in behaviour which would warrant their exclusion from school on disciplinary grounds for a fixed period or permanently. The court is requested to make such an order in respect of *[insert person's name]* [and] *[insert person's name]*.

[The applicant requests the court to order that the person (s) named above attend for a period of *[insert number]* months a counselling or guidance programme to be specified in directions given by the responsible officer.]

[It is alleged that:

- (a) the attendance of the parent at a residential course is likely to be more effective than their attendance at a non-residential course in improving the child's or young person's behaviour; and
- (b) any interference with family life which is likely to result from the attendance of the parent at a residential course is proportionate in all the circumstances.

The court is requested to order that the counselling or guidance programme may include a residential element.]

Short description of such residential course to be attended by the parent(s)/guardian(s):

The applicant requests the court to order that the parent(s)/guardian(s) comply for a period of *[insert number]* months with requirements to be specified in the Parenting Order as follows [].

STATUTORY INSTRUMENTS

2007 No. 2222 (L.24)

MAGISTRATES' COURTS, ENGLAND AND WALES

PROCEDURE

**The Magistrates' Courts (Parenting Orders) (Amendment) Rules
2007**

<i>Made</i>	- - - -	<i>23rd July 2007</i>
<i>Laid before Parliament</i>		<i>6th August 2007</i>
<i>Coming into force</i>	- -	<i>1st September 2007</i>

The Lord Chief Justice, after consultation with the rule committee appointed by the Lord Chancellor under section 144 of the Magistrates' Courts Act 1980(a) and with the concurrence of the Lord Chancellor, in exercise of the powers conferred by that section, makes the following Rules:

Citation and commencement

1. These Rules may be cited as the Magistrates' Courts (Parenting Orders) (Amendment) Rules 2007 and come into force on 1st September 2007.

Amendment of the Magistrates' Courts (Parenting Orders) Rules 2004

2. The Magistrates' Courts (Parenting Orders) Rules 2004(b) are amended as follows.

3. After rule 6, insert the following—

‘7. An application for a parenting order made under section 26A(c)(parenting orders in respect of anti-social behaviour: local authorities) of the 2003 Act shall be made by complaint and in the form set out at Schedule 5 or a form to like effect.

8. A parenting order made under section 26A of the 2003 Act shall be in the form set out in Schedule 6 or a form to like effect.

-
- (a) 1980 c. 43. Section 144 has been amended by sections 15(1) of, and paragraphs 99 and 102 of Part 1 of Schedule 4 to the Constitutional Reform Act 2005 (c. 4). There are other amendments to section 144 not yet in force; parenting orders are not family proceedings within the meaning of section 65 of the Magistrates' Courts Act and accordingly section 144(1)(b) does not apply to parenting orders.
- (b) S.I. 2004/247 (L. 3); r. 7 to 9 and Schedules 5 and 6 were revoked by r. 2.1 of the Criminal Procedure Rules 2005 (S.I. 2005/384 (L. 4), the Courts Act 2003 (c. 39), the Courts Act 2003 (Commencement No 6 and Savings) Order 2004 (S.I. 2004/2066) and the Courts Act 2003 (Consequential Amendments) Order 2004 (S.I. 2004/2035).
- (c) Section 26A of the Anti-social Behaviour Act 2003 (c. 38) was inserted by section 24 of the Police and Justice Act 2006 (c. 48).

9. An application for a parenting order made under section 26B(a)(parenting orders in respect of anti-social behaviour: registered social landlords) of the 2003 Act shall be made by complaint and in the form set out at Schedule 7 or a form to like effect.

10. A parenting order made under section 26B of the 2003 Act shall be in the form set out in Schedule 8 or a form to like effect.’.

Amendment of Schedule 1

4. In Schedule 1 (Application for Parenting Order (Anti-social Behaviour Act 2003, section 20))—

(a) for “Child or young person’s age:” substitute—

‘Child or young person’s age and date of birth (or date on which they are believed to have been born):’;

(b) for “Applicant Local Education Authority:” substitute—

‘Applicant:

[Local Education Authority:

[Governing Body of the []

School’s address: []]

[School from which the pupil was excluded, if different:

School’s address: []]

[School at which the behaviour which would warrant exclusion from school on disciplinary grounds took place, if different:

School’s address: []]’;

(c) for “(a) the child or young person has been excluded from school on disciplinary grounds;” substitute—

‘ (a) [the child or young person has been excluded from school on disciplinary grounds;] [the child or young person has engaged in behaviour [insert details] which would warrant exclusion from school on disciplinary grounds;]’; and

(d) after “[It is alleged that the parent(s) have refused to enter into a parenting contract.]” insert—

‘[It is alleged that the parent(s) have failed without reasonable excuse to attend a reintegration interview.]’;

(e) after “[The child or young person is under 16. Information as to the family circumstances of the child or young person is attached.]”, insert—

‘It is alleged that making the order would be desirable in the interests of preventing the child or young person from engaging in behaviour which would warrant their exclusion from school on disciplinary grounds for a fixed period or permanently. The court is requested to make such an order in respect of [*insert person’s name*] [and] [*insert person’s name*].

