

Explanatory Memorandum to the Education (Penalty Notice) (Wales) Regulations 2013

This Explanatory Memorandum has been prepared by the Department for Education and Skills and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Education (Penalty Notice) (Wales) Regulations 2013.

Carwyn Jones
First Minister of Wales

7 August 2013

Description

1. These Regulations set out the arrangements for using education-related fixed penalty notices for regular¹ non-attendance at school.

Matters of special interest to the Constitutional and Legislative Affairs Committee

2. None.

Legislative background

3. Section 7 of the Education Act 1996 places a duty on parents to ensure that their child receives full-time, efficient education suitable to the child's age, ability and aptitude and any special needs they may have.
4. Section 444A and 444B of the Education Act 1996 allows for penalty notices in respect of failure to secure regular attendance at school of a registered pupil and for the Welsh Ministers to make regulations regarding their operation.
5. Sections 23(9) and (10) of the Anti-social Behaviour Act 2003 ("the 2003 Act") allows the Welsh Ministers to extend to Wales the application of sections 444A and 444B of the Education Act 1996 by making regulations that remove the words 'in England' from those sections. The practical effect of this is that those sections will apply to both England and Wales. The Anti-Social Behaviour Act 2003 (Amendment to the Education Act 1996) (Wales) Order 2013 removed the words "in England" in each place that they occurred in sections 444A and 444B of the Education Act 1996.
6. The functions of the Secretary of State in the Education Act 1996 were transferred to the National Assembly for Wales by way of the National Assembly for Wales (Transfer of Functions) Order 1999. Those functions and the functions in the Anti-social Behaviour Act 2003 were transferred to the Welsh Ministers in accordance with paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

¹ Regular will be defined by the Local Authority as attendance falling below a set percentage agreed within that local authority

7. The Regulations will be laid under the negative resolution procedure.

Purpose & intended effect of the legislation

8. There is clear statistical evidence to demonstrate the link between poor attendance and low attainment and the level of unauthorised and persistent² absences in Wales is a concern. Evidence shows that children with poor attendance are unlikely to succeed academically and they are more likely to be not in education, employment or training (NEET) when they leave compulsory age schooling.
9. We need to ensure that local authorities have appropriate tools and powers to bring about improvements in attendance.
10. Penalty notices are one option amongst a number of different interventions available to promote better school attendance. Penalty notices will support local authorities and schools, to ensure parents fulfil their responsibilities by ensuring that their children attend school regularly.
11. Education-related penalty notices enable parents to discharge potential liability for conviction for these offences by paying a penalty of £60 if paid within 28 days rising to £120 if paid after 28 days but within 42 days. If the penalty is unpaid or paid in part at the end of the 42 day period, the local authority must withdraw the notice if it does not prosecute for the offence to which the notice relates.

Consultation

12. The Welsh Government consulted with key sectors including parents, pupils, schools, local authorities, regional education consortia, and education welfare services between 30 November 2012 and 22 February 2013 (12 weeks).
13. In the main there was general agreement with the proposals. There were two main issues arising from the responses which have been addressed within the guidance that will be issued to local authorities:

² Persistent absentees are pupils who were absent for at least 20 per cent or more of possible sessions as defined for statistical purposes by Welsh Government

- i. the implementation of a local code of conduct by local authorities
 - ii. the power for head teachers to issue penalty notices
14. Responses to the consultation called for either a national code of conduct or a more detailed 'model' code of conduct prepared by the Welsh Government. A local code of conduct is proposed to allow local authorities and schools to take into consideration local and individual circumstances. This will be developed by local authorities.
15. Welsh Government guidance on the penalty notice system, to be published alongside the Regulations, will make clear that local authorities, following consultation with their schools and police, may limit the power of issuing penalties to the authority only and not head teachers if they so wish as part of their code of conduct.
16. The full summary of responses to the consultation can be found at:
<http://wales.gov.uk/consultations/education/nonattendancepenalty/?lang=en>

Regulatory Impact Assessment (RIA)

17. The Regulations are not expected to impact on businesses, charities or the voluntary sector and as such, a full RIA has not been completed. The Regulations have no impact on the statutory duties (sections 77 -79 GOWA 06) or statutory partners (sections 72-75 GOWA 06).
18. The impact to local government is in relation to local authorities, schools and the police. The Welsh Government envisages local authorities making use of these Regulations.

Options

Option 1: Do nothing

19. In the event of the instrument not coming into force, then we would continue to regulate attendance through the current parenting contracts, parenting orders, school attendance orders or education supervision order.

Costs

20. This is the baseline option and as such there are no **additional** costs associated with this option.
21. With no change in the enforcement options available to local authorities, attendance levels would not be expected to increase any further. Similarly there would be no impact on improving attainment rates.
22. The number of lengthy and costly prosecutions currently undertaken is not expected to decrease.

Option 2: Make the legislation

23. By introducing the Regulations additional support would be provided to improve attendance and as such levels of attainment across Wales. This would provide a further option to address persistent low level non attendance at school.

Costs

24. There will be an initial financial outlay for the Welsh Government for preparing guidance on the Regulations for local authorities. The estimated staff cost for developing this guidance is approximately £3000.
25. There will be a transitional cost for each local authority for developing a local area code of conduct and consulting with/informing families. The estimated one-off cost for each local authority is £6000. It is expected that this cost would be offset by savings from the reduction in the number of prosecutions.
26. It is intended that implementation of the penalty notices will be cost neutral. Local authorities will retain any revenue from the penalty notice to cover enforcement costs. Any surplus will be paid to the Welsh Consolidated Fund. There are already processes in place to monitor pupil attendance and so there are no additional monitoring costs under this option.
27. There will be a cost to the individual families served with a penalty notice. As noted above, the cost will be £60 if paid within a 28 day period, rising to £120 if paid between 28 and 42 days.

Benefits

28. The main benefit of these Regulations is to increase and improve attendance rates which in turn, will drive up attainment levels of pupils. In addition, it will allow local authorities to address persistent low level non attendance quickly and effectively without needing to resort to protracted prosecutions, an improvement for local authorities.
29. Some of the key findings of research undertaken in the UK³ included the following:
- Penalty notice warning letters were found to contribute to positive impacts on pupils' attendance. In particular, they were perceived to contribute to improvements in attendance for pupils who have less entrenched attendance issues and for whom there are no specific issues or reasons underpinning their low attendance.
 - The threat of the penalty notice was often considered to be sufficient to improve attendance without one actually being issued.
 - Penalty notices were found to be an effective approach to dealing with punctuality issues and for cases where there were no complex issues or there did not appear to be underlying reasons for poor attendance.
 - Penalty notices were less effective in circumstances where there were underlying family issues or where attendance issues were more entrenched.

³ <https://www.gov.uk/government/publications/investigating-the-use-of-parental-responsibility-measures-for-school-attendance-and-behaviour-final-report>

Competition Assessment

30. The proposed Regulations do not affect business, charities and /or the voluntary sector.

Post implementation review

31. Local authorities will monitor and review statistics and processes on an annual basis. Welsh Government will be provided with data upon request.
32. The legislation will be reviewed to establish the actual costs and benefits and whether it is achieving its desired effects after two years. This will allow for the new system to bed in and comparable data to be available