

**To: Business Committee**

**From: Jane Davidson AM**

**Minister for Education and Lifelong Learning**

**EXPLANATORY MEMORANDUM**

**EDUCATION, WALES**

**THE ANTI-SOCIAL BEHAVIOUR ACT 2003 (COMMENCEMENT NO.5) (WALES) ORDER 2006**

**Summary**

This Order brings into force in Wales on 5 May 2006 sections 19 to 22 and 24 of the Anti-Social Behaviour Act 2003 relating to Parenting Contracts and Parenting Orders for the parents of school pupils. The sections brought into force are as follows:

Section 19 provides for school governing bodies and local education authorities (LEAs) to enter into parenting contracts with a parent of a child who has been temporarily or permanently excluded or whose attendance is poor;

Section 20 provides for the circumstances in which a LEA may apply to a magistrates court for a parenting order, the circumstances in which the court may make an order and the content and effect of an order;

Section 21 requires magistrates courts to consider, when determining whether to issue a Parenting Order, the family circumstances of pupils aged under 16 and the likely effect of the order on those circumstances. The courts must also consider the extent of the parent's willingness to enter into or comply with any Parenting Contract.

Section 22 provides for a right of appeal against the making of a parenting order to the Crown Court; and

Section 24 is an interpretation provision clarifying definition of terms.

1. This Memorandum is submitted to the Assembly's Business Committee in relation to The Anti-social Behaviour Act 2003 (Commencement No.5) (Wales) Order 2006, in accordance with Standing Order 24.6.

2. A copy of the Instrument is submitted with this Memorandum.

## **Enabling Power**

3. The power enabling this Instrument to be made is contained in section 93(2)(b) of the Anti Social Behaviour Act 2003. This power has been conferred on the National Assembly for Wales. Under Assembly Standing Orders, the Minister for Education and Lifelong Learning is able to put forward draft proposals for Assembly Instruments for consideration by the Assembly in plenary.

## **Effect**

4. Section 8 of the Crime and Disorder Act 1998 allows local authorities to apply to magistrates courts for Parenting Orders for those parents convicted under sections 443 and 444 of the Education Act 1996 of failing to comply with a school attendance order or failing to secure regular attendance at school of a registered pupil.

5. Commencement of sections s19 to 22 and 24 of the Anti-Social Behaviour Act 2003 will provide the governing body of a school and LEAs with new powers to be able to work with parents of pupils who have been excluded on disciplinary grounds or whose attendance at school is poor.

6. Parenting Contracts add to the range of strategies available for tackling poor behaviour at school. They will act as a vehicle for governing bodies and LEAs to engage with parents, agree conditions to improve a pupil's behaviour and provide support to parents informally as opposed to taking forward Court proceedings. In this way it is hoped that the relationship with parents can be better preserved, that parents will perceive the interaction as a positive way of working together to improve a pupil's behaviour and/or attendance and that any extra support provided will be seen as beneficial to the pupil rather than being seen as a purely punitive measure. Parenting Contracts are not enforceable in the sense that a breach of the conditions could result in a prosecution or fine. However, section 21 of the Act provides that magistrates courts must, when considering whether to make a Parenting Order, consider the parent's level of compliance with any Parenting Contract.

7. Parenting Orders will be available in respect of pupils who have been excluded on disciplinary grounds from a school for a fixed period or permanently. The proposed Regulations impose further conditions, in particular that pupils excluded for a fixed period

must have been excluded on more than one occasion within a twelve month period and that there is a general prohibition on applying for Parenting Orders more than six months after exclusion.

Section 21 specifies additional conditions that must be met before a LEA applies for a parenting orders. These include:

a requirement that courts must consider a parent's unwillingness to enter into, or their degree of compliance with, a parenting contract, consideration of the pupils' family circumstances;

power for the National Assembly for Wales to make Regulations in relation to costs associated with an Order; and

the duty on LEAs and schools to have regard to guidance issued by the National Assembly for Wales.

Section 22 provides for a right of appeal against the making of a parenting order to the Crown Court. Whilst, section 24 is an interpretation provision clarifying definition of terms.

