

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

Regulations and guidance relating to parenting contracts in cases of exclusion from school and truancy, parenting orders in cases of exclusion from school and penalty notices in cases of truancy

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Overview of the Guidance

This guidance applies to England only.

The guidance in relation to parenting contracts and orders only covers those arising from truancy and exclusion from school. Separate guidance on parenting orders and contracts arising from criminal conduct and/or anti-social behaviour has been published by the Home Office. Local Education Authorities (LEAs), school governing bodies (GBs), school staff, and the police, including community support officers and accredited persons, will be required by law to have regard to the relevant parts of the following guidance when making decisions on:

- entering into a parenting contract following a pupil's exclusion from school or truancy under section 19 of the Anti-social Behaviour Act 2003 (GBs and LEAs);
- applying for or monitoring a parenting order following a pupil's exclusion from school or truancy under section 20 of the Anti-social Behaviour Act 2003 (LEAs and schools);
- issuing a penalty notice under section 23 of the Anti-social Behaviour Act 2003 (LEAs, head teachers and deputy and assistant heads authorised by them¹, the police, including community support officers and accredited persons) and, in the case of LEAs, 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.

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

¹ Regulations limit those who may be authorised by head teachers to issue penalty notices to deputy head teachers and assistant head teachers.

Part 2 outlines the law relating to school attendance and where parenting contracts and penalty notices for parents of truants will fit in relation to other school attendance measures. Parenting contracts and penalty notices are by no means intended to replace any other existing measures but to provide alternative options for tackling truancy.

Part 3 of the guidance includes a good practice section entitled 'Resolving School Attendance Problems'. This is issued in order to be helpful to LEAs and schools, but they are not under a statutory duty to have regard to it.

Part 4 explains how the provisions available in cases of exclusion from school, namely parenting contracts and orders, fit in with other measures for tackling poor behaviour in school. Again parenting contracts and parenting orders are not intended to replace existing practice but to provide additional options for improving the pupil's behaviour.

Part 5 explains the method for entering into parenting contracts and common considerations which should be taken into account in respect of parenting contracts in cases of exclusion from school or truancy.

Part 1

Considerations to Take into Account in Applying the Measures

PURPOSE OF THE MEASURES

1. Parenting contracts, parenting orders and penalty notices are important additions to the interventions available to promote better school attendance and behaviour. Improving behaviour and attendance is essential to improve children's educational prospects and to avoid putting them at risk of criminal or anti-social behaviour.
2. These measures are intended to help ensure that parents take seriously their responsibilities to ensure their children regularly attend school and behave well when they get there. 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.

HUMAN RIGHTS ACT (HRA) 1998

4. LEAs, 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 LEA. Inconsistency or unfairness may lead to challenges under the HRA. Further information on the HRA can be found at

RACE EQUALITY

5. In addition to the duty not to discriminate on racial grounds, the Race Relations Amendment Act 2000 places a general duty on all public authorities, including LEAs, 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 (Statutory Duties) Order 2001 also places a number of specific duties on LEAs, 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.
6. LEAs, 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 LEAs 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.
7. The law also recognises the special position of 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(1) Education Act 1996 (see paragraph 30).
8. See the Commission for Race Equality's web-site for further information: www.cre.gov.uk.

DISABILITY

9. The amended Disability Discrimination Act 1995 applies to education and LEAs and school governing bodies will have to be mindful of their responsibilities under that legislation as they exercise their powers.
10. The definition of disability under the Disability Discrimination Act covers pupils with physical, sensory, intellectual or mental impairments. It is unlawful for schools or LEAs, without justification, to discriminate against disabled pupils and prospective pupils for a reason related to their 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.

11. Parenting contracts, parenting orders and penalty notices are not, and should not be used as, alternatives to complying with the duties under the Disability Discrimination Act.
12. 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-gb.org.

SPECIAL EDUCATIONAL NEEDS

13. Behaviour and attendance problems could, in some instances, relate to a child's special educational needs. School governing bodies have a statutory duty to do their best to ensure that the necessary provision is made for any pupil who has SEN. LEAs 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 in carrying out those duties is given in the Special Educational Needs Code of Practice. Schools and LEAs must have regard to this guidance.
14. Before proceeding to making a parenting contract, applying for a parenting order or issuing a penalty notice schools and LEAs 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 done their best, in conjunction with the LEA where appropriate, to make appropriate provision for the pupil's needs. This may include action to support the pupil at School Action and School Action Plus of the SEN Code of Practice or asking the LEA to carry out a statutory assessment of the pupil's needs.
15. 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

16. LEAs, schools and other professionals involved in applying the new measures will need to ensure that parents in the area have access to clear, accurate information about the new measures and their rights and responsibilities. Parent guides to the new measures are available on www.parentcentre.gov.uk. Depending on the local authority area, practitioners may need to make such documentation available in several different languages.

INVOLVEMENT OF CHILDREN AND YOUNG PEOPLE

17. LEAs, 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 LEAs 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.
18. For further information and guidance on involving pupils, please refer to the DfES guidance "Working Together: Giving children and young people a say", available from DfES publications under reference DfES/0492/2003.

MULTI-AGENCY WORKING

19. Truancy and poor behaviour in school are often symptoms of deeper underlying causes. Steps should be taken to investigate these underlying causes and to provide the most appropriate form of support to the pupil and their family. This will often require LEAs, schools and the police to work closely with other agencies (e.g. social services, the voluntary sector, behaviour support teams) which may already be involved or may need to be involved in working with the pupil or family.
20. In working with other agencies, practitioners may need to share information about parents and pupils. Practitioners should ensure that such information-sharing is compliant with the Data Protection Act 1998 and should refer to their Local Authority Data Protection policy. The Local Authority Data Protection Officer will also be able to assist in case of queries. Further guidance including a toolkit for data sharing in the public sector is available at www.dca.gov.uk/foi/sharing/ and at www.informationcommissioner.gov.uk

CHILD PROTECTION ISSUES

21. From time to time, the processes outlined in this guidance may lead practitioners to identify actual or potential child protection issues. At the time of writing, DfES guidance on child protection arrangements is contained in circular 10/95 available from DfES at www.dfes.gov.uk/publications/guidanceonthelaw/ Updated guidance will be issued in June 2004.

THE DEFINITION OF PARENT

22. The education-related provisions of the Anti-social Behaviour Act apply to all parents who fall within the definition set out in section 576 of the Education Act 1996. This defines 'parent' as: all natural parents, whether they are married or not; 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.

23. 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.

Part 2

Truancy Provisions

PARENTAL RESPONSIBILITY FOR REGULAR SCHOOL ATTENDANCE

Outline of school attendance legislation

24. Under Section 7 of the Education Act 1996, the parent is responsible for making sure that their child of compulsory school age² receives 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 or by education otherwise (the parent can choose to educate their child at home).
25. If it appears to the LEA that a child of compulsory school age is not receiving a suitable education, either by regular attendance at school or otherwise, they must begin procedures for issuing a School Attendance Order under Section 437 of the Education Act 1996.
26. If a child of compulsory school age who is registered at a school fails to attend regularly at the school then the parent is guilty of an offence under Section 444(1) of the Education Act 1996.
27. Since March 2001 there has been a further offence where a parent, knowing that their child is failing to attend regularly at school, fails without reasonable justification to cause him to attend (Education Act 1996, section 444(1A) as amended by the Criminal Justice and Court Service Act 2000). This offence requires proof that the parent knew of their child's non-attendance and failed to act. Under this aggravated offence a warrant can be issued compelling a parent to attend court and conviction can lead to a custodial sentence.
28. An LEA must consider applying for an Education Supervision Order (ESO) before prosecuting a parent (Children Act 1989, section 36). An LEA may apply for an ESO instead of or as well as prosecuting the parent.
29. For further details, please see the following documents:
Education Act 1996

² Compulsory school age is defined as beginning from the start of the term commencing on or after the child's 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.

