

2013 No. 1983 (W. 193)

EDUCATION, WALES

**The Education (Penalty Notices)
(Wales) Regulations 2013**

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 (“the 1996 Act”; section 444A was inserted by the Anti-Social Behaviour Act 2003).

Sections 444A and 444B were amended by S.I. 2013/1657 (W.155) so that those sections also apply to Wales.

In relation to truancy offences under section 444 of the 1996 Act these Regulations apply to penalty notices served on or after the date on which they come into force, whether the offence was committed before or after they come into force (regulation 1(3)).

Regulation 3 sets out the matters to be contained in a penalty notice.

Regulation 4 prescribes the level of the penalty which is to be paid to the local authority, and regulation 6 what is evidence of its payment or non-payment. Regulation 5 provides for the period in which it is to be paid, if it is to discharge the recipient’s liability for the offence. Regulation 6 provides which local authority the penalty is to be paid to.

Regulation 7 prescribes the period during which proceedings may be instituted under section 444A(3) of the 1996 Act as 42 days.

Regulation 8 details the circumstances in which a penalty notice may be withdrawn.

Regulations 10 to 13 prescribe who can issue penalty notices.

Regulations 14 - 18 requires a local code of conduct to be drawn up and consulted upon, for the issuing of

penalty notices to be done in accordance with the local code.

Regulations 19 – 21 prescribe that a copy of the penalty notice is to be provided to the local authority who must keep records as detailed. If the Welsh Ministers require information in respect of penalty notices, the local authority must provide it to them.

Regulations 22 and 23 prescribe how the penalty notice is to be served and how sums received by local authorities are to be spent.

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**The Education (Penalty Notices)
(Wales) Regulations 2013**

Made 7 August 2013

Laid before the National Assembly for Wales
12 August 2013

Coming into force 2 September 2013

The Welsh Ministers in exercise of the powers conferred on the Secretary of State by sections 444A(3) and (6), 444B and 569 of the Education Act 1996⁽¹⁾ and now vested in them, make the following Regulations:

Title, commencement and application

1.—(1) The title of these Regulations is the Education (Penalty Notices) (Wales) Regulations 2013 and they come into force on 2 September 2013.

(2) These Regulations apply in relation to Wales.

(3) In relation to offences under section 444 of the 1996 Act, these Regulations apply to penalty notices issued on or after the date on which these Regulations come into force, whether the alleged offence was committed before, on or after that date.

Interpretation

2.—(1) In these Regulations—

“the 1996 Act” (“*Deddf 1996*”) means the Education Act 1996;

(1) 1996. c.56; sections 444A and 444B were inserted by section 23(1) of the Anti-social Behaviour Act 2003 (c.38); section 444A has been amended by section 117 of, and paragraph 3 of Schedule 18 to, the Education Act 2005 (c.18) and section 110 of the Education and Inspections Act 2006 (c.40). References to local education authority were substituted with local authority by S.I. 2010/1158. The application of sections 444A and 444B were applied to Wales by virtue of S.I. 2013/1657 (W.155).

“alternative educational provision” (“*darpariaeth addysgol amgen*”) means one of the following—

- (a) education provided by a local authority for a child otherwise than at school or at the child’s home by way of arrangements made under section 19 of the 1996 Act⁽¹⁾;
- (b) education at a place outside the premises of the school at which the child is a registered pupil and which the child is required by the appropriate authority (within the meaning of section 444ZA⁽²⁾ of the 1996 Act) to attend for the purpose of receiving any instruction or training;

“code of conduct” (“*cod ymddygiad*”) means the local authority’s code of conduct for the time being in force pursuant to regulations 14 to 16;

“penalty notice” (“*hysbysiad cosb*”) means a penalty notice issued pursuant to section 444A(1) of the 1996 Act; and

“recipient” (“*derbynnydd*”) means a person to whom a penalty notice is given in accordance with section 444A(1) of the 1996 Act.

(2) In these Regulations a reference to a deputy or assistant head teacher includes a reference to a person acting as deputy or assistant head teacher, as the case may be⁽³⁾.

