

**EXPLANATORY MEMORANDUM TO THE  
EDUCATION (PENALTY NOTICES) (ENGLAND) (AMENDMENT)  
REGULATIONS 2005**

**2005 No. 2029**

**1.** 1.1 This explanatory memorandum has been prepared by Department for Education and Skills and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 The Education (Penalty Notices) (England) Regulations 2004 (SI 2004 No. 181) which came into force on 27 February 2004 set out the current requirements relating to the operation of the penalty notice scheme under section 444A of the Education Act 1996 (inserted by the Anti-Social Behaviour Act 2003). These need to be amended to reflect the extension of their use provided for by the 2005 Education Act.

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

3.1 None.

**4. Legislative Background**

4.1 Section 116 of the Education Act 2005 inserted a new section in the Education Act 1996 at section 444ZA. This section extends the circumstances in which a person with parental responsibility, as defined in section 576 of the Education Act 1996, can be issued with a penalty notice or can be prosecuted, for failing to ensure that a child for whom they are responsible attends regularly at alternative educational provision that has been made for them. The powers come into force on 1 September 2005.

**5. Extent**

5.1 This instrument applies to England only.

**6. European Convention on Human Rights**

No statement is required.

**7. Policy background**

7.1 By law, parents whose children are of compulsory school age (5 - 16) and school-registered are responsible for ensuring that their children attend school regularly. If they do not do so they are committing an offence under s444 of the Education Act 1996 and may be served a penalty notice (which, if paid, discharges potential liability for conviction for that offence) or be prosecuted for the offence. The Education Act 2005 extended the offence of failing to secure regular attendance at school to cover attendance at alternative provision.

7.2 The aim is to ensure that children who are excluded from school on a fixed term or permanent basis or who are not registered at a school attend any alternative provision that is made to continue their education. (Children who are given a suitable education outside the school and local authority system do not fall within the aim of this policy.)

7.3 If a child is excluded for a fixed period the school has a duty to make arrangements for the child's education to continue. If a child is permanently excluded or not registered at a school, the local authority has a duty to satisfy itself that the child is receiving a suitable education and, where appropriate, make any necessary arrangements. Schools and local authorities discharge this responsibility by arranging alternative provision.

7.4 Some parents fail to ensure that their children attend such provision and, as a result, their child's education is interrupted. However, under the previous legislation (section 444, 444A and 444B of the Education Act 1996) local authorities were unable to issue penalty notices or prosecute those parents. This policy will extend the offence of failing to secure regular attendance at school to cover alternative provision.

7.5 The Education Act 2005 therefore gives governing bodies additional powers to direct attendance at alternative provision and extends the use of penalty notices and prosecutions where parents fail to ensure that the pupil attends the alternative provision required.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

## **9. Contact**

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