Children Act 1989
Crime and Disorder Act 1998
Ensuring Regular School Attendance: Guidance on the Legal
Measures to Secure Regular School Attendance
All are available on the Department for Education and Skills website:
www.dfes.gov.uk/schoolattendance

Parenting contracts and penalty notices and how these fit with school attendance legislation and with each other

30. As outlined at paragraph 26, section 444(1) of the Education Act 1996 provides that a parent commits an offence if his or her compulsory school age child who is a registered pupil fails to attend school regularly. It is the commission of that offence that can trigger the use of a parenting contract or a penalty notice for truancy. The proof required that the offence has been committed is the same as that which would be required for a prosecution for the strict liability offence under section 444(1) of the Education Act 1996 i.e. that the child has failed to attend regularly unless the parent can show one of the following defences:
- the pupil's absence was authorised by the school³;
 - the pupil was ill or prevented from attending by any unavoidable cause;
 - the absence was on a day exclusively set aside for religious observance by the religious body to which the parent belongs;
 - the school is not within walking distance⁴ of the child's home and the LEA has made no suitable arrangements for:
 - the child's transport to and from school;
 - boarding accommodation at or near the school; or
 - enabling the child to attend a school nearer their home
 - the parent can show that their trade or business requires them to travel, and the child has attended school as regularly as the nature of the trade or business allows, and the child has attended school for at least 200 sessions during the preceding twelve months.
31. If it appears that the offence under section 444(1) of the Education Act 1996 has been committed and none of the defences outlined above applies, consideration can be given to making a parenting contract or issuing a penalty notice.

³ Schools are required to take an attendance register twice a day: at the start of the morning session and once during the afternoon session. The register shows whether the pupil is present, engaged in an approved educational activity off-site, or absent. The register must show whether any absence is authorised or unauthorised. Authorised absence is where the school has either given approval in advance for a pupil of compulsory school age to be away, or has accepted an explanation offered afterwards as satisfactory justification for absence. All other absences must be treated as unauthorised. Schools, not parents, authorise absence. Schools must adhere to DfES Guidelines in authorising absence. Schools should be consistent in applying the same rules in authorising absence.

⁴ Defined in section 444(5) of the Education Act 1996

PARENTING CONTRACTS FOR TRUANCY

Overview

32. If a pupil fails to attend school regularly, the LEA or governing body of the school may consider whether it would be appropriate to offer a parenting contract to the parent.
33. A parenting contract is a formal written agreement between a parent and either the LEA 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 LEA or governing body agreeing to provide support to the parent for the purpose of complying with the contract.
34. Entry into a parenting contract is voluntary. The parent cannot be compelled to enter into a parenting contract if they do not wish to do so. Equally, there is no obligation on the LEA or governing body to offer a parenting contract in cases of non-attendance.
35. Parenting contracts will, however, often be a useful tool in identifying and focusing on the issues behind the non-attendance and in developing a productive relationship with parents to address these issues.
36. The LEA or governing body should be responsive to the needs of the parent in deciding what type of support they will provide. The issues behind truancy can be a complex and the type of support required will depend on each individual case.
37. The LEA 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 providers of parenting programmes including voluntary organisations, Youth Offending Teams and LEAs. In assessing the nature of the counselling or guidance programme in which the parent should take part, the LEA 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.
38. Failure to comply with the parenting contract cannot lead to action for breach of contract or for civil damages. There is no direct sanction for a parent's failure to comply with or refusal to sign a parenting contract. However, if the pupil's irregular attendance continues or escalates to such a level where a prosecution is deemed appropriate, this should be presented as evidence in the case.

39. All those defined as a parent under section 576 of the Education Act (see paragraphs 22 and 23) are parents for the purposes of these provisions with the exception of local authorities who have parental responsibility as a result of being named in a care order (“corporate parents”) who are not included here. Parenting contracts can apply to each and any parent coming within the definition.
40. A parenting contract can be used in conjunction with a Pastoral Support Plan and is not intended to replace the excellent practice that already exists in this area, but instead provides an additional mechanism which is more focused on the potential of the parent to improve their child’s attendance. There is nothing to prevent an LEA or school entering into an agreement (either formal or informal) with a parent in relation to their child’s attendance at any time. Parenting contracts simply provide an additional option which has the backing of statute.

Circumstances in which a parenting contract might be pursued

41. In considering whether the necessary conditions for a parenting contract are fulfilled, LEAs and school governing bodies should have regard to all their statutory duties and in particular to the points set out in paragraphs 1-23 of this guidance.
42. A parenting contract may be used in cases of truancy where a pupil has failed to attend regularly at the school at which he is registered.
43. The purpose of a parenting contract is to improve the pupil’s attendance at school and to address any underlying issues. It is not to be seen or used as a punitive measure against the parent. Nor will it be appropriate in all cases. A parenting contract will be an appropriate course of action where the parent is willing to address their child’s truanting behaviour, but needs support to do so effectively.
44. Parenting contracts can apply to parents of pupils of:
 - 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; or
 - f) a pupil referral unit.

Assessing the appropriateness of a parenting contract

45. In deciding whether a parenting contract might be appropriate, the LEA or

governing body should consider all the issues behind the non-attendance, in particular whether attendance may be improved through working with the parent and providing support to them and, if so, what form this support should take.

At what point should the contract be arranged

46. 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.

Liaison between the head teacher, governing body, LEA and other agencies involved

47. Parenting contracts require the party entering into 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 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.
48. 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 attendance policy must remain with the governing body.
49. Regardless of whether the school or LEA enters into a parenting contract, it is important that both the LEA and the school are aware of the fact that a parenting contract has been entered into with the parent. The LEA and the school should liaise prior to entering into any parenting contract in order to share information about the pupil and family and any other agencies that might be involved with the pupil and family. If other agencies are identified, the school and LEA should consult them to discuss any underlying issues and to consider the types of requirements and support that might usefully be included in the contract itself.
50. Part 5 contains further details of considerations which are relevant to parenting contracts both for truancy and in cases of exclusion and gives suggestions of the types of support that may be helpful.

PENALTY NOTICES FOR PARENTS OF TRUANTS

Overview

51. Subsection (1) of section 23 of the Anti-social Behaviour Act 2003 adds

- two new sections (444A and 444B) after section 444 of the Education Act 1996. These new sections introduce penalty notices as an alternative to prosecution under section 444 and enable parents to discharge potential liability for conviction for that offence by paying a penalty. The offence of irregular attendance has not changed.
52. The parent cannot be prosecuted for the particular offence for which the 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 they pay a penalty in accordance with the notice. Penalties are to be paid to LEA.
 53. 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 post is deemed to have been received on the second day after posting it by first class post). If the penalty is not paid in full by the end of the 42 day period the LEA must either prosecute for the offence to which the notice applies or withdraw the notice (which they can only do in limited circumstances, see below). Unlike other penalty notice schemes the prosecution is not for non-payment of the notice. If there is a prosecution it will follow the usual procedures of a prosecution for irregular attendance. Prosecutions will be brought by the LEA under section 444 Education Act 1996.
 54. LEAs may only withdraw a penalty notice in the following circumstances:
 - 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;
 - Where it has been issued to the wrong person.
 55. The new provisions enable the following to issue penalty notices, although there is no requirement for them to do so:
 - authorised LEA 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.
 56. 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.
 57. All those defined as a parent under section 576 of the Education Act (see paragraphs 22 and 23) 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.

58. The Education (Penalty Notices) (England) Regulations 2004 set out the framework for the operation of the penalty notice scheme (see Annex A).

Circumstances in which a penalty notice might be issued

59. In considering whether the necessary conditions for a penalty notice are fulfilled, LEAs and school governing bodies should have regard to all their statutory duties and in particular to the points set out in paragraphs 1-23 of this guidance.
60. The key consideration in deciding whether to issue a penalty notice will be whether it can be effective in helping to get the pupil who is truanting back into school.
61. A penalty notice is a suitable intervention in circumstances of parentally condoned truancy, where the parent is judged capable of securing their child's regular attendance 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. It will be particularly useful as a sanction at an early stage before attendance problems become entrenched and where the LEA consider that a prosecution would be too heavy-handed.
62. The normal response to a first offence should be a warning rather than a penalty. However, authorised officers have the discretion to issue a penalty notice for a first offence in exceptional circumstances. 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.
63. It is for LEAs to set out in their local code of conduct the levels of unauthorised absence above which a penalty notice may be issued and in doing so, they should take into account the level of unauthorised absence at which they will be willing and able to prosecute for the offence of irregular attendance. The Education (Penalty Notices)(England) Regulations 2004 limit the circumstances in which an LEA can withdraw a penalty notice and the normal response to non-payment of a penalty notice will be prosecution for the offence to which the notice relates.

Circumstances in which prosecution may be appropriate

64. If casework, other intervention strategies (including a parenting contract) and/or a penalty notice have been unsuccessful in securing regular school attendance and/or the Education Welfare Service considers that prosecution may bring about an improvement in the pupil's school attendance, the LEA may choose to prosecute the parent under section 444(1) or 444(1A) of the Education Act 1996.

