EXPLANATORY MEMORANDUM TO

THE EDUCATION (PENALTY NOTICES) (ENGLAND) (AMENDMENT) REGULATIONS

2012 No. 1046

1. This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Education (Penalty Notices) (England) Regulations 2007 set out the current requirements relating to the operation of the penalty notice scheme for offences committed under section 444A of the Education Act 1996 and section 103 of the Education and Inspections Act 2006. The Education (Penalty Notices) (England) (Amendment) Regulations 2012 amend the Regulations by increasing the monetary amounts payable.

3. Matters of special interest to the Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Education-related penalty notices for parents who fail to secure the regular attendance at school of their child who is a registered pupil have been available since the relevant provisions in the Anti-social Behaviour Act 2003 and the Education (Penalty Notices) (England) Regulations 2004 came into force on 27 February 2004. They were introduced to provide a quicker and cheaper alternative sanction to prosecution. This was extended by the Education Act 2005 to include parents who fail to secure the regular attendance of their child at a place at which education is provided for a child under the local authorities' functions under section 19 of the Education Act 1996[1] . The Education and Inspections Act 2006 created a further offence and power to issue a penalty notice if a parent fails to ensure that their child, (when excluded from school) is not found present in a public place during school hours in the first five days of exclusion. The Education (Penalty Notices) (England) (Amendment) Regulations 2012 amend the Education (Penalty Notices) (England) Regulations 2007[2] which govern the issue of penalty notices.

[1] Section 19 of the Education Act 1996 provides that Local Authorities are under a duty to arrange suitable education for those children of compulsory school age who by reason of illness exclusion or otherwise, may not receive suitable education unless such arrangements are made for them.
[2] S.I 2007/ 1867

5. Territorial Extent and Application

5.1 This instrument applies to England only.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 Section 444 of the Education Act 1996 requires parents whose children are of compulsory school age (5 - 16) and school registered to secure their regular attendance at school. Section 103 of the Education and Inspections Act 2006 requires parents of excluded pupils to ensure that their child is not found present in a public place during school hours in the first five days of the exclusion from school. Evidence suggests that children who truant and those excluded from school are more likely to become involved in anti-social behaviour and crime. It is therefore important that parents take responsibility for ensuring that their children are in school or, if their children are excluded, that they are not present in a public place during school hours without reasonable justification. If parents fail in their duties, they commit an offence either under section 444 of the Education Act 1996 or section 103 of the Education and Inspections Act 2006, and may be served with a penalty notice by an authorised officer. An authorised officer can be a constable, authorised officer of the local authority, a head teacher or school staff member authorised by the head teacher.

7.2 Education-related penalty notices enable parents to discharge potential liability for conviction for section 444 and 103 offences by paying a penalty of £50 if paid within 28 days rising to £100 if paid after 28 but within 42 days. If the penalty is unpaid or paid in part at the end of the 42 day period, the local authority must decide whether to prosecute for the original offence or withdraw the notice.

7.3 It is the Government's priority to tackle all forms of absence from school because evidence shows that there is a clear correlation between attendance and attainment. Pupils who attend school regularly are almost four times more likely to achieve five or more GCSEs at grades A*-C including English and Maths than those who are persistently absent.

7.4 The amounts of the penalty notices have remained at £50 and £100 since the scheme was introduced in 2004. This instrument amends Regulation 4(a) and (b) by increasing the amounts payable from £50 to £60 for those who pay within 28 days; and from £100 to £120 for those who pay within 42 days. The new amounts will come into force on 1 September 2012. Increasing the amounts stated on the penalty notice puts the level of the penalty back, in real terms, to the level at which it was set when introduced. It also sends a strong message to parents that school attendance and ensuring the appropriate behaviour

of excluded pupils continues to be important and that a significant penalty is available where parents fail in their responsibilities.

- **Consolidation**

7.5 The Department does not intend to consolidate the regulations at this time. This instrument amends the Education (Penalty Notices) (England) Regulations 2007.

8. Consultation outcome

8.1 There is no statutory requirement to consult. The Department has however conducted an informal consultation with a number of local authorities, education welfare officers and school head teachers on their views on the proposed increase to the amounts on the penalty notices. Some of those consulted were sceptical of the value of penalty notices in changing behaviour but others did use and value them and agreed strongly that the level of the penalty needed to be increased. On balance the response to this informal consultation was supportive of the proposal.

9. Guidance

9.1 Statutory guidance is available to schools and local authorities which they must have regard to when using education-related penalty notices. This will be amended to reflect the new amounts payable: *Guidance on Education-Related Parenting Contracts, Parenting Orders and Penalty Notices* was published in September 2007. The Department will consult local authorities on the revised guidance before 1 September 2012 when the changes are expected to come into force.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The expected impact on the public sector is negligible as schools and local authorities already have the power to issue penalty notices to parents. This amendment would mean that local authorities must amend their standard documents/templates to reflect the new amounts payable and inform schools, where appropriate.

10.3 A full Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Department collects and publishes annual data on the number of penalty notices issued from local authorities.

13. Contact:

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