

Hertfordshire County Council

Children's Services

Integrated Services for Learning
Attendance Team

Penalty Notices (Truancy)

Guidance for Schools and Academies

July 2013



Contents

- 1. Penalty Notice Regulations**
- 2. Circumstances in which a Penalty Notice might be issued**
- 3. Responsibilities of the Local Authority for issuing Penalty Notices**
- 4. Responsibilities of Schools and Academies**
- 5. Formally notifying the Parent**
- 6. Local Code of Conduct**
- 7. Amount and payment of penalty**
- 8. Effect of issuing a Penalty Notice**
- 9. Withdrawal of a Penalty Notice**
- 10. Retention of receipts and revenue collection**
- 11. Administration of the Penalty Notices Scheme**
- 12. Documentation:**

Appendix A – Hertfordshire Code of Conduct
Appendix B (1 &2) Sample Warning letters to Parents
Appendix C – Penalty Notice Application Form
Appendix D – Formal Penalty Notice

1. Penalty Notices Regulations

Subsection (1) of section 23 of the Anti-Social Behaviour Act 2003 added two new sections (444A and 444B) to section 444 of the Education Act 1996. These new sections introduced penalty notices as an alternative to prosecution and enable parents to discharge potential liability for conviction for that offence by paying a penalty. The offence of irregular attendance has not changed.

The Education (Penalty Notices) (England) Regulations 2007 sets out the framework for the operation of the penalty notice scheme. The Education (Penalty Notices) (England) Amendment) regulations 2012 increased the amount of the penalty to £60 if paid within 28 days and to £120 if paid within 42 days. The Education (Penalty Notices) (England) (Amendment) Regulations 2013 shortens the time allowed for payment of the notice as follows: from 28 days to 21 days for payment of £60 and from 42 days to 28 days for payment of £120. These amendments come into force on 1 September 2013.

The shortened periods do not apply when the offence is alleged to have been wholly or partly committed before 1st September 2013.

The parent cannot be prosecuted for the offence for which the notice was issued until after the final deadline for payment has passed and cannot be convicted of that offence if he pays a penalty in accordance with the notice. Penalties are to be paid to local education authorities.

These procedures apply to the parents of children of compulsory school age who are registered at a maintained school, academy, pupil referral unit (education support centre) or City Technology College, or any other alternative educational provision arranged under s19 of The Education Act 1996.

All those defined as a parent under section 576 of the Education Act are parents for the purposes of these provisions. As with prosecutions under section 444 Education Act 1996, a penalty notice may be issued to each parent liable for the offence.

2. Circumstances in which a Penalty Notice may be issued

The key consideration in deciding whether to issue a penalty notice will be whether it can be effective in helping to get the pupil who is truanting back into school, or alternative provision (as appropriate).

A penalty notice is a suitable intervention in circumstances of parentally condoned truancy where the parent is judged capable of securing their child's regular attendance but is not willing to take responsibility for doing so. For example it could be used where a parent has failed to engage in any supportive measures. It will be particularly useful as a sanction at an early stage before attendance problems become entrenched and where the Local Authority considers that a prosecution would be too heavy handed.

The usual response to a first offence should be a warning rather than a penalty. However, a penalty notice can be issued without a warning in exceptional circumstances. These should be agreed with the Central Attendance and Employment support Team Manager on behalf of the County Lead for Behaviour and Attendance.

3. Responsibilities of the Local Authority for issuing Penalty Notices

Primary responsibility for issuing penalty notice rests with the Local Authority and this responsibility may not be delegated to schools or the police. The Local Authority may not prevent academies, schools or the police from issuing notices if they are willing to do so but any notices issued by them must comply with the Local Authority Code of Conduct. **(Appendix A)**

Local authorities are responsible for the administration of the scheme and may make such operational arrangements as they see fit.

Local authorities must issue a local code of conduct to ensure the scheme operates consistently.

It is for Local Authorities to set out in their local code of conduct the levels of unauthorised absence above which a penalty notice may be issued.

4. Responsibilities of Schools and Academies

Headteachers are empowered to issue penalty notices and may apply to the Local Authority for a penalty notice to be issued. They may also authorise their deputy head and assistant head to do so. They may not delegate this responsibility to other members of the school staff.

The Local Authority issues penalty notices on behalf of Hertfordshire schools in order to ensure consistency and in the event that a prosecution may need to be brought against the parent.

The Local Authority would also urge academies to notify and permit the Local Authority to issue the penalty notices in order to ensure consistency and in the event that a prosecution may need to be brought against the parent.

Headteachers must first gain the agreement of their governing body. The school's attendance policy should then be revised accordingly.