65. LEAs must judge whether and when to prosecute on a case by case basis. In some cases, prosecution may be used as the last resort when other strategies have failed to bring about an improvement in school attendance. In other cases prosecution may be the only appropriate response where acting early will prevent problems from worsening.
66. Before prosecuting a parent for poor attendance an LEA must consider whether to apply for an Education Supervision Order (ESO) instead of, or as well as, prosecuting. However, it is not necessary for there to have been a parenting contract or penalty notice before proceeding to prosecution.

Formally Notifying the Parent

67. At the outset of casework by the school or LEA 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 exceptional circumstances such as those outlined in paragraph 62 above, a penalty notice may be issued without formal written notification.
68. There is no statutory right of appeal against the issuing of a penalty notice (although the regulations make provisions for the LEA to withdraw them in certain limited circumstances). Therefore it is important, where feasible, to warn the parent or parents of the possibility of a notice being issued to allow them to make whatever representations they wish.
69. It is good practice to allow 15 school days for the parent to improve the situation before issuing a notice or commencing proceedings.
70. 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.

Roles and Responsibilities of the LEA

71. Primary responsibility for issuing penalty notices rests with the LEA and they must not seek to delegate this responsibility to schools or the police. Nor should they seek to prevent schools or the police from issuing notices if they are willing to do so.
72. However, LEAs are responsible for the administration of the scheme and for bringing prosecutions for truancy and must therefore issue a local code of conduct (see paragraphs 82-86) to ensure the smooth administration

and operation of the scheme and that it operates consistently across the LEA area.

Roles and Responsibilities of Schools

73. Head teachers are empowered to issue penalty notices and to authorise their deputy and assistant head to do the same.
74. Head teachers wishing to issue, or authorise their staff to issue, penalty notices must first gain the agreement of their governing body. The school's attendance policy (where applicable) must be revised accordingly.
75. Head teachers and deputy and assistant heads must comply with the local code of conduct issued by their LEA when issuing penalty notices and provide to the LEA a copy of any notice issued.

Roles and Responsibilities of the Police

76. The police, including community support officers and accredited persons, are empowered to issue penalty notices.
77. The police must comply with the local code of conduct issued by the relevant LEA when issuing penalty notices and provide to the LEA a copy of any notice issued.

Holidays in Term Time

78. Under the Education (Pupil Registration) Regulations 1995 head teachers are able to grant up to ten school days authorised 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 might suggest that each application has not been considered on its individual merits.

Truancy Sweeps

79. LEAs 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.

Administration of the Penalty Notice Scheme

80. The detail of how the penalty notice scheme must operate is set out in The Education (Penalty Notices)(England) Regulations 2004, attached at Annex A. A specimen notice is set out at Annex C. LEAs are responsible for drawing up a penalty notice pro forma and distributing this to those issuing them.
81. The LEA is responsible for the overall administration of the scheme and it is for them to make such arrangements for the operation of the scheme, not provided for in this guidance or in the associated regulations, as they see fit.

Local Codes of Conduct

82. The purpose of the local code of conduct is to ensure that the powers are applied consistently and fairly across the local authority area and that suitable arrangements are in place for the administration of the scheme. Local codes should contain a statement to this effect and highlight that penalty notices offer a swift intervention which may be used to combat truancy problems before they become entrenched.
83. Anyone issuing a penalty notice must do so within the terms of the local code. It is the responsibility of each LEA to draw up a code of conduct after consulting as set out in the regulations.
84. 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 LEAs 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 is being planned or commenced for the offence. *A simple way of achieving this would 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. *This must include the level of unauthorised absence which is necessary to trigger a penalty notice. In considering this trigger, LEAs should take into account the level of unauthorised absence at which they will be willing and able to prosecute for the offence of irregular attendance as the LEA will normally be following this course of action where a penalty notice is not paid. Other criteria may be included.*
 - The maximum number of penalty notices that can be issued to one parent in any twelve month period.
 - Arrangements for co-ordination between the LEA and its local

partners.

85. Although not specifically provided for in the regulations, the code could include locally agreed criteria for authorising or not authorising absence provided that this can be agreed between head teachers and the LEA.
86. It is good practice to publicise the contents of local codes, for example by including them in any local authority or school attendance policies.
87. For examples of local codes go to www.dfes.gov.uk/behaviourandattendance

Retention of Receipts & Revenue Collection

88. Regulations provide that the LEA 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.
89. The LEA are required to produce an auditor's statement as part of the usual audit procedure showing that income received from fines does not exceed enforcement as defined. The surplus, if any, must be surrendered to the consolidated fund.
90. LEAs 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

91. Payment of a penalty notice discharges liability for prosecution for the offence to which the notice relates (ss 444A(2) & (4) of the Education Act 1996 as inserted by s 23 of the Antisocial Behaviour Act 2003).
92. This means that neither the fact that a penalty notice was issued and paid nor the pattern of unauthorised absence to which a paid notice relates can be submitted as evidence in a prosecution for any subsequent offence.
93. However, when sections 98 to 101 of the Criminal Justice Act 2003 come into force, these will bring penalty notices within the definition of "bad character" in that legislation. Evidence of the issue of a paid penalty notice may therefore be introduced under the conditions in sections 101 to 106, which 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.

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

Part 3

Further Guidance on Resolving School Attendance Problems

95. While the parent is primarily responsible for ensuring their child attends school regularly, where school attendance problems occur the key to successfully resolving these problems is engaging the child through collaborative working between the parent, the school and the LEA.

SCHOOL-LEVEL ACTION

96. Outside of the home, it is often at the school level that the biggest direct influence can be brought to bear on raising levels of attendance. Absence from school undoubtedly has a detrimental effect on a pupil's progress and attainment. Therefore schools need to monitor and support pupils to maintain regular school attendance. Senior management and all teaching staff should work to raise the level of enjoyment and commitment to learning among pupils.
97. Schools are required to take an attendance register twice a day: at the start of the morning session and once during the afternoon session. The register shows whether the pupil is present, engaged in an approved educational activity off-site, or absent. The register must show whether any absence is authorised or unauthorised. Schools must adhere to DfES guidelines in authorising absence and be consistent in their application of them. Schools must keep registers up-to-date and must ensure that they

are accurately completed.

98. Where possible schools should use ICT or radio communication systems (i.e. Electronic Registration) to record attendance. Electronic Registration enables more effective and efficient monitoring of attendance on a daily basis as well as allowing the identification of longer-term trends in absence which can be used to inform school policy and practice.
99. All schools should have effective systems and procedures for encouraging regular school attendance and investigating the underlying causes of poor attendance which should be set out in an attendance policy. The attendance policy should also set out the circumstances in which the school will consider entering into a parenting contract and issuing a penalty notice. These systems should be reviewed regularly and modified where necessary to reflect the circumstances of the school.
100. Schools should make parents aware of any school attendance policy and should be encouraged to cooperate with the systems and procedures that the policy describes.
101. Schools should have systems and procedures for:
 - Registering pupils;
 - Categorising absence;
 - Collating and analysing attendance data to identify trends and enable action to be taken;
 - Determining in which exceptional circumstances leave of absence will be granted for holidays during term-time;
 - Monitoring attendance and punctuality for all lessons;
 - Dealing with late arrivals;
 - Dealing with unauthorised absence (i.e. when contact will be made with parents, how and when standard letter systems will be used, what measures will be taken to reengage disaffected pupils, what rewards/incentives will be used to encourage attendance, what sanctions will be taken including the circumstances in which the school will consider entering into a parenting contract and issuing a penalty notice);
 - Referring cases to the LEA (i.e. when, how and by whom);
 - Reintegrating pupils who have been absent (e.g. providing pastoral support, the role of the Learning Support Unit, using learning/peer mentoring).
102. If the school has an attendance policy it should clearly set out staff roles and responsibilities for dealing with attendance and should link to the school's behaviour and bullying policies. It should reflect the LEA's attendance strategy and its code of conduct for issuing penalty notices and should be endorsed by the School Governors. Parents and pupils should be consulted on the policy. The Head teacher is responsible for the

operational management of the attendance policy.

