EXPLANATORY MEMORANDUM TO

THE EDUCATION (PENALTY NOTICES) (ENGLAND) (AMENDMENT) REGULATIONS 2024

2024 No. 210

1. Introduction

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

2. Declaration

2.1 The Rt Hon Damian Hinds, Minister of State at the Department for Education confirms that this Explanatory Memorandum meets the required standard.

2.2 Simon Blake, Deputy Director for School Attendance Division, at the Department for Education confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Adam Luke at the Department for Education, email: school.attendance@education.gov.uk, can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The instrument makes several changes to the regime for issuing penalty notices for absence under section 444A of the Education Act 1996. It does not change the existing requirements for penalty notices in respect of the presence of an excluded pupil in a public place under section 105 of the Education and Inspections Act 2006.

4.2 This instrument requires schools to consider on a case-by-case basis whether to issue (or ask another authorised officer such as the local authority to issue) a penalty notice to a parent when their child's absence is recorded as unauthorised after 10 school sessions within any 10-school week period. This will typically equate to 5 days of unauthorised absence from school. A school week is a week in which the school meets at least once.

4.3 The instrument also limits the number of penalty notices that can be issued to a parent in respect of an individual child to 2 within any 3 year period.

4.4 It increases the amount of the penalty set out in the Education (Penalty Notices) (England) Regulations 2007 as amended, from £120 to £160 if paid within 28 days and £60 to £80 if paid within 21 days for the first penalty notice issued to a parent in respect of an individual child in any 3 year period.

4.5 It sets the amount of any second penalty notice issued to the same parent in respect of the same child within 3 years of the date the first penalty notice was issued to £160 to be paid within 28 days.

4.6 As in the Education (Penalty Notice) (England) Regulations 2007, the instrument allows sums received from penalty notices to be used for issuing and enforcing penalty notice and prosecuting recipients who do not pay. The instrument extends the provision so that sums received can also be used for supporting the regular attendance at school of registered pupils. Any surplus must still be returned to the Secretary of State.

Where does the legislation extend to, and apply?

4.7 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.8 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England only.

5. Policy Context

What is being done and why?

5.1 The Government's vision for improving school attendance is for pupils, parents, schools, local authorities, and other partners to work together to prevent patterns of absence from developing. This follows a support first approach to avoid legal action for parents wherever a supportive approach is more appropriate. The amendments are being made to introduce a new national framework for penalty notices for school absence to embed this support first approach and to improve the consistency in their use across England.

5.2 Currently, the system differs from local authority area to area and therefore there is significant variation in parents' experience across the country. Greater consistency will be achieved in the instrument with a single national threshold where penalty notices for school absence must be considered. Where a penalty is deemed appropriate, this instrument increases the deterrent by increasing the amount of the penalty from £120 to £160 (reduced to £80 if paid within 21 days) and introducing an escalation for repeat cases where any second attendance related penalty notice issued to the same parent in respect of the same child within 3 years of the first is charged at a flat rate of £160. A third penalty notice cannot be issued within 3 years of the first, and prosecution or other attendance intervention should be considered instead.

What was the previous policy, how is this different?

5.3 Each local authority in England previously set its own circumstances in which a penalty notice was considered appropriate, and this led to significant variation across the country and unfairness for parents. In the last full year of data before this instrument this meant that 22 out of 153 local authorities issued over half of all penalty notices for absence. This instrument introduces a standard national threshold of 10 sessions of absence in 10 school weeks, at which penalty notices are considered by all schools regardless of local authority area so the rules are clear for parents and unfairness is reduced.

5.4 Similarly, each local authority previously set the limit of how many penalty notices could be issued to a single parent in any 12 month period. This led to similar inconsistency and unfairness for parents. This instrument changes this to include a standard national limit of 2 penalty notices for absence issued to any parent in respect of a single child but over a 3 year period. It was decided to extend the period of the limit to 3 years as if a child's absence is meeting the national threshold numerous times it is unlikely that a penalty notice is the most appropriate legal intervention to

improve attendance and so other interventions such as a parenting contract or prosecution should be considered instead. It is also designed to deter parents from allowing repeated periods of absence.

5.5 To increase the deterrent and to take account of inflation, as the amount of the penalty had not been increased since 2012, this instrument increases the amount of the penalty from £120 to £160 if paid within 28 days and £60 to £80 if paid within 21 days, for the first penalty notice issued to a parent in respect of an individual child in any 3 year period. This instrument creates a new flat rate of any second attendance related penalty notice issued to the same parent in respect of the same child within 3 years of the date of the first penalty notice of £160 to be paid within 28 days. This escalation is also designed to deter parents from allowing repeated periods of absence.