[The applicant requests the court to order that the person(s) named above attend for a period of [*insert number*] months a counselling or guidance programme to be specified in directions given by the responsible officer.]’; and

(f) for—

‘Short Description of the counselling/guidance programme to be attended by the parent(s)/guardian(s):

(a) Section 26B of the Anti-social Behaviour Act 2003 was inserted by section 24 of the Police and Justice Act 2006.

Further requirements to be included in the order:’,
substitute—
‘Short description of such residential course to be attended by the parent(s)/guardian(s):
The applicant requests the court to order that the parent(s)/guardian(s) comply for a period of *[insert number]* months with requirements to be specified in the Parenting Order as follows:’.

Amendment of Schedule 2

5. In Schedule 2 (Parenting Order (Anti-social Behaviour Act 2003, section 20))—

- (a) for “Applicant Local Education Authority” substitute—
‘Applicant Local Education Authority/School Governing Body’;
- (b) for the paragraph beginning “[*insert child/young person’s name*]” substitute the following—
‘[*insert child/young person’s name*] of [*insert address*] who is believed to have been born on [*insert date of birth*], [a registered pupil][formerly a registered pupil] at [*details of school*] has [been excluded from [*details of school from which the child or young person has been excluded, if different*] on disciplinary grounds] and the prescribed conditions are met [*insert details*].]
[The court is satisfied that [*insert child/young person’s name*] of [*insert address*] who is believed to have been born on [*insert date of birth*], [a registered pupil at [*details of school*]] has engaged in behaviour which would warrant exclusion from school on disciplinary grounds] and the prescribed conditions are met.];’ and
- (c) for the paragraph beginning “Decision:” substitute—
‘Decision: In exercise of its powers under section 20(3) of the Anti-social Behaviour Act 2003(**a**) (“the 2003 Act”) and having complied with its duties under that section[, and having complied with its duty under section 21(1) of the 2003 Act in taking into account the failure of the persons named above to [enter into][comply with] a parenting contract][, and having complied with its duty under section 21(1A) of the 2003 Act(**b**) in taking into account the failure of the persons named above without reasonable excuse to enter into a reintegration interview], the court has decided to impose a parenting order on the person(s) named above being parent(s) of the pupil because the court considers that the order would be desirable in the interests of improving the behaviour of the pupil.’.

Amendment of Schedule 3

6. In Schedule 3 (Application for Parenting Order (Anti-social Behaviour Act 2003, section 26))—

- (a) for “Child or young person’s age:” substitute—
‘Child or young person’s age and date of birth (or date on which they are believed to have been born):’;
- (b) after “[The child or young person is under 16. Information as to the family circumstances of the child or young person is attached.]” insert—
‘It is alleged that making the order would be desirable in the interests of preventing the child or young person from engaging in further criminal conduct or further anti-social behaviour. The court is requested to make such an order in respect of [*insert person’s name*] [and] [*insert person’s name*].’.

(a) Subsection (3) was substituted by section 98(5) of the Education and Inspections Act 2006 (c. 40).

(b) Subsection (1A) was inserted by section 99(2)(b) of that Act.

[The applicant requests the court to order that the person (s) named above attend for a period of [*insert number*] months a counselling or guidance programme to be specified in directions given by the responsible officer.]; and

(c) for—

‘Short description of the counselling/guidance programme to be attended by the parent(s)/guardian(s):

Further requirements to be included in the order:’

substitute—

‘Short description of such residential course to be attended by the parent(s)/guardian(s):

The applicant requests the court to order that the parent(s)/guardian(s) comply for a period of [*insert number*] months with requirements to be specified in the Parenting Order as follows:’

7. After Schedule 4, insert the Schedules set out in the Schedule to these Rules.

13th July 2007

Phillips of Worth Matravers CJ

I concur

Date 23 July 2007

Jack Straw
The Lord Chancellor

SCHEDULE

Rule 7

SCHEDULES 5 TO 8 OF THE MAGISTRATES’ COURTS (PARENTING ORDERS) RULES 2004

‘SCHEDULE 5

Rule 7

Application for Parenting Order (Anti-social Behaviour Act 2003, section 26A)

Magistrates’ Court
(Code)

Date:

Child or young person:

Child or young person’s address:

Child or young person’s age and date of birth (or date on which they are believed to have been born):

Parent/Guardian:

Parent/Guardian’s address:

Parent/Guardian:

Parent/Guardian’s address:

Applicant Local Authority:

Responsible officer:

It is alleged that:

- (a) the child or young person has acted on [*insert date(s)*] at [*insert place(s)*] in an anti-social manner, that is to say, in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself; and
- (b) the child or young person resides in the local authority’s area.

Short description of acts:

[Evidence of these acts is attached.]