103. School administrative staff or support staff should contact parents on any day a registered pupil of compulsory school age is absent without explanation (i.e. First Day Contact), including in cases where the pupil skips lessons after registration. This makes it clear to pupils and parents that unauthorised absence is taken seriously. By contacting the parent the school also ensure that the parent is aware that their child is not in school enabling the parent to take steps, where necessary, to establish that their child is safe.
104. Pastoral or support staff should follow up individual pupils and analyse attendance data to identify trends for individual pupils, classes or year groups which can then enable the school to target its efforts.
105. Attendance problems are often a symptom of some underlying cause. The school should investigate whether there are any school or home factors (or both) which are affecting the pupil's school attendance.
106. Wherever practicable, action should be taken by the school to improve a pupil's attendance and investigate and address any underlying cause of problems⁵ before considering whether to issue a penalty notice or making a referral to the LEA. Schools can undertake a range of actions to overcome attendance problems. These will depend on the pupil and their circumstances and will involve working closely with the parent. For example:
 - early discussion of unauthorised absence between the pupil and the teacher responsible for their registration;
 - Meetings between the school, parents and the pupil to establish the reasons for unauthorised absence;
 - consideration of whether attendance problems could be related to an unidentified SEN and, as appropriate, provision of extra support at School Action, School Action Plus or request for a statutory assessment;
 - meetings with parents to discuss strategies in school and at home which encourage regular school attendance;
 - engaging the parent in a parenting contract;
 - consideration of timetable and subject choice with regard to engaging the pupil;
 - use of Learning Mentors to build positive relationships with pupils and parents;
 - use of Peer Mentors to provide a social support network;
 - use of methods of encouraging/rewarding good or improving

⁵ These can include bullying, ill health, unmet special educational needs (SEN), or unidentified SEN or disability. The list is not exhaustive.

attendance. This can be extremely effective – see www.dfes.gov.uk/schoolattendance for examples of successful reward schemes and other good practice;

- use of methods for discouraging absence (i.e. placing the pupil on report, letters home);
- extra help with work missed;
- in-school counselling;
- where a pupil is at risk of failure at school through long-term disaffection the Head teacher should establish a pastoral support programme for the pupil.

107. Schools should work closely with the LEA to determine the course of action that should be taken in cases of non-attendance. Other agencies such as Social Services, Connexions, the Police or Youth Offending Teams should be engaged where appropriate.
108. Where intervention at school-level fails to bring about an improvement in school attendance, a referral to the LEA must be made. The types of actions to be taken at schoollevel and the trigger for referral to the LEA should be set through negotiation between the school and the LEA. Schools should work closely with the Education Welfare Service to establish a clear protocol for referral.

LEA-LEVEL ACTION

109. LEAs are under a duty to ensure that a child for whom they are responsible is receiving a suitable education either by regular attendance at school or otherwise (section 437 Education Act 1996). The service responsible for carrying out the LEA's duty is often known as the Education Welfare Service (EWS) and staffed by Education Welfare Officers (EWOs). References to the EWS or EWOs should be taken to mean any service or individual carrying out the LEA's duty under section 437.
110. Education Welfare Officers should build an effective working relationship with schools to resolve attendance problems by:
 - Working closely with schools to define their role and responsibilities surrounding school attendance;
 - Defining the Education Welfare Service's roles and responsibilities;
 - Ensuring that policies and operational practices are shared between the EWS and schools;
 - Agreeing arrangements for referral, regular review, monitoring and evaluation;
 - Agreeing procedures for resolving enquiries.
111. The LEA must work with schools to ensure that school registers are kept

up-to-date and are accurately completed. Where legal action is taken against the parent only unauthorised absence can be considered by the court because, by definition, any authorised absence has been approved by the school.

112. The LEA should set out the amount of support that schools can expect from the Education Welfare Service. The support should be based on clear and straightforward criteria. Any formula for EWS resource allocation should take into account the extent of absence from school and the number of pupils on the school roll.
113. Each school maintained by the LEA should have a named EWO who is responsible for liaison with the school. LEAs should monitor carefully the use of all different types of intervention strategies to assess whether they are effective and appropriate.
114. When a case is referred to the LEA, the Education Welfare Officer should make an assessment of the case and work closely with the pupil and their family as well as the school to resolve issues surrounding their poor school attendance. This may involve making home visits and securing a problem-solving dialogue between home and school.
115. The Education Welfare Service should consider and attempt to resolve any possible factors that may be contributing to school attendance problems. Documentary evidence should be kept to prove that the Education Welfare Officer has undertaken casework to address possible reasons for non-attendance. This should also include evidence of action taken by the school.

MULTI-AGENCY AND CROSS BORDER WORKING

116. Where the pupil lives in a different LEA, the LEA where the pupil attends school should take the lead in any LEA-level action necessary to improve the pupil's attendance e.g. in offering a parenting contract, issuing a penalty notice or bringing a prosecution. In such cases, the LEA where the pupil lives and the LEA where he or she attends school will need to work closely together. This will particularly be the case if a parenting order is made following prosecution as the most appropriate and convenient parenting programme may be located in the LEA where the pupil lives.
117. LEAs are advised to draw up protocols setting out the basis under which cross border working will take place.
118. The Education Welfare Service should engage other agencies where appropriate. It may be that the pupil is a child in need (section 17 of the Children Act) and with parental agreement a child and family meeting with

relevant professionals may assist the family and the pupil. There are legal (e.g. data protection requirements), professional and gate-keeping restrictions on obtaining help and/or information from other agencies such as the Benefits Agency, Health Trusts and Social Services Departments. Under section 27 of the Children Act 1989, an authority whose help is requested will comply with the request if it is compatible with their own statutory or other duties and obligations and does not unduly prejudice the discharge of any of their functions.

119. There are a number of individuals and organisations that may be able to assist in various ways with resolving poor attendance problems. These include: educational psychologists, health workers, social services departments, child and adolescent mental health services (CAMHS), Connexions, SEN Coordinators (SENCOs), youth offending teams (YOTs), Behaviour and Education Support Teams (BESTs) and the police. This list is not exhaustive and schools and LEAs should endeavour to make links with all relevant organisations in their area.

Part 4

Behaviour

Provisions

ENCOURAGING ACCEPTABLE BEHAVIOUR IN SCHOOL

School-level Action

120. All schools are required by law to have a written behaviour policy⁶. The governing body of a school is responsible for making sure that the behaviour policy is in place and the head teacher is responsible for ensuring the behaviour policy is implemented on a day-to-day basis.
121. Department for Education and Skills advice for schools on Behaviour, Attendance and Anti-Bullying Policies is available on the Improving Behaviour in Schools website (www.dfes.gov.uk/ibis), the behaviour and attendance website (www.dfes.gov.uk/behaviourandattendance) and the anti-bullying website (www.dfes.gov.uk/bullying). Schools will need to draw upon a range of effective practice in dealing with poor behaviour in school.
122. Schools should only decide to exclude in cases where serious breaches of the school's behaviour policy have occurred and allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school (in accordance with the current DfES guidance on exclusions).

LEA-level action

123. An effective LEA works with schools to encourage review of their behaviour policies and support practice across the whole school. It does this in a number of ways including through the work of Behaviour Support Services (BSS), which support both individual pupils and wider school practice. In a number of areas, LEAs also manage school-based multidisciplinary teams who support schools with high numbers of pupils with complex emotional and behavioural needs.

⁶ Section 61 School Standards and Framework Act 1998.

124. Most LEAs are also required to have a Behaviour Support Plan (BSP). The BSP details arrangements available, or proposed, for the education of children with behavioural difficulties. The emphasis of these local plans is on building good practice, early intervention, working with parents, and collaborating with specialist support services.
125. LEAs also have statutory duties in the exclusion process. All exclusions should be reported to the LEA as set out in DfES guidance on exclusions. The LEA is often involved in the exclusion review process and has responsibility for the appeal process.
126. In cases where a pupil has been permanently excluded from school, the LEA is responsible for making arrangements for the pupil to continue receiving a suitable full-time education.

Cross Border working

127. If a pupil who lives in a different LEA to the school is permanently excluded, they become the responsibility of the LEA in which they live and the LEA in which they live should take the lead in any action necessary to improve their behaviour. In the case of a fixed term exclusion, where the pupil lives in a different LEA, the LEA where the pupil attends school should take the lead in any LEA-level action necessary to improve the pupil's behaviour e.g. in offering a parenting contract or applying for a parenting order. In such cases, the LEA where the pupil lives and the LEA where they attend school will need to work closely together. This will particularly be the case if a parenting order is made as the most appropriate and convenient parenting programme may be located in the LEA where the pupil lives.
128. LEAs are advised to draw up protocols setting out the basis under which cross border working will take place.