Headteachers and deputy and assistant heads must comply with the local code of conduct issued by their Local Authority. They must also provide to the Local Authority a copy of any notice that is issued under the code of conduct.

5. Formally Notifying the Parent

At the outset of casework by the school or Local Authority the parent should be informed in writing of the actions that may be taken. It is good practice to make sure the parent understands the consequences of failing to ensure their

child's regular attendance, in particular that the case could result in a penalty and/or prosecution.

The warning letter(s) should be sent by the school if the case is not open to an Attendance Improvement Officer.

There is no statutory right of appeal against the issuing of a penalty notice (although the regulations make provisions for the Local Authority to withdraw them in certain limited circumstances). Therefore it is important, where feasible, to warn the parent(s) of the possibility of a notice being issued to allow them to make whatever representations they wish.

Appendix B1 provides a sample warning letter to parent(s) that they are at risk of a penalty notice being issued. This should be used **before** the unauthorised absences have reached 21 sessions and serves early notice that a penalty may be issued if the attendance does not improve.

It is good practice to allow 10 school days for the parent to improve the situation before issuing the breach letter.

Appendix B2 (breach letter) should be used when the unauthorised absences have reached 21 sessions and warns the parent that if the attendance does not improve, a penalty notice will be issued.

It is good practice to allow 5 school days following the breach letter (B2) for the parent(s) to improve the situation before issuing a notice or commencing proceedings.

6. Local Code of Conduct

The purpose of the local code of conduct is to ensure that the powers are applied consistently and fairly across the local authority area and that suitable arrangements are in place for the administration of the scheme.

Penalty notices must only be issued within the terms of the local code. It is the responsibility of each local authority to draw up a code of conduct.

The local code of conduct is key to the successful use of penalty notices. It ensures consistency, fairness and transparency in the way penalty notices are applied and allows local authorities to manage the system and tailor it to local needs and resources. The regulations specify that the following must be included in the local code:

- a) Means of avoiding the issue of duplicate notices
- b) Measures to ensure that a notice is not issued when proceedings for an offence under section 444 of the Act 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

The Local Authority must set out in their code of conduct the attendance levels below which a penalty notice will usually be issued. This is as follows:

- The pupil's absence must have been **unauthorised** for at least **21** sessions in the previous and/or current term.
AND
- the parent or carer is not willing to take responsibility for securing their child's attendance and has not co-operated with any proposed voluntary or supportive measures.

7. Amount and payment of penalty

The amount of the penalty to be paid shall be:

- a) £60 if paid within 21 days of receipt of the notice
- b) £120 if paid after 21 days but within 28 days of receipt of the notice

For offences alleged to have been wholly or partly committed before 1 September 2013, the penalties shall be:

- c) £60 if paid within 28 days of receipt of the notice
- d) £120 if paid after 28 days but within 42 days of receipt of the notice

A notice served by post is deemed to have been received on the second day after posting it by first class post.

If the penalty notice is not paid in full by the end of the 28-day period the Local Authority must either prosecute for the offence to which the notice applies under section 444 of the Education Act 1996 or withdraw the notice. The notice can only be withdrawn under limited circumstance (see para 9). There is no provision to prosecute for failing to pay the penalty.

In circumstances where the school or police have instigated the issuing of a penalty notice they will be required to provide a witness statement and may be required to attend court. (see Code of Conduct)

8. Effect of issuing a Penalty Notice

If the penalty is not paid in full before the expiry of the period for paying it the Local Authority named in the notice shall either institute proceedings against the recipient for the offence or shall withdraw the notice.

9. Withdrawal of a Penalty Notice

The Education (Penalty Notices) (England) Regulations 2007 limit the circumstances in which a Local Authority can withdraw a penalty notice and the normal response to non-payment of a penalty notice will be prosecution for the offence to which the notice relates.

The Local Authority may withdraw a penalty notice in any case that the authority determines:

- a) It has not been issued in accordance with the Code of Conduct.
- b) It ought not to have been issued, or
- c) It ought not to have been issued to the person named as the recipient, or
- d) The penalty notice has not been paid in full before the expiry date but it is not appropriate to prosecute the recipient for the offence in connection with which the notice was issued.

10. Retention of Receipts & Revenue Collection

Regulations provide that the Local Authority can retain revenue from their penalty notice scheme to cover the costs of issuing or enforcing notices, or the cost of prosecuting recipients who do not pay.

The Local Authority is required to produce an auditor's statement as part of the usual audit procedure showing that income received from fines does not exceed enforcement as defined. The surplus, if any, must be surrendered to the consolidated fund.