[The parent(s)/guardian(s) entered into a parenting contract on [*insert date*]]. [It is alleged that the parent(s)/guardian(s) have failed to comply with the parenting contract, a copy of which is attached to the application form.]

Short description of alleged failure to comply with parenting contract.]

[Evidence of this alleged failure to comply is attached.]

[It is alleged that the parent(s)/guardian(s) have refused to enter into a parenting contract.]

[The child or young person is under 16. Information as to the family circumstances of the child or young person is attached.]

It is alleged that making the order would be desirable in the interests of preventing the child or young person from engaging in further anti-social behaviour. The court is requested to make such an order in respect of [*insert person’s name*] and [*insert person’s name*]

[The applicant requests the court to order that the person(s) named above attend for a period of [*insert number*] months counselling or guidance to be specified given by the responsible officer.]

[It is alleged that:

- (a) the attendance of the parent(s)/guardian(s) at a residential course is likely to be more effective than their attendance at a non-residential course in preventing the child or young person from engaging in further anti-social behaviour, and
- (b) any interference with family life which is likely to result from the attendance of the parent(s)/guardian(s) at a residential course is proportionate in all the circumstances.

The court is requested to order that the counselling or guidance programme may [include][consist of] a residential course.

Evidence to support the request for a residential requirement is attached.]

Short description of the counselling/guidance programme to be attended by the parent(s)/guardian(s):

The applicant requests the court to order that the parent(s)/guardian(s) comply for a period of [*insert number*] months with requirements to be specified in the Parenting Order as follows:

SCHEDULE 7

Rule 9

Application for Parenting Order (Anti-Social Behaviour Act 2003, section 26B)

Magistrates' Court
(Code)

Date:

Child or young person:

Child or young person's address:

Child or young person's age and date of birth (or date on which they are believed to have been born):

Parent/Guardian

Parent/Guardian's address

Applicant:

Local Authority:

Responsible officer:

It is alleged that:

(a) the child or young person has acted on [*insert date(s)*] in an anti-social manner, that is to say, in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself; and

(b) the behaviour in question directly or indirectly relates to or affects the housing management functions of the registered social landlord.

Short description of acts:

[Evidence of these acts is attached.]

The registered social landlord has consulted the local authority in whose area the child or young person resides or appears to reside.

[The parent(s)/guardian(s) entered into a parenting contract on [*insert date*].] [It is alleged that the parent(s)/guardian(s) have failed to comply with the parenting contract, a copy of which is attached to this application form.]

Short description of alleged failure to comply with parenting contract.

Evidence of this alleged failure to comply is attached.]

[It is alleged that the parent(s)/guardian(s) have refused to enter into a parenting contract.]

[The child or young person is under 16. Information as to the family circumstances of the child or young person is attached.]

It is alleged that making the order would be desirable in the interests of preventing the child or young person from engaging in further anti-social behaviour. The court is requested to make such an order in respect of [*insert person's name*] [and] [*insert person's name*].

[The applicant requests the court to order that the person(s) named above attend for a period of [*insert number*] months counselling or guidance to be specified given by the responsible officer.]

It is alleged that:

(a) the attendance of the parent(s)/guardian(s) at a residential course is likely to be more effective than their attendance at a non-residential course in preventing the child or young person from engaging in further anti-social behaviour; and

(b) any interference with family life which is likely to result from the attendance of the parent(s)/guardian(s) at a residential course is proportionate in all the circumstances.

The court is requested to order that the counselling or guidance programme may [include][consist of] a residential course.

Evidence to support the request for a residential requirement is attached.

Short description of the counselling/guidance programme to be attended by the parent(s)/guardian(s).

The applicant requests the court to order that the parent(s)/guardian(s) comply for a period of [*insert number*] months with requirements to be specified in the Parenting Order as follows:

SCHEDULE 8

Rule 9

Parenting Order (Anti-social Behaviour Act 2003, section 26B)

Magistrates' Court
(Code)

Date:

Person(s) named in order:

Age(s) years (if under 18)
 years (if under 18)

Address(es):

Applicant Registered Social Landlord:

Local Authority:

Responsible Officer:

[insert child's/young person's name] of *[insert address]*, who is believed to have been born on *[insert date of birth]*, has behaved in a manner which is anti-social, that is to say, in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself and the behaviour in question directly or indirectly relates to or affects the housing management functions of the registered social landlord.

Decision: In exercise of its powers under section 26B(2) of the Anti-social Behaviour Act 2003 (the "2003 Act") and having complied with its duties under that section[, and having complied with its duty under section 27(1) of the 2003 Act in considering the failure of the persons named above to [enter into][comply with] a parenting contract], the court has decided to impose a parenting order on the person(s) named above because the court considers that the order would be desirable in the interests of preventing the child or young person from engaging in further anti-social behaviour.

The requirements of the order are as follows:

[insert person's name] shall for a period of *[insert length of requirement]* beginning with the date of the order comply with such requirements as are listed in the Schedule to the order.

[insert person's name] shall for a concurrent period of *[insert length of requirement]* not exceeding three months attend a counselling or guidance programme as directed by the responsible officer.