THE NEW PROVISIONS

129. Parenting contracts and parenting orders are intended to add to the range of strategies available for tackling poor behaviour in school and to enable schools and LEAs to engage with parents effectively, whether on a voluntary or compulsory basis.
130. The provisions are only available in cases where an exclusion has taken place. The provisions are not intended to replace any existing practice but to provide additional options for working with the parent and pupil to bring about an improvement in the pupil's behaviour. Parenting contracts and parenting orders could form part of the school's behaviour policy.

PARENTING CONTRACTS IN CASES OF EXCLUSION

Overview

131. If a pupil is excluded from school whether for a fixed term or permanently, the LEA or governing body of the school may consider whether it would be appropriate to offer a parenting contract to the parent.
132. A parenting contract is a formal written agreement between a parent and either the LEA 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 LEA or governing body agreeing to provide support to the parent for the purpose of complying with the contract.
133. Entry into a parenting contract is voluntary. The parent cannot be compelled to enter into a parenting contract if they do not wish to do so. Equally, there is no obligation on the LEA or governing body to offer a parenting contract following an exclusion.
134. Parenting contracts will, however, often be a useful tool in identifying and focusing on the issues behind the behaviour which gave rise to the exclusion and in developing a productive relationship with parents to address these issues.
135. The LEA 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 behaviour may be a complex and the type of support required will depend on each individual case.
136. The LEA 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 including voluntary organisations, youth offending teams and LEAs. In assessing the nature of the counselling or guidance programme in which the parent should take part, the LEA 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.
137. Failure to keep to the terms of the parenting contract cannot lead to action for breach of contract or for civil damages.
138. There is no direct 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 LEA considers an application for a parenting order is appropriate, the court will be required to take this failure or refusal into account in deciding whether to make the order.

139. All those defined as a parent under section 576 of the Education Act (see paragraphs 22 and 23) are parents for the purposes of these provisions with the exception of local authorities who have parental responsibility as a result of being named in a care order ("corporate parents") who are not included here. Parenting contracts can apply to each and any parent coming within the definition.
140. A parenting contract can be used in conjunction with a Pastoral Support Plan and is not intended to replace the excellent practice that already exists in this area, but instead provides an additional mechanism which is more focused on the potential of the parent to improve their child's attendance. There is nothing to prevent an LEA or school entering into an agreement (either formal or informal) with parents in relation to their child's behaviour at any time. Parenting contracts are not intended to replace existing practice but simply to provide an additional option which has the backing of statute.

Circumstances in which a parenting contract might be pursued

141. In considering whether the necessary conditions for a parenting contract are fulfilled, LEAs and school governing bodies should have regard to all their statutory duties and in particular to the points set out in paragraphs 1-23 of this guidance.
142. A parenting contract may be offered to a parent where a child is excluded from school, whether for a fixed term or permanently.
143. The purpose of a parenting contract is to improve the pupil's behaviour at school and to address any underlying causes. It is not to be seen or used as a punitive measure against the parent. Nor will it be appropriate in all cases. A parenting contract will be an appropriate course of action where the parent wishes to address their child's poor behaviour in school but needs support to do so effectively.
144. Parenting contracts can apply to pupils of:
 - 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; or
- f) a pupil referral unit.

Assessing when a parenting contract is appropriate

145. In deciding whether a parenting contract might be appropriate, the LEA or governing body should consider all the issues behind the exclusion, in particular whether the pupil's behaviour may be improved through working with the parent and providing support to them and, if so, what form this support should take.

At what point should the contract be arranged

146. The parenting contract should be arranged as soon as possible after the exclusion and completion of any exclusions review and appeal process.
147. In the case of permanent exclusions this would be:
- o 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 existing guidance), informing the parent of their decision to uphold the permanent exclusion, as the date by which time the parent must have notified the LEA that they wish to lodge an appeal; or
 - o the date upon which the Independent Appeal Panel endorses the decision to exclude.
148. In the case of fixed-term exclusions the date on which the review process is complete would be:
- o the date upon which the governing body endorses the head teacher's decision to exclude; or
 - o if the exclusion is not considered by the governing body, the date on which the exclusion began.
149. For a pupil referral unit, the review process is complete when the LEA endorses the decision of the teacher in charge to exclude; or if the LEA does not consider it, the date on which the exclusion began.

Liaison between the head teacher, governing body, LEA and other agencies involved

150. Parenting contracts require the party entering into the contract to fund any cost of the supportive element of the contract. In the context of the school, this will be the governing body (which controls the school budget under the School Standards 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.

151. 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.
152. Regardless of whether the school or the LEA enters into a parenting contract, it is important that both parties are aware of the fact that a parenting contract has been entered into with the parent. The LEA and the school should liaise prior to entering into any parenting contract in order to share information about the pupil and family and any other agencies that might be involved with the pupil and family. If other agencies are identified, the school and LEA should consult them to discuss any underlying issues and to consider the types of requirements and support that might usefully be included in the contract itself.

Parenting Contracts following Permanent Exclusion

153. In cases of permanent exclusion from school, it will usually be the LEA that will consider arranging a parenting contract in relation to the pupil. In most cases, the excluded pupil will be the responsibility of the LEA until arrangements can be made for the pupil to continue their education elsewhere.
154. The governing body of any school which takes in an excluded pupil may also consider arranging a parenting contract if it wishes, but is under no obligation to do so. However, in accordance with the law on admissions, a school may not require a parent to sign a parenting contract as a condition of their child being accepted by the school.

Drawing up the Contract

155. Part 5 contains further details of considerations which are relevant to parenting contracts both for truancy and in cases of exclusion and gives suggestions of the types of support that may be helpful.

PARENTING ORDERS IN CASES OF EXCLUSION FROM SCHOOL

Overview

156. Where a pupil is permanently excluded from school or receives more than one fixed term exclusion within 12 months, the LEA may apply to the court for a parenting order.

157. Parenting orders compel parents who have been unwilling or unable to engage on a voluntary basis to address their child's poor behaviour in school by providing support including parenting classes.
158. The parenting order consists 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 can last for up to 3 months;
 - A requirement for the parent to comply with such requirements as are specified in the order. This element can last up to 12 months.
159. Parenting orders available in cases of exclusion from school are civil orders available on application to the court. Unlike the parenting orders imposed in attendance cases, they do not follow prosecution for a criminal offence. A pro forma application for a parenting order is attached at Annex D.
160. The LEA is responsible for making an application for a parenting order and for all costs associated with it including the costs of the parenting programme.
161. The court can impose a parenting order on any or all parents coming within the definition (see paragraphs 22 and 23) and their consent is not required.
162. All parenting orders must be supervised by a 'responsible officer'. This could be an officer of the LEA, a head teacher or a person nominated by the head teacher.
163. If the parent fails to comply with an Order, then breach proceedings must be considered. If proven guilty of breaching a parenting order, the parent is liable for a fine not exceeding level 3 (currently up to £1000). In considering the level of fine, the magistrates must take into account the means of the parent to pay. The court may also consider any other sentence available for a non-imprisonable offence.

Circumstances in which a parenting order might be pursued

164. In considering whether the necessary conditions for a parenting order are fulfilled, LEAs and school governing bodies should have regard to all their statutory duties and in particular to the points set out in paragraphs 1-23 of this guidance.
165. An LEA may apply to a magistrates' court for a free-standing parenting

order when:

- a) a pupil has been excluded from school for a second fixed-term within a period of 12 months; or
 - b) a pupil has been permanently excluded from school.
166. Parenting orders can apply to parents of pupils of:
- 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; or
 - f) a pupil referral unit.

Assessing when a parenting order is appropriate

167. A parenting order is only appropriate where the exclusion has been made in response to serious misbehaviour.
168. Serious misbehaviour would include, for example: 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 serious misbehaviour. This list is not exhaustive.
169. In deciding whether a parenting order might be appropriate, the LEA must make a judgement about whether parenting is a significant factor in the pupil's misbehaviour, whether a parenting programme could remedy this and what other requirements might be useful in an order to address the pupil's behaviour.
170. An application for a parenting order can be made in respect of one or more persons who come within the definition of parent (see paragraphs 22 and 23).

Parenting orders in different circumstances

171. Section 26 of the Anti-social Behaviour Act 2003 enables youth offending teams to apply for parenting orders in respect of criminal conduct and anti-social behaviour. LEAs should consider in each case whether the order for exclusion should also cover criminal conduct and anti-social behaviour. If the youth offending team agrees that the order should cover these areas, they would usually, depending on the circumstances of the case and local arrangements, be the lead agency in bringing the application and

supervising the order. Local protocols will need to be agreed about cooperating and supplying resources for such cases.

