

EXPLANATORY MEMORANDUM TO
THE EDUCATION (PENALTY NOTICES) (ENGLAND) (AMENDMENT) (NO. 2)
REGULATIONS 2024

2024 No. 717

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 Baroness Barran, Parliamentary Under-Secretary of State for Education 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 This instrument is being made in consequence of defects in The Education (Penalty Notices) (England) (Amendment) Regulations 2024. This instrument makes changes to how penalty notices for absence from school under section 444A of the Education Act 1996 are issued, to ensure that regulations reflect the intended policy position as stated in published *Working Together to Improve School Attendance*¹ guidance which is due to come into force on 19th August 2024.

4.2 The instrument ensures that where a penalty notice that has been issued to a parent is subsequently withdrawn, or where a penalty notice has been issued in respect of an offence for which the parent has subsequently been found not guilty, that penalty notice will not count towards the escalation process under which a 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, is charged at a flat rate of £160.

4.3 The instrument also ensures that a penalty notice issued for an absence offence which was committed before 19th August 2024 (even if the penalty notice itself is issued after 19th August 2024) does not count towards the escalation process. It is to be disregarded when considering if a penalty notice should be charged at £160 because it is a second penalty notice within 3 years, and it is to be disregarded for the purposes of the 2 penalty notice limit within 3 years.

¹ <https://www.gov.uk/government/publications/working-together-to-improve-school-attendance>

Where does the legislation extend to, and apply?

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

- 4.4 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 Education (Penalty Notices) (England) (Amendment) Regulations 2024 (“the First Amendment Regulations”) made changes to the Education (Penalty Notices) (England) Regulations 2007 (“the Principal Regulations”) with the aim of improving the effectiveness and consistency in the use of penalty notices for school absence across the country. This instrument further amends the Principal Regulations to ensure that they match the intended policy position.
- 5.2 One aim of the policy in the First Amendment Regulations was to discourage parents from committing repeated absence offences by a) making a second penalty notice within 3 years payable at a flat rate of £160 rather than £80 (if paid within 21 days) or £160 (if paid within 28 days) as is the case for a first penalty notice, and b) allowing only 2 penalty notices within 3 years (after which an alternative approach must be taken, which might be prosecution). The intended policy position was also that some penalty notices should not ‘count’ in this escalation of the deterrent because it would be unfair to do so; namely, penalty notices that have been withdrawn (for example, due to being issued incorrectly), and penalty notices that are issued in respect of an offence for which the parent is subsequently found not guilty. However, the First Amendment Regulations omitted to give effect to this policy aim for some penalty notices to be disregarded for the purposes of the escalation in the amount of the penalty (though they did give effect to that intention in relation to the limit of 2 penalty notices in 3 years), which is why we are making this further amendment.
- 5.3 This instrument also ensures that, where penalty notices are issued on or after 19th August relating to offences beginning before 19th August 2024 (when these and the First Amendment Regulations come into effect), such penalty notices also do not ‘count’ in the escalation, and so are to be disregarded when considering if a penalty notice should be charged at £160 because it is a second penalty notice within 3 years, and disregarded for the purposes of the 2 penalty notice limit within 3 years. This means that parents are not penalised by being subject to regulations for offences made before those regulations come into force.
- 5.4 Finally, this instrument clarifies the position in relation to offences committed over a period that spans 19th August 2024, so that penalty notices relating to offences that begin before that date are to be disregarded for the purposes of the escalation process even if they continued on or after that date.

What was the previous policy, how is this different?

- 5.5 Under the First Amendment Regulations, which introduce the escalation process referred to in paragraph 5.2 above and come into force on 19th August 2024, penalty notices issued for offences committed before the regulations come into force, penalty notices that are withdrawn, and penalty notices for offences for which the parent is later found not guilty count towards the escalation process described in paragraph 5.2 above, meaning a second penalty notice issued to the same parent for the same child within 3 years of the first would be charged at a flat rate of £160.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument amends the Principal Regulations as described above.

Why was this approach taken to change the law?

6.2 These amendments were necessary to ensure that the law is consistent with the intended policy aims as set out in published guidance.

6.3 This instrument comes into force on 19th August 2024, at the same time as the First Amendment Regulations. This ensures that there is no period of time during which the incorrect policy is given effect in law. This means that this instrument is being laid less than a full school term before coming into force. It is being laid as early as possible. The practical impact of the short gap between laying and coming-into-force will be minimal because the guidance, which was published alongside the First Amendment Regulations, explains the combined effect of both sets of amendments and therefore schools and local authorities will have had a term's notice of the overall changes to the law.

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. The Government published its response to this consultation in 2023². Following the consultation, the Department used the responses and further informal consultation with schools and local authorities to develop both the First Amendment Regulations, and this instrument, the Education (Penalty Notices) (England) (Amendment) (No. 2) Regulations 2024.

7.3 In the informal consultation process, local authorities were in agreement that penalty notices that had been withdrawn or issued in relation to offences for which the parent had been found not guilty or had been issued for offences beginning before 19th August 2024, should not 'count' towards the escalation.

8. Applicable Guidance

8.1 The new edition of 'Working together to improve school attendance' which is due to come into force on 19th August 2024 reflects the intended policy position as given effect by the instrument.

² <https://www.gov.uk/government/consultations/school-registers-and-national-thresholds-for-legal-intervention>

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 is no, or no significant, impact on business, charities or voluntary bodies because they do not play a role in administering this penalty notice system.
- 9.3 The legislation does not impact small or micro businesses.
- 9.4 There is no, or no significant, impact on the public sector. The policy position to which this instrument gives effect is in line with the position set out in the new edition of 'Working together to improve school attendance' which is due to come into force on 19th August 2024, and local authorities will not need to incur any costs beyond the de minimis costs required to make the changes detailed in the Explanatory Memorandum to the First Amendment Regulations (S.I. 2024/210).

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

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”).