[[insert person's name] shall on *[insert dates]* attend a residential course at *[insert address]* as directed by the responsible officer. The court is satisfied that the requirements of section 26B(6) and (7) of the 2003 Act have been met.]

[(In the event that the child/young person is under 16.) The court has complied with its duties under section 27(2) of the 2003 Act and has obtained and considered information about the child's young person's family circumstances, and the likely effect of the order on those circumstances.]

The court has complied with its duties under section 27(3) of the 2003 Act, and has explained to the person(s) named above the effect of the order and its requirements, what may happen if he/she/they fail(s) to comply with these requirements (as set out in section 9(7) of the Crime and Disorder Act 1998), and that the court has power (under section 9(5) of the Crime and Disorder Act 1998) to review the order on the application of the person(s) named above or the responsible officer.

Justice of the Peace

[or By order of the Court,
Clerk of the Court]

SCHEDULE

Any Requirement(s) imposed by the court under section 26B(3)(a) and (b) of the 2003 Act should be listed here.'

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Magistrates' Courts (Parenting Orders) Rules 2004 (S.I. 2004/247(L. 3)) ("the principal Rules"). They amend Schedules 1 and 2 of the principal Rules consequent upon the amendment of section 20 of the Anti-social Behaviour Act 2003 ("the 2003 Act") by section 98 of the Education and Inspections Act 2006 ("the 2006 Act", rules 4 and 5 respectively). They amend Schedule 3 of the principal Rules (rule 6). Rule 3 inserts rules 7 to 10 of, and rule 7 inserts Schedules 5 to 8 to, the principal Rules. These provisions set out the procedure in relation to parenting orders under sections 26A and 26B of the 2003 Act, and provide forms in relation to these parenting orders.

Parenting orders were introduced by the Crime and Disorder Act 1998. Section 20 of the 2003 Act made parenting orders available in respect of pupils excluded from school, and section 98 of the 2006 Act amended section 20 to extend the availability of parenting orders to situations where a pupil has engaged in behaviour which would warrant exclusion from school immediately (but where the school deals with the behaviour in a different way). Sections 26A and 26B of the 2003 Act were inserted by section 24 of the Police and Justice Act 2006 and extend the situations in which parenting orders can be made. Section 26A sets out provisions for local authorities to apply for parenting orders where the child has been engaging in anti-social behaviour and the child resides, or appears to reside, in the local authority's area. Section 26B sets out provisions for registered social landlords to apply for parenting orders where the child has been engaging in anti-social behaviour and the behaviour in question directly or indirectly relates to or affects the housing management functions of the registered social landlord. Parenting orders may require the parent(s) or guardian(s) of the child to attend a counselling and guidance programme. Parenting orders may include other requirements including a requirement to attend a residential course.

These Rules come into force on 1st September 2007.

STATUTORY INSTRUMENTS

2007 No. 1867

EDUCATION, ENGLAND

The Education (Penalty Notices) (England) Regulations 2007

Made - - - - 26th June 2007

Laid before Parliament 6th July 2007

Coming into force - - 1st September 2007

The Secretary of State for Education and Skills, in exercise of the powers conferred upon him by sections 444A(3) and (6), 444B and 569 of the Education Act 1996(a) and sections 105(3) and (5), 106 and 181 of the Education and Inspections Act 2006(b), makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Education (Penalty Notices) (England) Regulations 2007 and come into force on 1st September 2007.

(2) These Regulations apply only in relation to England.

(3) In relation to offences under section 444 of the 1996 Act, these Regulations apply to penalty notices issued on or after the date on which these Regulations come into force, whether the alleged offence was committed before, on or after that date.

Interpretation

2.—(1) In these Regulations—

“the 1996 Act” means the Education Act 1996;

“the 2006 Act” means the Education and Inspections Act 2006;

“the 2004 Regulations” has the meaning given by regulation 24(1)(a);

“alternative educational provision” means one of the following—

- (a) education provided by a local education authority for a child otherwise than at school or at his home by way of arrangements made under section 19 of the 1996 Act(c);
- (b) education at a place outside the premises of the school at which the child is a registered pupil and which the child is required by the appropriate authority (within the meaning of section 444ZA(d) of the 1996 Act) to attend for the purpose of receiving any instruction or training;

(a) 1996 c. 56; sections 444A and 444B were inserted by section 23(1) of the Anti-social Behaviour Act 2003 (c. 38); section 444A has been amended by section 117 of, and paragraph 3 of Schedule 18 to, the Education Act 2005 (c. 18) and section 110 of the Education and Inspections Act 2006 (c. 40). There are amendments to section 569 not relevant to these Regulations. For the meaning of “prescribed”, see section 579(1).

(b) 2006 c. 40; for the meaning of “prescribed”, see section 187(2) and (3)(e) of that Act, and section 579(1) of 1996 c. 56.