Timing of an application for a parenting order

172. An application for a parenting order must be made after the date upon which the exclusion review and appeal process ends.
173. 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 LEA that they wish to lodge an appeal; or
 - the date upon which the Independent Appeal Panel endorses the decision to exclude.
174. In the case of a fixed-term exclusion, the date on which the review process is complete would be:
 - the date upon which the governing body governing body endorses the Head teacher's decision to exclude (or the LEA in the case of a PRU); or
 - if there is no consideration by the governing body (or the LEA in the case of a PRU), the date on which the exclusion began.
175. If there is no parenting contract in place, the LEA 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.
176. 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 LEA may make an application for a parenting order within 6 months of the date on which the contract was signed.

Liaison between the head teacher, governing body, LEA and other agencies involved

177. Although only the LEA can apply for the parenting order and the final decision as to whether the application is appropriate will rest with the LEA,

the head teacher may in the case of fixed term exclusions, where the child remains a registered pupil at the school, ask the LEA to apply for a parenting order where he or she considers that this may have a positive impact on the pupil's behaviour, preventing further fixed term exclusions or permanent exclusion.

178. Making any application for a parenting order in cases of exclusion from school will require close collaborative working between the school and the LEA. LEAs 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.

Costs

179. LEAs are under no obligation to apply for a parenting order in cases of exclusion from school. Nor will it be appropriate in all circumstances.
180. Where an application for a parenting order is made, the LEA will have to cover the costs of making the application and the costs associated with any order made including the costs of any counselling or guidance programme.

Making the Application

181. Applications must be made in accordance with the Magistrates' Courts (Parenting Order) Rules 2004⁷ which specify the form of application that should be used. A copy of the specimen application form for a parenting order is included at the back of this guidance at Annex D.
Evidence that the pupil has been excluded and that the exclusion was made in response to serious misbehaviour at school
182. In addition, the LEA will need to prepare evidence in support of their application. Evidence 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.
183. Supporting evidence might include witness 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

⁷ SI 2004/247

184. 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 LEA and details of the LEA's ability to deliver the parenting programme should be presented to support the application.
185. The LEA 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.

Procedural Points

Providing information about family circumstances

186. 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.
187. The LEA should be prepared to provide information about the parent's family circumstances. The LEA 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 LEA), 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.

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

188. Parenting orders in cases of exclusion from school apply only to parents as individuals and not to corporate bodies. Therefore this type of parenting order cannot be made against local authorities in respect of looked after children (i.e. children in the local authority's direct care). They will however apply to foster parents.

Parental attendance at court

189. Magistrates' courts, including youth courts, have power to enforce parental attendance at court, where appropriate, by issuing a summons. It is desirable to ensure all parents falling within the definition (see paragraphs 22 and 23) attend court and that all parents are involved in any parenting intervention.

Requirements of parenting orders

190. 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

191. 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. The arrangements for meeting this requirement should be as flexible as possible, not least to take account of the availability and timing of such a programme.
192. The counselling or guidance programme may be provided by the responsible officer or by another provider, such as the local authority social services department or a local voluntary sector organisation working with parents. There is a wide range of parenting programme providers. The LEA should be aware of what provision exists in its area and in neighbouring authorities (for cross-border cases).
193. The court will decide the length of this requirement. It should be such as to allow for a sufficient number of weekly sessions. Experience suggests that this should be no less than 6 or 7 two-hour sessions. The period of up to three months for this requirement must run concurrently with the overall length of the order 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.
194. 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. See also paragraphs 208 to 218.
195. 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 assessing the nature of the counselling or

guidance programme in which the parent should take part, 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.

196. 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

197. 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.
198. 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. LEAs should therefore consider whether there would be a breach of Article 8 and, if so, whether that is justifiable.
199. If an LEA 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.
200. In order for the court to decide whether any likely interference with family life is proportionate LEAs 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

201. 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.
202. The LEA 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.
203. The requirements specified in the order may be such as the court considers desirable in the interests of preventing any repetition of the behaviour which led to the pupil being excluded from school in the first place. Although discretionary, it is likely to be appropriate to include requirements relating to the supervision of the pupil in order to address their behaviour. The LEA should recommend to the court what these requirements should consist of. Possible requirements might include: setting and reinforcing agreed boundaries at home; ensuring the pupil's regular attendance at alternative provision; signing regular behaviour reports or updates; attending regular meetings with the pupil's education provider.
204. The requirements imposed under this element of the order will need to be tailored to address the problems which caused the court to make the parenting order and should, if possible, be linked to any work being undertaken by the LEA or school with the pupil.
205. 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 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 further court involvement

Role of the responsible officer

206. A parenting order must specify a responsible officer who, in the case of an order made following exclusion from school, will usually be an officer of the LEA, a head teacher or a member of staff nominated by the head teacher.

207. 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. social services, the youth offending team, any voluntary organisations) to ensure that all interventions fit together well and are complementary.
208. In deciding who is best placed to act as the responsible officer for a parenting order, the LEA 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. In most circumstances the responsible officer will be an officer of the LEA.
209. Head teachers may only accept responsibility for acting as a responsible officer (either themselves or through 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 (as set out in paragraph 208 above). LEAs 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.
210. 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.
211. 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.

Variation and discharge

212. 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.
213. 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.
214. 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.

Dealing with Appeals and Breach of an Order

Appeals

215. Where a parenting order in a case of exclusion from school has been made, any appeal against the order should be made to the Crown Court.

Breach

216. The parenting order is primarily designed to help and support the parent in addressing their child's behaviour. The responsible officer should be seeking to secure and maintain the parent's co-operation and compliance with the requirements of the order to ensure that it is successfully completed, and will need to make a judgement about what is reasonable in all the circumstances of the case.
217. If a parent fails to comply with a requirement of the order, it is good practice for the responsible officer to make contact with the parent within one working day by visit, telephone or letter. If there is no acceptable

reason for the non-compliance, the responsible officer should give the parent a written warning and if possible a warning in person.

218. 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.
219. In the event of more than one unacceptable failure to comply within a period of three months, the responsible officer should meet the parent to review the order and how it can be made to work. In the light of this discussion the responsible officer should consider whether the failure to comply should form the basis of a prosecution.
220. If a prosecution is brought, there will be a hearing to determine whether the parent is guilty of failing without reasonable excuse to comply with a requirement of a parenting order. In all cases this will be heard in the adult magistrates' court, except when the parent is under 18 where it would be more appropriate for the case to be heard in a youth court. The hearing will provide an opportunity for the parent to explain why a failure to comply with a requirement of the order has occurred.
221. If the parent is convicted, they will be liable to a fine not exceeding level 3 on the standard scale (currently up to £1,000). The court will also have available to it an absolute or conditional discharge, probation order or curfew order. The imposition of a community sentence would be subject to the restrictions set out in sections 6 and 7 of the Criminal Justice Act 1991. Courts cannot re-issue parenting orders in breach proceedings but the original order will continue to be valid.
222. 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. They will however be most effective when brought as soon as possible after the breach is discovered and completed within the life of the order. This will allow the Court more options, for instance to vary the order to require the parent to attend a new parenting programme and fulfil specific requirements to exercise control over their child. The penalty for breach could be a fine or community sentence dependent on the parent attending a new programme and meeting other requirements.

Part 5

Common considerations for Parenting Contracts

MAKING THE DECISION TO OFFER A PARENTING CONTRACT

223. In considering whether it would be appropriate to offer a parenting contract, LEAs and school governing bodies should have regard to all their statutory duties and in particular to the points set out in paragraphs 1-23 of this guidance.
224. The LEA or governing body of a school should take into account a number of issues before deciding to enter into a parenting contract. These include whether other agencies are already involved in working with the pupil and family, whether a parenting contract would complement or join-up this work, the type of support that might be helpful to the parent and how a parenting contract arranged by the LEA or governing body will be funded.

MAKING CONTACT WITH OTHER AGENCIES INVOLVED WITH THE PUPIL AND FAMILY

225. 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 LEA or the governing body of a school decides 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 types of support that could usefully be included if it is.

226. A multi-agency approach is necessary to ensure that all work being carried out with the pupil and their parent fits well together and avoids duplication.