Form and content of penalty notices

3. A penalty notice must give such details 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 must contain—

- (a) the name and address of the recipient;
- (b) the name and address of the child who—
 - (i) is failing to attend school regularly;
 - (ii) is failing to attend alternative educational provision regularly and, as applicable—
 - (aa) the name of the school where the child is a registered pupil, if applicable; and
 - (bb) the place where the alternative educational provision is provided for the child or at which the child is required to attend,

(1) Section 19 was amended by sections 47 and 57 of, and Schedule 8 to, the Education Act 1997 (c.44).
(2) Section 444ZA was inserted by section 116 of the Education Act 2005.
(3) By section 579(1) of the Education Act 1996 (c.56), “head teacher” includes an acting head teacher.

as the case may be;

- (c) the name and official particulars of the authorised officer issuing the notice;
- (d) the period during which the offence was committed in the case of an offence under section 444 of the 1996 Act, and the date of the issue of the notice;
- (e) the amount of the penalty which is to be paid, if it is paid within 28 days in accordance with regulation 4, and the amount in accordance with that regulation if it is not paid within that period but is paid within 42 days;
- (f) the name and the address of the local authority to which the penalty is to be paid in accordance with regulation 6 and to which any correspondence relation to the penalty notice may be sent;
- (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 5;
- (i) a statement that payment within that period will discharge any liability of the recipient 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.

The penalty

Amount of penalty

4. The amount of the penalty to be paid is—

- (a) £60, where the amount is paid within 28 days of receipt of the penalty notice; or
- (b) £120, where paragraph (a) does not apply but where the amount is paid within 42 days of receipt of the penalty notice.

Period for payment of the penalty

5. The time by which the penalty is to be paid⁽¹⁾ is within 42 days of receipt of the penalty notice.

Payment of penalty

6.—(1) The penalty is payable to—

(1) If the penalty is paid within this period, the recipient cannot be convicted of the offence under section 444A(4) of the Education Act 1996 (c.56), to which the notice relates.

- (a) the local authority in whose area the school at which the recipient's child is a registered pupil is situated;
- (b) where the child is not, at the time of giving the penalty notice, a registered pupil at any school, whether due to permanent exclusion or otherwise, the local authority in whose area the child resides.

(2) A certificate purporting to be signed by the proper officer of a local 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 is admissible in evidence in any legal proceedings and is evidence of the matters stated in it.

Effect of penalty notice

Period during which proceedings may not be instituted

7. The period prescribed for the purposes of section 444A(3) of the 1996 Act is 42 days beginning with the date on which the recipient receives the penalty notice.

Withdrawal

Withdrawal of penalty notice

8.—(1) A penalty notice may be withdrawn by the local authority named in the notice as the authority to which payment is to be made in any case in which—

- (a) that authority determines that—
 - (i) it ought not to have been issued; or
 - (ii) it ought not to have been issued to the person named as the recipient; or
- (b) it appears to the authority that the notice contains material errors.

(2) A penalty notice may be withdrawn in accordance with paragraph (1) whether or not the period for payment referred to in the notice pursuant to regulation 3(h) has expired, and whether or not the penalty has been paid.

(3) Where a penalty notice has been withdrawn in accordance with paragraph (1)—

- (a) notice of the withdrawal must be given to the recipient; and
- (b) any amount paid by way of penalty in pursuance of that notice must be repaid to the person who paid it.

(4) Except as provided in paragraph (5), no proceedings may be continued or instituted against the recipient for the offence in connection with which the withdrawn penalty notice was issued, or, where the penalty notice related to an offence under subsection (1) of section 444 of the 1996 Act, for an offence

under subsection (1A) arising out of the same circumstances.

(5) But where a penalty notice was issued, and was withdrawn pursuant to paragraph (1)(b), proceedings may be continued or instituted—

- (a) for the offence in connection with which that penalty notice was issued; or
- (b) where the penalty notice related to an offence under subsection (1) of section 444 of the 1996 Act, for an offence under subsection (1A) of that section arising out of the same circumstances as the first mentioned offence, if both of the following conditions are met—
 - (i) a further penalty notice in respect of the offence, or in the case of sub-paragraph (b), the first mentioned offence, was issued at the same time as the first penalty notice was withdrawn; and
 - (ii) the penalty has not been paid pursuant to that further penalty notice in accordance with the requirements of these Regulations.