(c) Section 19 was amended by sections 47 and 57 of, and Schedule 8 to, the Education Act 1997 (c.44), and section 101 of the 2006 Act.

(d) Section 444ZA was inserted by section 116 of the Education Act 2005.

- (c) education at the school at which the child is a registered pupil pursuant to arrangements of the description referred to in subsection (3) of section 100 (duty of governing body or proprietor where pupil excluded for a fixed period) of the 2006 Act, whether provided pursuant to the duty imposed by that subsection or otherwise;
- (d) arrangements made for a child by a local education authority at a school (whether or not the school at which the child was, immediately before permanent exclusion, a registered pupil, and whether pursuant to its duty in section 19(3A) of the 1996 Act (duty of local education authority in relation to excluded pupils) or otherwise, in conjunction with arrangements of the type referred to in subsection (3) of section 100 of the 2006 Act;

“code of conduct” means the local education authority’s code of conduct for the time being in force pursuant to regulations 14 to 18;

“penalty notice” means a penalty notice issued pursuant to section 444A(1) of the 1996 Act or section 105(1) of the 2006 Act;

“public place” has the meaning given by section 103(8) of the 2006 Act;

“recipient” means a person to whom a penalty notice is given in accordance with section 444A(1) of the 1996 Act or section 105(1) of the 2006 Act, as the case may be; and

“school hours” has the meaning given by section 103(8) of the 2006 Act.

(2) In these Regulations a reference to a deputy or assistant head teacher includes a reference to a person acting as deputy or assistant head teacher, as the case may be^(a).

Form and content of penalty notices

3. A penalty notice must give such details of the circumstances alleged to constitute the offence to which the notice relates as are necessary to give reasonable information as to the offence and must contain—

- (a) the name and address of the recipient;
- (b) the name and address of the child who—
 - (i) is failing to attend school regularly;
 - (ii) is failing to attend alternative educational provision regularly and, as applicable—
 - (aa) the name of the school where he is a registered pupil, if applicable; and
 - (bb) the place where the alternative educational provision is provided for the child or at which he is required to attend; or
 - (iii) was present in a public place at a time during school hours on a school day falling within section 103(2) of the 2006 Act,

as the case may be;

- (c) the name and official particulars of the authorised officer issuing the notice;
- (d) the period during which the offence was committed in the case of an offence under section 444 of the 1996 Act, and the date of the offence in relation to an offence under section 103(3) of the 2006 Act, and (in either case) the date of the issue of the notice;
- (e) the amount of the penalty which is to be paid, if it is paid within 28 days in accordance with regulation 4, and the amount in accordance with that regulation if it is not paid within that period but is paid within 42 days;
- (f) the name and the address of the local education authority to which the penalty is to be paid in accordance with regulation 6 and to which any correspondence relating to the penalty notice may be sent;
- (g) the method or methods by which payment of the penalty may be made;
- (h) the period for paying the penalty, in accordance with regulation 5;

(a) By section 579(1) of 1996 c. 56 (which applies to penalty notices issued under section 105 of 2006 c. 40 by virtue of section 187(2) and (3)(e) of that Act), “head teacher” includes an acting head teacher.

- (i) a statement that payment within that period will discharge any liability for the offence;
- (j) the consequences of the penalty not being paid before the expiration of the period for paying it; and
- (k) the grounds on which the notice may be withdrawn.

The penalty

Amount of penalty

4. The amount of the penalty to be paid is—
- (a) £50, where the amount is paid within 28 days of receipt of the notice;
 - (b) £100, where paragraph (a) does not apply but where the amount is paid within 42 days of receipt of the notice.

Period for payment of the penalty

5. The time by which the penalty is to be paid^(a) is within 42 days of receipt of the notice.

Payment of penalty

- 6.—(1) The penalty is payable to—
- (a) the local education authority in whose area the school at which the recipient's child is a registered pupil is situated;
 - (b) where the child is not, at the time of giving the notice, a registered pupil at any school, whether due to permanent exclusion or otherwise, the local education authority in whose area the child resides.

(2) A certificate purporting to be signed by the proper officer of a local education authority to the effect that the recipient of a penalty notice has or has not paid the amount due on or before a date stated in the certificate is admissible in evidence in any legal proceedings and is evidence of the matters stated in it.

Effect of penalty notice

Period during which proceedings may not be instituted

7. The period prescribed for the purposes of section 444A(3) of the 1996 Act and section 105(3) of the 2006 Act is 42 days beginning with the date on which the recipient receives the penalty notice.

Withdrawal

Withdrawal of penalty notice

- 8.—(1) A penalty notice may be withdrawn by the local education authority named in the notice as the authority to which payment is to be made for payment in any case in which—
- (a) that authority determines that—
 - (i) it ought not to have been issued; or
 - (ii) it ought not to have been issued to the person named as the recipient; or
 - (b) it appears to the authority that the notice contains material errors.

(a) If the penalty is paid within this period, the recipient cannot be convicted of the offence under or section 444A(4) of 1996 c. 56, or section 105(4) of 2006 c. 40, to which the notice relates.