PARENTING CONTRACTS IN DIFFERENT CIRCUMSTANCES

227. Section 19 of the Anti-social Behaviour Act 2003 sets out provisions for governing bodies and LEAs to enter into parenting contracts in cases of exclusion from school or truancy. Section 25 of the Anti-social Behaviour Act 2003 enables youth offending teams to enter into parenting contracts in respect of criminal conduct and anti-social behaviour.
228. Governing bodies and LEAs should consider in each case whether the contract should cover both exclusion and truancy and/or criminal conduct and anti-social behaviour. If the youth offending team agrees that the order should cover these areas, they would usually, depending on the circumstances of the case and local arrangements, be the lead agency in bringing the application and supervising the order. Local protocols will need to be agreed about cooperating and supplying resources for such cases.

TYPES OF SUPPORT THAT MIGHT BE INCLUDED IN A PARENTING CONTRACT

229. Parents will often be unaware of the different types of support available and the LEA 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.

FUNDING A PARENTING CONTRACT

230. The party entering into the parenting contract with the parent (namely the LEA or the governing body of a school) is responsible for bearing the costs of any support provided under a parenting contract.
231. The cost of a parenting contract will be largely dependent on the type of support provided. LEAs and schools are encouraged to use parenting contracts innovatively, making use of existing resources where appropriate. This might include, for example, the facilities of the local extended school, the local Citizens Advice Bureau, on-site learning mentors, Educational psychologists, BESTs, an existing parenting peer group, or asking another parent to act as a mentor.

CONTACTING PARENTS AND DRAWING UP A PARENTING CONTRACT WITH THEM

232. Once all agencies involved with the family have been consulted, the governing body or LEA should arrange a meeting with the parent to discuss the pupil's non-attendance and any related issues. In contacting the parent, the governing body or LEA 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 paragraphs 22 and 23) 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 LEA to consider which parents should attend and whether it would be appropriate for parents to attend separate meetings.
233. Depending on the pupil's age and understanding, the pupil should also be invited to attend the meeting.
234. The LEA 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 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 LEA or governing body may wish to send a copy to the parent.
235. At the meeting, the LEA 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 LEA 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 the pupil's 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.
236. Once the requirements and support elements of the contract have been agreed, the governing body or LEA 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, a separate parenting contract could be arranged for each parent.
237. 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.
 238. The specified requirements for the parent under s19 (4) (a) of the ASB Act should be devised to prevent further truancy or poor behaviour in school which might lead to a further 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 LEA, signing weekly behaviour reports and ensuring that the pupil does not contact certain pupils. This list is not exhaustive.
 239. 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.
 240. A further requirement will normally 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 improve their child's behaviour or attendance at school. In assessing the nature of any counselling or guidance programme, the LEA 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.
 241. The contract will need to be written in language the parent can understand and should strike an effective balance between specific and general requirements. General requirements are normally clearer about aims whereas specific requirements should be clear about exactly what the parent must do.
 242. The governing body or LEA'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.

243. The parent and a representative of the governing body or LEA (preferably the person who will deliver the governing body or LEA'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

244. 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. The 12-month limit for parenting orders can be taken as the limit normally applying to contracts as a matter of good practice. There will normally be requirements relating to the pupil's behaviour or attendance in addition to the provision of some sort of support, which would normally last for under 3 months. It will often be desirable, however, to maintain some level of support after the contract has come to an end and schools and LEAs will need to consider how to ensure that such support is sustainable after the end of the contract.

DELIVERING THE CONTRACT

245. Responsibility for delivering the LEA's or school's part of the contract and for helping to manage its overall outcome must be allocated to an officer of the LEA or a member of the school's governing body. Alternatively the governing body may choose to delegate the responsibility to the head teacher who may delegate to a senior member of staff.
246. Delivering the contract will involve regular contact with the parent to discuss progress and any problems in meeting the contract's requirements. It will also involve contact with other interested agencies such as the provider of a parenting programme.

DEALING WITH BREACHES

247. The LEA or governing body (or head teacher on behalf of the governing body) should be working with the parent to gain their co-operation and compliance with the contract but will have to judge whether any breaches are reasonable and whether the contract remains useful and should continue.
248. There is no liability in tort or contract for breaching a parenting contract.
249. However, in cases of exclusion from school, failure by the parent to comply with the contract would be a relevant consideration for the LEA in deciding whether to apply for a parenting order (see paras 152-166) and, in deciding whether to make a parenting order, the court must take into

account any failure by the parent to comply with the requirements specified in a parenting contract (see para 181).

250. Similarly, in cases of truancy, failure to comply with a contract may lead the LEA or school to consider issuing a penalty notice to the parent or may lead the LEA to consider prosecuting the parent for failing to ensure their child attends school regularly in which case evidence that the parent failed to comply with the contract could be presented to the court.
251. It is therefore important that any breach of the contract is recorded so that it can be presented to the court if necessary.
252. Every breach discovered should have a response. Upon learning of a breach the LEA officer or member of the governing body/senior school staff responsible for overseeing the contract should contact the parent within one working day to seek an explanation for the breach. 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.
253. If no explanation is given or the LEA officer or member of the governing body/senior school staff 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 breaches, the LEA officer or member of the governing body/senior school staff responsible for overseeing the contract should arrange a meeting with the parent to review the contract and how it can be made to work. The parent should be reminded that if a contract fails the LEA may seek to apply for a parenting order in cases of exclusion either immediately or if a further exclusion occurs or in cases of truancy the LEA may issue a penalty notice or seek to prosecute the parent under section 444 of the Education Act if the parent continues to fail in their duty to ensure their child attends school regularly. They should also be informed that a court would consider the parent's level of compliance with a contract when deciding whether to make an order and would be likely to take this into account in any truancy prosecution.
254. 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 in any truancy prosecution.

PARENTS WHO REFUSE TO ENTER INTO A PARENTING CONTRACT OR WITH WHOM IT IS IMPOSSIBLE TO AGREE A CONTRACT

255. Parenting contracts are voluntary, but the LEA 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 LEA 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 at least willing to meet to discuss the possibility and, if so, what was said.
256. If a parent refuses to enter into a contract or fails to agree to an appropriate contract, the LEA or governing body may consider the alternative courses of action available. For example, in cases of exclusion, an application for a parenting order may be made immediately if the child has been excluded permanently or in the future should the child's poor behaviour continue to the point where a second fixed-term exclusion occurs and, in cases of truancy, a penalty notice may be issued or the LEA may consider prosecution. The LEA officer or member of staff responsible for liaising with the parent should inform the parent that this action may be taken. They should also make clear that, on an application for a parenting order, the court is required to take into account the refusal to enter into a parenting contract under section 21 (a) of the Anti-social Behaviour Act and that the refusal may be presented in evidence in the event of a prosecution for irregular attendance.

Annexes

- Annex A: Penalty Notice Regulations 59
- Annex B: Parenting Order Regulations 63
- Annex C: Penalty Notice Proforma 65
- Annex D: Specimen Application Form for a Parenting Order 67

Annex A: Penalty Notice Regulations

STATUTORY INSTRUMENTS

2004 No. 181

EDUCATION, ENGLAND

The Education (Penalty Notices) (England) Regulations 2004

Made.....29th January 2004
Laid before Parliament.....4th February 2004
Coming into force.....27th February 2004

The Secretary of State for Education and Skills, in exercise of the powers conferred upon him by sections 444A, 444B and 569 of the Education Act 1996⁸ hereby makes the following Regulations:

Citation, commencement, interpretation and application

1. (1) These Regulations may be cited as the Education (Penalty Notices) (England) Regulations 2004 and shall come into force on 27th February 2004.
(2) In these Regulations —
“the Act” means the Education Act 1996;
“recipient” means a person to whom a penalty notice is given in accordance with section 444A(1) of the Act.
(3) These regulations apply only in relation to England.

Form and content of penalty notices

2. A penalty notice shall give such particulars 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 shall contain —
 - (a) the name and address of the recipient;
 - (b) the name and address of the child who is failing to attend school regularly, and the name of the school where he is a registered pupil;
 - (c) the name and official particulars of the authorised officer issuing the notice;
 - (d) the date of the offence and of the issue of the notice;
 - (e) the amount of the penalty which is to be paid, and any variation in the amount under regulation 3;
 - (f) the name and the address of the local education authority to which the penalty is to be paid and to which any correspondence relating to the penalty notice may be sent, being the local education authority in whose area is the school at which the recipient’s child is a registered pupil;
 - (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 3;

⁸ 1996 c.56 Sections 444A and 444B were inserted by section 23 of the Anti-Social Behaviour Act 2003 (2003 c.38)

- (i) a statement that payment 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.