## **Target Implementation**

It is intended that this Instrument be made on 2 May 2006, and come into force on 5 May 2006. Meeting these target dates will allow LEAs to apply for Parenting Orders during the Summer Term of 2005-06 academic year.

## **Financial Implications**

Any direct costs associated with preparing and implementing Parenting Contracts will be incurred voluntarily by either the governing body of a school or the LEA as the provisions are not statutory. For this reason no additional funding is being provided by the Welsh Assembly Government to directly fund their implementation. However each LEA in Wales has been provided with a grant of £15K for 2005-06 and 2006-07 to help them develop the ways in which they work with parents, which may include setting up processes for implementing Parenting Contracts and Parenting Orders. In many cases it is expected that the cost of implementing Parenting Contracts will avoid the escalation of behavioural or attendance problems and avoid further more costly interventions at a later date.

The range of costs could vary greatly depending on the nature of what is agreed within a

Parenting Contract. Parenting Contracts may, at their simplest, contain agreements on improvements in attendance levels and punctuality, which will incur little or no direct cost. At the other extreme they may include more costly interventions such as out-of-school provision that may lawfully be provided, either on a part-time or full-time basis. There will also be indirect costs incurred by governing bodies and LEAs through the staff time required to negotiate any Parenting Contracts with parents and to prepare and conduct applications for Parenting Orders in the magistrates courts.

Parenting Orders on average are likely to be more cost intensive than Parenting Contracts as they are likely to include counselling or guidance programmes. The range of costs may vary greatly depending on the nature of the requirements stipulated in the Parenting Order, and on aspects such as whether the LEA provides parenting classes internally or buys these in from an external provider. The Youth Justice Board estimate that a typical cost of a Parenting Order, including application, supervision and provision of parenting classes would be around £1,000.

The proposed Regulations provide that the costs associated with the requirements of Parenting Orders, including the costs of providing counselling or guidance programmes, shall be borne by the LEA. This would appear to be the most appropriate approach as the primary legislation as it stands, only allows LEAs rather than governing bodies of schools to apply for Parenting Orders. Legislation which would allow LEAs to pursue Parenting Orders and subsequently force expenditure on governing bodies is considered inappropriate and impracticable.

Magistrates courts may also incur costs through processing applications for Parenting Orders, staff time required to hear cases and undergoing any training required to implement the new provisions. The Welsh Assembly Government is working with the Department for Constitutional Affairs to ensure that magistrates courts are provided with information and guidance on the changes.

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It is intended to produce guidance for LEAs and schools covering all elements of Parenting Orders, which will incur the associated costs of preparation and distribution. It is anticipated that these costs will be met out of the existing Pupil Support Division publicity budget for 2006-07

## **Regulatory Appraisal**

Having regard to paragraph 7(ii) of the Assembly guidance on Regulatory Appraisals, I

have concluded that a Regulatory Appraisal is not required as paragraph 7(ii) exempts Commencement Orders bringing into force primary legislation from the need for a Regulatory Appraisal.

## **Consultation**

### **With Stakeholders**

The intention to introduce Parenting Contracts for parents of excluded and poor attending pupils and Parenting Orders for parents of excluded pupils was consulted on as part of the wider consultation on revisions to National Assembly for Wales Guidance Circular 3/99 'Inclusion and Pupil Support' published on 4 May 2005. The closing date for the consultation was 29 July 2005 and a list of consultees is attached at Annex A.

The consultation responses on this issue were largely favourable and justified continuing with the implementation and the content of the regulations. Around 2/3 of those who expressed a preference said that they were likely to use the new provisions and there were no comments that the provision should not be introduced. 29 of 34 respondents who commented felt that the definition of serious misbehaviour was suitable and 27 out of 31 thought the time limits within which a LEA must make an application for a parenting order were appropriate.

The views of all respondents have been taken into account in preparing the final draft of the Commencement Order.