(2) A penalty notice may be withdrawn in accordance with paragraph (1) whether or not the period for payment referred to in the notice pursuant to regulation 3(h) has expired, and whether or not the penalty has been paid.

(3) Where a penalty notice has been withdrawn in accordance with paragraph (1)—

- (a) notice of the withdrawal must be given to the recipient; and
- (b) any amount paid by way of penalty in pursuance of that notice must be repaid to the person who paid it.

(4) Except as provided in paragraph (5), no proceedings may be continued or instituted against the recipient for the offence in connection with which the withdrawn notice was issued, or, where the notice related to an offence under subsection (1) of section 444 of the 1996 Act, for an offence under subsection (1A) arising out of the same circumstances.

(5) But where a penalty notice was issued, and was withdrawn pursuant to paragraph (1)(b), proceedings may be continued or instituted—

- (a) for the offence in connection with which that penalty notice was issued; or,
- (b) where the penalty notice related to an offence under subsection (1) of section 444 of the 1996 Act, for an offence under subsection (1A) of that section arising out of the same circumstances as the first mentioned offence,

if both of the following conditions are met—

- (i) a further penalty notice in respect of the offence, or in the case of sub-paragraph (b), the first mentioned offence, was issued at the same time as the first penalty notice was withdrawn; and
- (ii) the penalty has not been paid pursuant to that further penalty notice in accordance with the requirements of these Regulations.

Non payment of the penalty

9. Where—

- (a) the penalty is not paid in full before the expiry of the period for paying it; and
- (b) the local education authority named in the notice pursuant to regulation 3(f) has neither instituted proceedings against the recipient for the offence to which the notice relates, nor is contemplating such proceedings,

the authority must withdraw the notice.

Issue of penalty notices

Authority to issue penalty notices

10.—(1) A head teacher may authorise a deputy or assistant head teacher to issue penalty notices.

(2) But a head teacher may not authorise any other member of staff to issue penalty notices.

Limitation on schools issuing penalty notices

11. A head teacher or deputy or assistant head teacher may only issue a penalty notice in respect of a child who is a registered pupil at the school at which that head teacher, or deputy or assistant head teacher, as the case may be, works.

Limitation on local education authorities issuing penalty notices

12.—(1) Subject to paragraph (2), an officer of a local education authority may only issue a penalty notice in respect of a child —

- (a) who is a registered pupil at a school in the area of that authority;
- (b) for whom that authority has made arrangements for alternative educational provision (whether or not in the area of that authority); or
- (c) who is not, at the time the notice is given, a registered pupil at any school (whether due to permanent exclusion or otherwise) but resides in the area of that authority.

(2) Where a local education authority has entered into an agreement with another local education authority for an officer of that other authority to issue penalty notices in respect of a child to which paragraph (1)(a) or (b) applies, an officer of that other authority may issue a penalty notice in respect of such child.

Several penalty notices in respect of the same offence

13. Where there is more than one person liable for the offence, a separate notice may be issued to each person.

Codes of conduct

Requirement to draw up code of conduct

14. Each local education authority must draw up a code of conduct which sets out measures to ensure consistency in the issuing of penalty notices, including—

- (a) means of avoiding the issue of duplicate penalty notices;
- (b) measures to ensure that a penalty notice is not issued in respect of an offence when proceedings for that offence under section 444 of the 1996 Act (or an offence under subsection (1A) of that section arising out of the same circumstances) or section 103(3) of the 2006 Act, as the case may be, are contemplated or have been commenced by the local education authority;
- (c) the occasions when it will be appropriate to issue a penalty notice for an offence;
- (d) a maximum number of penalty notices that may be issued to one parent in any twelve month period; and
- (e) arrangements for co-ordination between the local education authority, neighbouring local education authorities where appropriate, the police and authorised officers^(a).

Consultation on the code of conduct

15.—(1) In preparing the code of conduct the local education authority must consult governing bodies, head teachers and the chief officer of police for a police area which includes all or part of the area of the local education authority, and must have regard to any guidance issued by the Secretary of State.

(2) In this regulation-

“chief officer of police” has the meaning given by section 101(1) of the Police Act 1996^(b); and

“police area” means a police area provided for by section 1 of that Act.

Compliance with the code of conduct

16. Any person issuing a penalty notice must do so in accordance with the code of conduct.

(a) Authorised officers are defined in section 444B(4) of 1996 c. 56 in relation to penalty notices under section 444A of that Act, and in subsection (6) of section 105 of 2006 c. 40 in relation to penalty notices under that section.
 (b) 1996 c.16, to which there are amendments not relevant to these Regulations.

Secretary of State’s power to give direction

17. The Secretary of State may at any time direct a local education authority—
- (a) (if it has not already drawn up a code of conduct under regulation 14) to prepare a draft code for his approval by the date specified in the direction; or
 - (b) (if it has already drawn up such a code but the code appears to the Secretary of State to contain inappropriate measures) to prepare a draft of revisions to the code for his approval by the date specified in the direction.