5.6 Previously, any sums received from penalty notices had to be used by a local authority for issuing and enforcing penalty notices and prosecuting recipients who did not pay. Any surplus had to be returned to the Secretary of State. This instrument retains those provisions but also allows local authorities to also use sums received from attendance related penalty notices to support the regular attendance at school of registered pupils. This is to further encourage the use of supportive approaches to improve attendance.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument amends the Education (Penalty Notices) (England) Regulations 2007 as amended.

6.2 It imposes a new duty on school staff who have the power to issue penalty notices, requiring them to consider issuing penalty notices relating to failure to secure regular school attendance when they become aware that a pupil has been recorded as absent in specified circumstances for 10 school sessions during 10 school weeks (regulation 5(1)). It adds a new limitation on the number of penalty notices which can be issued under section 444A(1) of the Education Act 1996 in respect of the same parent and child (regulation 6(1)). It amends the amount of a penalty payable under a penalty notice issued under section 444A(1) of the Education Act 1996, setting different amounts in different circumstances (regulation 4(1)). It makes provision to extend the range of functions on which local authorities may spend any sums they receive in payment of attendance-related penalty notices to enable use of funds to support attendance at school (regulation 7).

6.3 Several related minor amendments are made, including a change to the information that must be set out in a penalty notice in relation to the amount of the penalty (regulation 4(2)) and a requirement for a local authority's code of conduct for penalty notices to include a statement of the steps the authority may take in the event of further attendance offences where two penalty notices have already been issued in the previous three years (regulation 6(2)(c)).

6.4 These Regulations are laid alongside the School Attendance (Pupil Registration) (England) Regulations 2024, which require all schools to record pupils' absences using specified codes representing different circumstances of absence. It is those codes that are referred to in regulation 5(1) of these Regulations to specify the types of absence that may trigger the new duty to consider issuing a penalty notice, if 10 of them occur in 10 school weeks. The School Attendance (Pupil Registration) (England) Regulations 2024 were made before the making of these Regulations.

6.5 For the most part the amendments made by these Regulations disregard any events occurring before 19th August 2024 (regulations 4(3), 5(2) and 6(1)).

Why was this approach taken to change the law?

6.6 As the policy aim was to improve consistency regulatory changes were deemed the only possible approach to secure that.

7. Consultation

Summary of consultation outcome and methodology

7.1 There is strong support from schools and local authorities for a more consistent national approach in the use of penalty notices for absence, reducing unfairness for parents and giving schools and local authorities more clarity on when their use is appropriate. In early 2022, the Department consulted on replacing individual local authority codes of conduct for issuing penalty notices with a national framework to improve consistency between local areas. 87% of local authority respondents and 81% of school or academy trust respondents agreed with the idea of a national framework.

7.2 The Department then worked with schools, local authorities and representative bodies to develop proposals on the details to be included in the national framework. This was followed by a further 6 week formal consultation over June and July 2022. This consultation sought views on the thresholds to be included in that framework. The Government published its response to this consultation in 2023[1]. Following the consultation, the Department used the responses and further informal consultation with schools and local authorities to develop the final instrument including deciding to retain local codes of conduct but introducing a national threshold and the details of that threshold.

8. Applicable Guidance

8.1 A new edition of the 'Working together to improve school attendance'[2] will be published alongside these regulations, and will include statutory guidance about penalty notices under section 444B(3) of the Education Act 1996.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because there is no impact on business.

Impact on businesses, charities and voluntary bodies

9.2 There will be a de minimis cost to the public sector for administering the system because revenue from penalty notices is by used by local authorities to fund its administration so any changes in penalty notice rates within LAs can be managed locally. As part of the development of the instrument the Department conducted a

[1] Government response to consultation: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1180696/Modernising_school_attendance_and_admission_registers_and_setting_national_thresholds_for_legal_intervention_consultation-response.pdf

[2] 'Working together to improve school attendance' guidance: https://www.gov.uk/government/publications/working-together-to-improve-school-attendance.

Justice Impact Test and Local Authority New Burdens Assessment that confirmed this.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that the effect of the policy will be kept under review through regular sectoral engagement and action will be taken if any issues arise. This will include considering if any changes to the national threshold is needed in future.

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Minister for Schools has made the following statement regarding Human Rights:

"In my view the provisions of the Education (Penalty Notices) (England) (Amendment) Regulations 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").