### **With Subject Committee**

The Commencement Order was notified orally by the Minister of Education and Lifelong Learning to the Education and Lifelong Learning (ELL) Committee on 8 February 2006 and was identified for detailed scrutiny. The Commencement Order is due to be scrutinised, together with the related regulations, The Education (Parenting Orders) (Wales) Regulations 2006, by the ELL Committee on 2 March 2006 (ELL(2)04-06(p.3)).

In addition, the consultation document was made available to Members of the Committee in May 2005 and no comments were received.

## **Recommended Procedure**

Subject to the views of the Business Committee, I recommend that this Commencement Order proceeds to Plenary under the Accelerated procedure, because these are relatively straightforward provisions, which have been strongly supported throughout detailed consultation.

## **Compliance**

The proposed legislation will (as far as is applicable):

- have due regard to the principle of equality of opportunity for all people (Government of Wales Act 1998, section 120);
- be compatible with the Assembly's scheme for sustainable development (section 121)
- be compatible with Community law (section 106);
- be compatible with the Assembly's human rights legislation (section 107);  
and
- be compatible with any international obligations binding the UK government and the Assembly (section 108).

The information in this Memorandum has been cleared with the Directorate of Legal Services (DLS) and the Assembly Compliance Officer (ACO).

Drafting Lawyer (Amina Rix Ext. 3719)

Head of Division (Alan Lansdown Ext 3368)

Drafting Policy Official (Graham Davies Ext. 6897)

**JANE DAVIDSON AM FEBRUARY 2006**

**MINISTER FOR EDUCATION & LIFELONG LEARNING**

### **Annex A**

Inclusion and Pupil Support – Consultation list

In each of the 22 LEAs:

Director of Education

Pupil Support Managers

Education Welfare Service Managers

Other organisations (from main consultation list only)

Teachers Unions

Diocesan Directors

Children's Commissioner for Wales

ACCAC

Estyn

Governors Wales

General Teaching Council for Wales

Welsh Joint Education Committee

Welsh Language Board

Welsh Local Government Association

Funky Dragon

SNAP Cymru

NSPCC Cymru

Welsh Association of Foundation/Aided schools

Voluntary Sector Assembly Liaison

National Association of Governors and Managers

PTA Wales

**Education Otherwise**

## **Schools**

### **A ten percent sample of independent and maintained primary, secondary and special schools, and pupil referral units in Wales:**