Approval and effect of code of conduct following direction

18. The Secretary of State may approve a draft code or draft revisions to the code submitted under regulation 17 with or without modifications and—
- (a) where a draft code has been approved (pursuant to regulation 17(a) and this regulation) it has effect as approved; and
 - (b) where draft revisions to the code have been approved (pursuant to regulation 17(b) and this regulation) the code has effect with the approved revisions.

Information

Copy of the penalty notice to be supplied to the LEA

19. A person issuing a penalty notice must (without delay) provide a copy to the local education authority which is named in the notice as the authority to which payment is to be made pursuant to regulation 3(f).

Records

20. A local education authority must keep records of penalty notices which must include—
- (a) a copy of each notice issued;
 - (b) a record of all payments made and on what dates;
 - (c) whether the notice was withdrawn and on what grounds; and
 - (d) whether the recipient was prosecuted for the offence for which the notice was issued (or, where the notice related to an offence under subsection (1) of section 444 of the 1996 Act, for an offence under subsection (1A) arising out of the same circumstances).

Information to the Secretary of State

21. A local education authority must supply to the Secretary of State such information as he may require in respect of penalty notices.

Final provisions

Service of notices

22. —(1) Where the penalty notice is served by first class post^(a), service is deemed to have been effected, unless the contrary is proved, on the second working day after posting the notice.

(2) In this regulation “working day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday, or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971^(b).

(a) Section 572 of the Education Act 1996 makes provision for the service of notices.

(b) 1971 c. 80.

Sums received by local education authorities

23.—(1) The functions of a local education authority specified for the purposes of section 444A(6)(a) of the 1996 Act and section 105(5) of the 2006 Act are issuing and enforcing penalty notices, and prosecuting recipients who do not pay.

(2) To the extent that sums received by a local education authority are not used for the purposes of the functions specified in paragraph (1), they must be paid to the Secretary of State.

Revocation and transitional provisions

24.—(1) Subject to paragraphs (2) and (3), the following regulations are revoked—

- (a) the Education (Penalty Notices) (England) Regulations 2004**(b)** (“the 2004 Regulations”);
- (b) the Education (Penalty Notices) (England) (Amendment) Regulations 2004**(c)**; and
- (c) the Education (Penalty Notices) (England) (Amendment) Regulations 2005**(d)**.

(2) The 2004 Regulations continue to apply to penalty notices issued before the date on which these Regulations came into force.

(3) A code of conduct drawn up under regulation 12, or drawn up and approved pursuant to regulations 15 and 16, as the case may be, of the 2004 Regulations, and in force immediately before the coming into force of these Regulations, has effect under these Regulations as if drawn up pursuant to regulation 14, or drawn up and approved pursuant to regulation 17 and 18, as the case may require, of these Regulations; but nothing in this paragraph has the effect of applying that code of conduct to penalty notices issued pursuant to section 105 of the 2006 Act.

(4) A penalty notice issued pursuant to the 2004 Regulations is taken into account for the purposes of regulation 14(d) of these Regulations.

Jim Knight

Minister of State

Department for Education and Skills

26th June 2007

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations prescribe the necessary details for the operation of the penalty notice scheme under –

- (a) section 444A of the Education Act 1996 (“the 1996 Act”; section 444A was inserted by the Anti-Social Behaviour Act 2003); and
- (b) section 105 of the Education and Inspections Act 2006 (“the 2006 Act”).

They only apply in England (regulation 1(2)) and in the case of truancy offences under section 444 of the 1996 Act, apply to penalty notices served on or after the date on which they come into force, whether the offence was committed before or after they come into force (regulation 1(3)).

Regulation 3 sets out the matters to be contained in a penalty notice.

Regulations 4 prescribes the level of the penalty which is to be paid to the local education authority, and regulation 6 what is evidence of its payment or non-payment. Regulation 5 provides for the period in which it is to be paid, if it is to discharge liability for the offence. Regulation 6 provides which local education authority the penalty is to be paid to.

(a) Section 444A(6) was inserted by section 110 of the 2006 Act.

(b) S.I. 2004/181.

(c) S.I. 2004/920.

(d) S.I. 2005/2029.

Regulation 7 prescribes 42 days as the period before which no proceedings can be commenced. If the penalty is not paid within that time, regulation 8 makes provision for the withdrawal of a penalty notice. Regulation 9 requires the local education authority to withdraw the notice where it is not paid but where the authority does not prosecute for the offence.

Regulations 10 to 13 set out details about who may issue penalty notices and in what circumstances.

Regulations 14 to 18 require the local education authority to draw up and consult on a code of conduct for the issuing of penalty notices. Regulations 17 and 18 provide for the Secretary of State to have power to direct a local education authority to draw up a draft code or revisions to a code and for the Secretary of State to approve the draft code or revisions.

Regulations 19 to 21 require records to be kept, a copy of any penalty notice issued to be given to the local education authority, and information to be given to the Secretary of State.

