



Penalty Notice Code of Conduct

In relation to School Attendance,
Leave of Absence and Exclusions



Penalty Notice Code of Conduct

The Education (Penalty Notices)(England) Regulations 2007

Section 444A and 444B Education Act 1996
(Section 23 Anti Social Behaviour Act 2003)

Section 103 of the Education and Inspections Act 2006
(Section 105 Education and Inspections Act 2006)

Education (Pupil Registration) (England) (Amendment) Regulations 2013

Section A

1. The purpose of the Code of Conduct is to ensure that Penalty Notices are applied consistently, fairly, and with transparency, and that suitable administrative arrangements are in place. All Penalty Notices must be issued within the terms set out in the code.
2. In order to comply with Human Rights legislation and to ensure that there is no underlying bias that could lead to disproportionate, unfair or unequal treatment on account of ethnicity, disability or special educational needs, it is essential that Penalty Notices are issued in a consistent manner.
3. Local Authorities are responsible for the overall administration of the scheme, and in Gateshead The Legal Intervention Team (Attendance) will issue and monitor all Penalty Notices on behalf of the Local Authority (LA). This will ensure consistent and equitable delivery, retain home-school relationships and allow integration with other enforcement sanctions.
4. Penalty Notices will only be issued by post and never as an on the spot action; this is to ensure that all evidential requirements are in place and to meet Health and Safety requirements.
5. The Penalty Notice 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.

6. Within this Code of Conduct the term 'parent' means all natural parents, whether they are married or not; and includes any person who, although not a natural parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person; and any person who, although not a natural parent, has care of a child or young person, as defined in Section 576 Education Act 1996.
7. 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 effectively engage with any voluntary or supportive measures proposed to support regular school attendance
 - Removes their child from school during term time without authorised leave of absence
 - Has failed to make adequate arrangements to ensure their child is not in a public place during the first 5 days of exclusion

Section B

Penalty Notice: in relation to school attendance

Legal Basis

1. 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. The legislation empowers designated Local Authority Officers to issue Penalty Notices in cases where an offence under section 444 has, in the opinion of the Local Authority, been committed.
2. Parents may discharge potential liability for conviction for an offence under section 444 by paying a penalty within a fixed time. There is no legal requirement for there first to have been a Penalty Notice issued before proceeding to prosecution.
3. The Education (Penalty Notices) (England) Regulations 2004 came into force on 1st September 2007.
4. Section 23 of the Anti Social Behaviour Act 2003 came into force on 27th February 2004.
5. The Education (Penalty Notices) (England) (Amendment) Regulations 2013 come into force on 1 September 2013. The amendment reduces the timescales for paying a penalty notice; if paid within 21 days the fixed penalty is £60, if paid after 21 days but within 28 days the penalty is £120.

Circumstances where a Penalty Notice may be issued

6. A Penalty Notice may only be issued in accordance with this Code of Conduct and when the Local Authority is satisfied that an offence under s444 of the Education Act 1996 has been committed by the recipient of the Notice.
7. A Penalty Notice can only be issued in cases of **unauthorised** absence. An unauthorised absence is recorded where the Head Teacher is not satisfied with the reasons given for absence, or a leave of absence requests has been refused.
8. A Penalty Notice is considered appropriate in the following circumstances:
 - Where a pupil has 10 or more sessions of unauthorised absence during the current term/twelve weeks
 - When an unauthorised leave of absence of 10 or more sessions during the current term/twelve weeks has been taken
 - Where there is evidence of persistent late arrival after the register has closed (recorded as unauthorised) for 10 or more sessions during the current term/twelve weeks
9. In cases where families contain more than one child who meets the above criteria parents may receive a separate Penalty Notice for each child but this will be the subject of careful consideration.
10. The LA must consider every aspect of a child's case before considering whether a Penalty Notice would be appropriate.
11. Where more than one person comes within the definition of "parent" a separate Penalty Notice may be issued to each such person for each relevant offence.
12. In the case of unauthorised absence:-
 - The parent will be issued with Warning Letter by the LA explaining the possible consequences should the attendance not reach the expected level during a specified 30 day period.
 - Usually a parent will receive a maximum of one Penalty Notice per child; subsequent offences will proceed to prosecution.
 - The parent will be given the opportunity to attend a PACE interview (interview under caution) to raise any mitigating circumstances or legal defences.
13. In the case of unauthorised leave of absence during term time:-
 - Head Teachers may not grant any leave of absence during term time unless there are exceptional circumstances. The Head Teachers should

determine the number of school days a child can be away from school if the leave is granted.

- In the first instance a parent will be issued with a Penalty Notice Warning Letter. All subsequent requests from the school for a Penalty Notice will result in the parent being issued with a fixed penalty fine.
- A parent can receive a Penalty Notice for each incidence of leave. Taking two or more leaves of absence within one academic year can potentially result in Penalty Notices being issued against them for each leave of absence.
- The parent can make representation to the Head Teacher at the time of the leave of absence request. Where the request is refused, and there is an unauthorised absence of 10 or more sessions, the Head Teacher may notify the LA and request a Penalty Notice be issued.