Non payment of the penalty

9. The authority must withdraw the penalty notice where—

- (a) the penalty is not paid in full before the expiry of the period for paying it; and
- (b) the local authority named in the notice pursuant to regulation 3(f) has neither instituted proceedings against the recipient for the offence to which the notice relates, nor is contemplating such proceedings.

Issue of penalty notices

Authority to issue penalty notices

10.—(1) A head teacher may authorise a deputy or assistant head teacher to issue penalty notices.

(2) But a head teacher may not authorise any other member of staff to issue penalty notices.

Limitation on schools issuing penalty notices

11. A head teacher or deputy or assistant head teacher may only issue a penalty notice in respect of a child who is a registered pupil at the school at which that head teacher, or deputy or assistant head teacher, as the case may be, works.

Limitation on local authorities, issuing penalty notices

12.—(1) Subject to paragraph (2), an officer of a local authority may only issue a penalty notice in respect of a child—

- (a) who is a registered pupil at a school in the area of that authority;
- (b) for whom that authority has made arrangements for alternative educational provision (whether or not in the area of that authority); or
- (c) who is not, at the time the notice is given, a registered pupil at any school (whether due to permanent exclusion or otherwise) but resides in the area of that authority.

(2) Where a local authority has entered into an agreement with another local authority for an officer of that other authority to issue penalty notices in respect of a child to which paragraph (1)(a) or (b) applies, an officer of that other authority may issue a penalty notice in respect of such child.

Several penalty notices in respect of the same offence

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

Codes of conduct

Requirement to draw up code of conduct

14. Each local authority must 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 penalty notices;
- (b) measures to ensure that a penalty notice is not issued in respect of an offence when proceedings for that offence under section 444 of the 1996 Act (or an offence under subsection (1A) of that section arising out of the same circumstances) as the case may be, are contemplated or have been commenced by the local 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 authority, neighbouring local authorities

where appropriate, the police and authorised officers⁽¹⁾.

Consultation on the code of conduct

15.—(1) In preparing the code of conduct the local authority must 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 authority.

(2) In this regulation—

“chief officer of police” has the meaning given by section 101(1) of the Police Act 1996⁽²⁾;

“police area” means a police area provided for by section 1 of that Act.

Compliance with the code of conduct

16. Any person issuing a penalty notice must do so in accordance with the code of conduct.

Information

Copy of the penalty notice to be supplied to the local authority

17. A person issuing a penalty notice must (without delay) provide a copy to the local authority which is named in the notice as the authority to which payment is to be made pursuant to regulation 3(f).

Records

18. A local authority must keep records of penalty notices which must 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; and
- (d) whether the recipient was prosecuted for the offence for which the notice was issued (or, where the notice related to an offence under subsection (1) of section 444 of the 1996 Act, for an offence under subsection (1A) arising out of the same circumstances).

(1) “Authorised officer” is defined in section 444B(4) of the Education Act 1996 (c.56) in relation to penalty notices under section 444A of that Act.

(2) 1996 c.16, to which there are amendments not relevant to these Regulations.

Information to the Welsh Ministers

19. A local authority must supply to the Welsh Ministers such information as they may require in respect of penalty notices.

Final provisions

Service of notices

20.—(1) Where the penalty notice is served by first class post⁽¹⁾, service is deemed to have been effected, unless the contrary is proved, on the second working day after posting the notice.

(2) In this regulation “working day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday, or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971⁽²⁾.

Sums received by local authorities

21.—(1) The functions of a local authority specified for the purposes of section 444A(6)(a) of the 1996 Act are issuing and enforcing penalty notices, and prosecuting recipients who do not pay.

(2) To the extent that sums received by a local authority are not used for the purposes of the functions specified in paragraph (1), they must be paid to the Welsh Ministers.

Carwyn Jones

First Minister of Wales

7 August 2013

(1) Section 572 of the Education Act 1996 makes provision for the service of notices.

(2) 1971 c.80.