Regulation 22 provides that if service of a penalty notice by prepaid letter is by first class post, the time at which it will be considered to have been served on the recipient is on the second working day after posting, unless the contrary is proved. Methods of service are provided for in section 572 of the Education Act 1996.

Regulation 23 specifies the functions of local education authorities for which sums received as penalties may be used, that is, the operation and enforcement of the penalty notice scheme. Sums not so used must be paid to the Secretary of State.

Regulation 24 makes transitional provision. The Education (Penalty Notices) (England) Regulations 2004 (S.I. 2004/181 as amended by S.I. 2004/920 and 2005/2029; “the 2004 Regulations”) continue to apply to penalty notices served before these Regulations come into force, and penalty notices issued under them are taken into account for the purposes of applying regulation 14(d) (which requires codes of conduct to provide for how many penalty notices may be issued to the same parent in any period of twelve months) but are otherwise revoked. Codes of conduct under the 2004 Regulations continue in force for penalty notices issued under section 444A of the 1996 Act, but they are not automatically extended to penalty notices issued under section 105 of the 2006 Act.

A full impact assessment has not been produced for this instrument as it has no impact on the costs of business.

Penalty Notice
[S.444A EDUCATION ACT 1996] AND [S.105 EDUCATION AND
INSPECTIONS ACT 2006]

Please read the notes overleaf carefully.

PART 1

[If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, or fails to attend regularly at alternative provision, the child's parent is guilty of an offence under s.444 Education Act 1996.]

[If a child of compulsory school age who has been excluded from a school on disciplinary grounds is found in a public place during school hours on a school day in the first five days of an exclusion and the child's parent has received a notice pursuant to s.104 of the Education and Inspections Act 2006, the child's parent is guilty of an offence under s.103 of the Education and Inspections Act 2006.]

To: [Title]

[Forenames]
[Surname]

[Date of Birth (if known)]

Of: [address]

[postcode]

You are a parent of [name and address of child] (called in this notice "the pupil") who [is a registered pupil at [name of school]/and has been directed to attend alternative provision] [is not registered at a school but for whom the local authority has made arrangements to attend alternative educational provision] [was excluded from (name of school) on (date of exclusion)].

On [date][dates]/ between [date] and [date] the pupil [failed to attend regularly at the school] [was found, during school hours on a school day in a public place].

This notice gives you the opportunity to pay a penalty fine instead of being prosecuted for the offence given above. The amount of the penalty is £50/£100 in accordance with the table overleaf. If you pay this penalty within the time limits set out below, no further action will be taken against you in connection with the offence as set out in this notice.

Payment should be made within 28 days. If paid after 28 days but within 42 days the penalty is doubled to £100. Payment should be made to [LA name and address for payment] and can be made in person at [that address] on [office opening hours], or by posting this notice with a cheque or postal order to [that address].

Late or part payments will not be accepted and no reminders will be sent. **If payment is not received by [insert date 42 days from date of issue], you may be prosecuted for the offence and could be subject to a fine of up to [£2,500] [£1,000].**

This notice is issued by [name] [official particulars] of [address/employer] [within XXX LA].

Date of issue:

PART 2

Please complete the following and return this notice with your payment to [insert LA address]:

Name:

Address:

I attach payment in the sum of £.....

Signed:

Date:

NOTES

1. Contact details.

If you have any queries about this notice, please contact XXX Local Authority at [insert department contact name, telephone number, fax number and address].

2. Amount of penalty.

The amount of the penalty is as follows:

When paid

Within 28 days £50

Within 42 days £100

3. Code of conduct.

This notice is issued in accordance with a local code of conduct drawn up by the XXXX LA. Any questions or correspondence about the code should be addressed to the [Children's Services Department] at [address and phone no.]

4. Withdrawal.

This notice may be withdrawn by the XXX LA if it is shown that it should not have been issued to you or has not been issued to you in accordance with the local code of conduct. If you believe that the notice was wrongly issued you must contact the LA to ask for it to be withdrawn as soon as possible, stating why you believe the notice to have been incorrectly issued. The LA will consider your request and will contact you to let you know whether the notice is withdrawn. If the notice is not withdrawn and you do not pay, you will be liable to prosecution for the offence that your child has failed to attend school regularly.

5. Payment.

You should complete the notice above and send or deliver it to the LA at the address given. [insert opening hours of offices etc.]

6. Prosecution.

If you do not pay the penalty, and the notice is not withdrawn, you will be prosecuted for the offence of [failing to ensure your child's regular attendance at school][failing to ensure your child is not in a public place during school hours in the first five days of an exclusion]. You will receive a separate summons for this which will give you notice of the time and date of the court hearing. You will be able to defend yourself and you would be advised to seek legal representation; in some circumstances you may be entitled to publicly funded legal advice/assistance¹.

¹ For more information telephone Community Legal Service Direct's help line On 0845 345 4345 or visit their website at: www.clsdirect.org.uk

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