14. Where all criteria are met the LA will Issue a Penalty Notice by First Class Post.

Section C

Penalty Notice: in relation to exclusion

Legal Basis

1. 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 5 days of each and every fixed period or permanent exclusion, This will be specified in a Notice given to the parent by the School under s104 of the Education and Inspections Act 2006.
2. The implementation of the Education and Inspections Act 2006 Section 105 allows for a Penalty Notice to be given to a parent guilty of an offence under Section 103. The school must have notified the parent at the time of the exclusion of their duty and the days to which it relates.
3. Designated Local Authority Officers are empowered to issue Penalty Notices where pupils are found in a public place during the first 5 days of exclusion.
4. The Education (Penalty Notice) (England) Regulations 2007 came into force on 1st September 2007.

Circumstances where a Penalty Notice may be issued

5. The parent is liable for a Penalty Notice if a child is found present in a public place during school hours without reasonable justification during the first 5 days of each and every period of a fixed or permanent exclusion as specified in a Notice given to the parent by the School under s104 of the Education and Inspections Act 2006.

6. Where more than one person comes within the definition of “parent” a separate Penalty Notice may be issued to each such person for each relevant offence.
7. The LA must consider every aspect of a child’s case before considering whether a Penalty Notice would be appropriate.
8. The LA recognises 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 prearranged medical appointment or emergency. Similarly, if the parent needs urgent medical help it may be inappropriate to leave the child at home. In all cases it will be for the parent to prove reasonable justification.
9. A reasonable justification depends upon points of fact and proof and will ultimately be decided by the Courts.

Procedure for issue

10. The Legal Intervention Team (LIT), on behalf of the LA, will receive requests to issue Penalty Notices from Northumbria Police. These requests will be actioned provided that:
 - All necessary information is provided to the Legal Intervention Team to establish that an offence under Section 103 of the Education Act 2006 has been committed.
 - The circumstances of the pupil's whereabouts meets all the requirements of this Code of Conduct.
 - The issue of a Penalty Notice does not conflict with other intervention strategies in place or other enforcement sanctions already being processed.
11. A parent can receive a maximum of 2 Penalty Notices resulting from an individual child being in a public place during the first 5 days of a fixed period or permanent exclusion; subsequent offences will proceed to immediate prosecution.

Section D

Limitations on Local Authorities issuing Penalty Notices

1. A Local Authority may only issue a Penalty Notice in respect of a child: -
 - Who is a registered pupil at a school in the area of the Authority
 - For whom the Authority has made arrangements for alternative educational provision (whether or not in the area of that Authority)
 - 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. The Local Authority of the school at which the child is registered should issue the Penalty Notice. Where the child has been excluded it would be the Local Authority where the child resides.

Procedure for withdrawing Penalty Notices

3. A Penalty Notice may be withdrawn by Gateshead Council in any case in which the Authority determines that:-
 - It ought not to have been issued
 - It ought not to have been issued to the person named as recipient
 - It contains material errors
 - The use of the Penalty Notice did not conform to the terms of this Code of Conduct
4. Where a Penalty Notice has been withdrawn in accordance with the above, a notice of the withdrawal shall be given to the recipient. Any amount paid by way of penalty in pursuance of that notice shall be repaid to the person who paid it. No proceedings shall be continued or instituted against the recipient for the offence for which the withdrawn notice was issued.

Payment of Penalty Notices

5. Arrangements for payment will be detailed on the Penalty Notice.
6. Payment of a Penalty Notice discharges the parent's liability for the offence in question, and they cannot subsequently be prosecuted for the offence covered by the Penalty Notice.
7. The penalty is £60 if paid within 21 days of receipt of the notice, rising to £120 if paid after 21 days but within 28 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 unless it is shown otherwise). If the penalty is not paid in full by the end of the 28 day period the Local Authority must either prosecute for the offence to which the notice applies or withdraw the notice.

Non-payment of Penalty Notices:

8. Non-payment of a Penalty Notice will result in the withdrawal of the notice and will trigger the prosecution process. Prosecution is for the offence to which the notice relates rather than for non-payment of the notice.
9. In the case of the prosecution of a parent who has failed to ensure their child attends school regularly the prosecution will be brought by the Local Authority under the provisions of Section 444 Education Act 1996.
10. In the case of 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 prosecution will be brought by the Local Authority under the provisions of Section 103 of the Education and Inspections Act 2006.

11. The parent cannot be prosecuted for the particular offence for which a notice was issued until after the final deadline for payment has passed (28 days after receipt of the notice) and cannot be convicted of that offence if the parent pays a penalty in accordance with the notice.

Penalty Notices as Evidence in Legal Proceedings

12. Payment of a Penalty Notice discharges liability for prosecution for the offence to which the notice relates.

13. This means that the following cannot generally be cited or submitted as evidence in subsequent prosecutions: -

- The fact that a Penalty Notice was issued and paid.
- The pattern of unauthorised absence to which a Penalty Notice referred.
- The presence of an excluded child in a public place to which a Penalty Notice referred.

14. 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
- If the defendant attacks the character of another person.

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

Policy and Publicity

16. Deployment of Penalty Notices as a sanction is included in Gateshead Council's Attendance Strategy.

17. All school Attendance Policies will include information on the deployment of Penalty Notices and this will be brought to the attention of all parents.

18. The Local Authority will include information on the use of Penalty Notices and other attendance enforcement sanctions in promotional and public information material.

Reporting and Review

19. The Legal Intervention Team will report at regular intervals to the Director of Care, Wellbeing and Learning and the Department for Education on the deployment and outcomes of Penalty Notices.
20. The Legal Intervention Team will review Penalty Notice use at regular intervals and amend the general enforcement strategy as appropriate.

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