Aberbargoed Primary School

Abercarn Primary School

Abercynon Infants School

Alltwen Primary School

Archdeacon John Lewis

Arddleen C.P. School

Argoed Primary School

Ashgrove School

Betws Primary School

Bodfari C.P. School

Brecon Road Infants School

Broad Haven C.P. School

Bryn Bach County Primary School

Bryn Deri Primary School

Brynglas Primary School

Bryngwyn Comprehensive School

Bryngwyn Primary

Brynteg County School



Bryntirion Comprehensive School

Caehopkin C.P. School

Caereinion High School

Caerleon (Lodge Hill) Junior School

Cefn Mawr Primary School

Clase Primary School

Clydach Infant School

Coed Eva Junior Mixed School

Coed Glas Primary School

Coedffranc Junior School

Coedylan Primary School

Comin Junior Mixed School

Connah's Quay High School

Conwy Secondary PRU Unit

Cowbridge Comprehensive School

Craigfelen Primary School

Croesyceiliog School

Cross Hands C.P. School

Cross Inn C.P. School

Cwmafan Infant School

Cwmbach C.I.W. Primary School

Cwrt Henry

Deiniol C.P. School

Derwendeg Primary School

Duffryn High School

Dunvant Infant School

Dunvant Junior School

Eveswell Primary School

Ffaldau Primary School

Fitzalan High School

George Street Primary School

Gladstone Primary School

Glan Afan Comprehensive School

Glanffrwd Infant School

Grange Town Primary

Grangetown Nursery School

Greenhill Special School

Gurnos Nursery School

Gwynedd C.P. School

Hafren C.P. Junior School

Hengoed Primary School

Heol-Y-Celyn Primary School

Hillside Primary School

Hirwaun Primary School

Holy Name V.R.C. School

Hook C.P. School

Howey C.I.W. School

John Summers High School

Johnstown C.P. School

Kemys Fawr Infants School

Lewis School Pengam

Llandinam C.P. School

Llandrindod Wells C.P. School

Llanfoist C.P. School

Llangattock C.I.W. School

Llangunnor C.P. School

Llangwm VCP School

Llanhari Primary School

Llanrhidian Primary School

Llanwnnen C.P. School

Maes-Y-Coed Primary School

Marlborough Infant School

Meadowbank Special School

Millbank Primary School

Morrison Comprehensive School

Nantymoel Primary School

Neath Abbey Infants

Neyland Junior C.P. School

Ninian Park Primary School

Old Road C.P. Primary School

Pennant C.P. School

Pentyrch Primary School

Penyreglyn Primary School

Pil Primary School

Plasmarl Primary School

Pontlottyn Primary School

Porthcawl Primary School

Queen's Hill PRU

Rhosddu Primary School

Rhydlewis C.P. School

Rhydyfelin Nursery School

Sennybridge C.P. School

Shirenewton Junior & Infant School

St Alban's R.C. Primary School

St Asaph V.P. Infants

St Cenydd Comprehensive School

St David's C.I.W. Primary

St David's R.C. Junior & Infants

St Elfod Junior School

St Fagans C.I.W. Primary School

St Giles Junior Controlled School

St John Baptist C.I.W. High School

St Josephs C.P. School

St Mary`s R.C. (A) School

St Mary's Aided Primary School

St Mary's Junior & SEN Unit

St Mary's R.C. Primary

St Monica's C.I.W. Primary School

St Peter's C.V. Junior & Infants

Sully Primary School

Tenby Junior Community School

Tonyrefail Comprehensive School

Trefnanney C.P. School

Trelawnyd V.A.

Tremains Junior School

Twynrodyn Community School

Ty Afan Primary Centre

Ty Isaf Infants & Nursery School

Upper Rhymney Primary School

Wepre C.P. School

Windsor Clive Infant School

Y.G. Abergynolwyn

Y.G. Llwyngwrl

Y.G. Nantgaredig

Y.G. Sirol Haycastle

Y.G. Swyddffynnon

YGGD Gwauncaegurwen

YGGD Trebannws

Ynysmaerdy Primary School

Ynyswen Infant School

Ysgol Bod Alaw

Ysgol Bro Carmel

Ysgol Caer Drewyn

Ysgol Capel Cynfab

Ysgol Capelulo

Ysgol Carreg Hirfaen

Ysgol Clydau

Ysgol Croes Atti

Ysgol Delyn

Ysgol Dewi Sant

Ysgol Dyffryn Ardudwy

Ysgol Eifionydd

Ysgol Emrys Ap Iwan

Ysgol G.G. Aberdar

Ysgol Glanrafon

Ysgol Gyfun Gwyr

Ysgol Gyfun Gymraeg Plasmawr

Ysgol Gyfun Penweddig

Ysgol Gymraeg Llantrisant

Ysgol Gymuned Bryngwran

Ysgol Gynradd Beddgelert

Ysgol Gynradd Chwilog

Ysgol Gynradd Dolgellau

Ysgol Gynradd Gymraeg Lonlas

Ysgol Gynradd Llanfachraeth

Ysgol Gynradd Maesincla

Ysgol Gynradd Parcyrhun

Ysgol Gynradd Pum Heol

Ysgol Gynradd Rhiwlas

Ysgol Gynradd Santes Gwenfaen

Ysgol Gynradd Trefeurig

Ysgol Hiraddug

Ysgol Ieuan Gwynedd

Ysgol Llanbedrog

Ysgol Llanfarian

Ysgol Mair R.C. School

Ysgol Pen Barras

Ysgol Penmachno

Ysgol Porth y Felin

Ysgol Rhiwabon

Ysgol Rhydygors

Ysgol Sant Baruc

Ysgol Sant Dunawd



Ysgol Santes Tudful

Ysgol Teilo Sant

Ysgol Uwchradd Glan Clwyd

Ysgol Waunfawr

Ysgol Y Bannau

Ysgol Y Ddol

Ysgol Y Parc Infants

Ysgol y Tywyn