Amount and payment of penalty

- 3. The amount of the penalty to be paid shall be –
 - (a) £50 where the amount is paid within 28 days of receipt of the notice;
 - (b) £100 where the amount is paid within 42 days of receipt of the notice.
- 4. (1) The penalty shall be payable to the local education authority named in the penalty notice.
(2) A certificate purporting to be signed by the proper officer or the chief education 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 shall be received in evidence in any legal proceedings and shall be evidence of the matters stated in it.

Effect of issue of penalty notice

- 5. The period prescribed for the purposes of section 444A(3) of the Act shall be 42 days.
- 6. If the penalty is not paid in full before the expiry of the period for paying it the local education authority named in the notice shall either institute proceedings against the recipient for the offence to which the notice relates or shall withdraw the notice in accordance with regulation

Withdrawal of penalty notice

- 7. (1) A penalty notice may be withdrawn by the local education authority in any case in which that authority determines that —
 - (a) it ought not to have been issued, or
 - (b) it ought not to have been issued to the person named as the recipient.(2) Where a penalty notice has been withdrawn in accordance with paragraph (1) —
 - (a) notice of the withdrawal shall be given to the recipient;
 - (b) any amount paid by way of penalty in pursuance of that notice shall be repaid to the person who paid it; and
 - (c) no proceedings shall be continued or instituted against the recipient for the offence in connection with which the withdrawn notice was issued or for an offence under section 444(1A) of the Act arising out of the same circumstances.

Authority to issue penalty notices

- 8. A head teacher may authorise a deputy or assistant head teacher to issue penalty notices
- 9. An authorised staff member may only issue a penalty notice in respect of a child who is a registered pupil at his school.
- 10. An officer of a local education authority may only issue a penalty notice in respect of a child who is a registered pupil at a school in the area of —
 - (a) that local education authority; or
 - (b) another local education authority which has an agreement to that effect with his local education authority.

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

Codes of conduct

12. Each local education authority shall 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 notices;
 - (b) measures to ensure that a notice is not issued when proceedings for an offence under section 444 of the Act 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.
13. In preparing the code of conduct the local education authority shall 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 shall have regard to any guidance issued by the Secretary of State.
14. Any person issuing a penalty notice shall do so in accordance with the code of conduct drawn up by the local education authority.
15. 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 12) 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 make inappropriate provisions) to prepare a draft of revisions to the code for his approval by the date specified in the direction.
16. The Secretary of State may approve a draft code or draft revisions to the code submitted under regulation 15 with or without modifications and -
 - (a) where a draft code has been approved (pursuant to regulation 15(a) and this regulation) it shall have effect as approved; and
 - (b) where draft revisions to the code have been approved (pursuant to regulation 15(b) and this regulation) the code shall have effect with the approved revisions.

Information

17. A person issuing a penalty notice shall forthwith provide a copy to the local education authority which is named in the notice.
18. A local education authority shall keep records of penalty notices which shall 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;
 - (d) and whether the recipient was prosecuted for the offence for which the notice was issued.
19. A local education authority shall supply to the Secretary of State such information as he may require in respect of penalty notices.

Service of notices

20. (1) A penalty notice may be served by —
(a) giving it to the recipient; or
(b) leaving it at the recipient's usual or last-known address; or
(c) sending it to the recipient at that address by first class post.
(2) Service by post shall be deemed to have been effected on the second day after posting the notice by first-class post.

Use of monies received

21. Any sums received by local education authorities by way of penalties must be applied in meeting the costs of issuing and enforcing notices, or the cost of prosecuting recipients who do not pay.

Ivan Lewis
Parliamentary Under Secretary of State
29th January 2004 Department for Education and Skills

EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations prescribe the necessary details for the operation of the penalty notice scheme under section 444A of the Education Act 1996 (inserted by the Anti-Social Behaviour Act 2003). They only apply in England.

Regulation 2 sets out the matters to be contained in a penalty notice. Regulations 3 and 4 prescribe the level of the penalty which is to be paid to the local education authority, and what is evidence of its payment or non-payment.

Regulation 5 prescribes 42 days as the period before which no proceedings can be commenced. If the penalty is not paid within that time, Regulation 6 requires the local education authority either to prosecute for the offence under section 444 or to withdraw the notice on one of the grounds set out in Regulation 7.

Regulations 8 to 11 set out details about the issuing of penalty notices.

Regulations 12 to 14 require the local education authority to draw up and consult on a code of conduct for the issuing of penalty notices.

Regulations 15 and 16 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 17 to 19 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 20 sets out how penalty notices may be served on the recipient.

Regulation 21 requires local education authorities to use the sums received as penalties to meet the costs of operation and enforcement of the penalty notice scheme.

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

Annex B: Parenting Order Regulations

STATUTORY INSTRUMENTS

2004 No. 182

EDUCATION, ENGLAND

The Education (Parenting Orders) (England) Regulations 2004

Made.....29th January 2004
Laid before Parliament..... 4th February 2004
Coming into force.....27th February 2004

The Secretary of State, in exercise of the powers conferred upon him by sections 20(1), 21(4) and 94 of the Anti-social Behaviour Act 2003(a) hereby makes the following Regulations:

Citation, commencement and application

1. (1) These Regulations may be cited as the Education (Parenting Orders) Regulations 2004 and shall come into force on 27th February 2004.
(2) These Regulations apply only in relation to pupils excluded from schools in England.

Interpretation

2. In these Regulations—
“the Act” means the Anti-social Behaviour Act 2003;
“the 2002 Act” means the Education Act 2002⁹;
“school day” has the same meaning as in the Education Act 1996¹⁰.

Prescribed conditions

3. (1) The following conditions are prescribed for the purposes of section 20(1)(b) of the Act.
(2) In the case of a pupil excluded for a fixed period the exclusion must be the second or subsequent exclusion of the pupil from any school within twelve months from the day on which the previous exclusion began.
(3) The application must be made within the relevant period.
4. (1) 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 the exclusion was considered by the governing body (or in the case of an exclusion from a pupil referral unit, the local education authority) or, if it was not so considered, the day on which it began;

⁹ 2003 c.38

¹⁰ 1996 c.56. School day is defined in s.579(1)

(b) the period of six months beginning with the day on which a parent of the pupil entered into a parenting contract.

(2) 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 2002 Act decided to uphold the exclusion, or

(ii) if there was no appeal, the last day on which an appeal could have been made; or

(b) the period of six months beginning with the day on which a parent of the pupil entered into a parenting contract.

Costs of parenting order

5. The costs associated with the requirements of parenting orders, including the costs of providing counselling or guidance programmes, shall be borne by the local education authority.

Ivan Lewis

Parliamentary Under Secretary of State

29th January 2004 Department for Education and Skills

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe conditions one of which must be fulfilled before an application can be made for a parenting order under section 20 of the Anti-Social Behaviour Act 2003.

The conditions are set out in regulation 3. Where the pupil has been excluded permanently, the only condition is that the application must be made within the relevant period. Where the pupil has been excluded for a fixed term, there must have been at least two such exclusions in the last twelve months and the application must be made within the relevant period.

Regulation 4 defines the relevant period, including cases where a parenting contract has been entered into.

Regulation 5 prescribes for the purpose of section 21(4) of the Act that local education authorities are to fund the costs of parenting orders.

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

Annex C: Penalty Notice Proforma

Penalty Notice

S.444A EDUCATION ACT 1996

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, his parent is guilty of an offence under s.444 Education Act 1996.

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].

On [date]/ between [date] and [date] the pupil failed to attend regularly at the school.

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 [LEA 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 £1,000.**

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

Date of issue:

.....

PART 2

Please complete the following and return this notice with your payment to [insert LEA 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 Education 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 LEA. Any questions or correspondence about the code should be addressed to the [Education Department] at [address and phone no.]
4. Withdrawal.

This notice may be withdrawn by the XXX LEA 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 LEA to ask for it to be withdrawn as soon as possible, stating why you believe the notice to have been incorrectly issued. The LEA 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 LEA 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. 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 legal aid.

Annex D: 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:

.....

Parent:.....

Parent's

address:.....

which is in the area of [] Local Education Authority

Parent:.....

Parent's

address:.....

which is in the area of [] Local Education Authority

Applicant Local Education

Authority:.....

It is alleged that:

(a) the child or young person has been excluded 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.]

[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:

(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 the counselling/ guidance programme to be attended by the parent(s):

Further requirements to be included in the order:

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