11. Administration of the Penalty Notice Scheme

The scheme will be administered by the Central Attendance and Employment Support Team Manager on behalf of the County Lead for Behaviour and Attendance.

Applications for a penalty notice should be addressed to the Attendance Team Manager for the area where the child goes to school.

Applications must be submitted on the appropriate application form **(Appendix C)**.

Penalty notices will be issued provided they comply with the Code of Conduct and the relevant information has been provided in the specified manner.

Hertfordshire County Council

Penalty Notice for Truancy – Local Code of Conduct

1. Legislation

Section 23 of the Anti Social Behaviour Act 2003 empowers designated Local Authority Officers; Headteachers and Deputy and Assistant headteachers authorised by them and the Police to issue penalty notices in cases of unauthorised absence from school. The issuing of penalty notices must conform with all requirements of the Human Rights Act and all Equal Opportunities legislation. The Local Authority is responsible for developing the Code of Conduct that all partners named in the Act must adhere to when using the powers.

2. Statement of intent

Regular and punctual attendance is a legal requirement for students registered at a school or academy and is essential if students are to maximise the educational opportunities available to them.

A penalty notice can also be issued if a pupil fails to attend an alternative educational provision, such as an Education Support Centre, College or Youth programmes Unit provision Education Support Centre or other alternative educational provision arranged under s19 of The Education Act 1996.

The Anti-Social Behaviour Act 2003 introduces penalty notices as an alternative to prosecution under section 444 of the Education Act 1996. Parents may discharge potential liability for conviction by paying a penalty.

Penalty notices involve the recipient paying a fine of £60 if paid within 21 days, or £120 if paid within 28 days of receipt of the notice. For offences alleged to have been wholly or partly committed before 1 September 2013 the penalty notice involves the recipient paying a fine of £60 if paid within 28 days or £120 if paid within 42 days.

Failure to pay the fine within 28 days will result in either a prosecution for the offence to which the notice applies, or withdrawal of the notice (limited circumstances apply). Prosecution will be taken by the Local Authority under the Education Act 1996, section 444.

To comply with Human Rights legislation it is essential that Penalty Notices be issued in a consistent manner. This code of conduct will govern the issuing of penalty notices within Hertfordshire County Council.

The Local Authority will retain any revenue from penalty notices to cover the administration of the scheme and any legal action arising from it.

3. Circumstances under which a Penalty Notice will be issued

Penalty notices can only be issued in cases of unauthorised absence.

- a) The pupil's absence must have been unauthorised for at least **21** sessions in the previous and/or current term.
- b) The parent or carer is not willing to take responsibility for securing their child's attendance and has not co-operated with any proposed voluntary or supportive measures.
- c) In the early stages of casework when the Attendance Improvement Officer is of the opinion that the issuing of a penalty notice could avoid further absence. e.g. where a parent or carer continually fails to provide an explanation for a pupil's absence in accordance with the school's procedures. Attendance Improvement Officers will only issue penalty notices when the pupil concerned is an open case to them.
- d) The deliberate taking of a holiday during term time without the school's permission (where it can be clearly demonstrated that the parent/carer understood that permission had not/would not be given) and where this has resulted in a period of unauthorised absence in the previous and/or current term exceeding 20 sessions. In such cases, a separate notice will be issued for each child in the family. In these circumstances it is not necessary to issue a warning letter or the breach letter (B2) but clear documentary evidence must be provided by the school/academy which demonstrates that the parent/carer understood that permission had not/would not be given. Should a parent fail or refuse to pay any penalty notice issued for this reason and a prosecution is undertaken the evidence provided by the school would be the only information laid before the court.
- e) Following a truancy patrol when the reason for absence is avoidable and the parent or carer fails to co-operate (and give an undertaking that it will not happen again). Penalty notices will not be issued during a Truancy Patrol as this could involve a health and safety risk to the Attendance Improvement Officer.
- f) The issuing of a penalty notice does not conflict with any other legal action already being processed.
- g) A penalty notice should not be issued when the pupil concerned is in the care of Hertfordshire County Council, without prior discussion with the Central Attendance and Employment Support Team Manager on behalf of the County Lead for Behaviour and Attendance.

4. Procedure for issuing Penalty Notices

To ensure consistency and equitable delivery Penalty Notices will be issued on behalf of the County Lead for Behaviour and Attendance by the Attendance Manager for the area where the child goes to school.

Penalty notices will only be issued by post and never as an on the spot action. This is to comply with Health and Safety requirements and to satisfy evidential requirements.

No parent or carer will receive more than **two** separate penalty notices resulting from unauthorised absence of an individual child in any twelve month period. There will be no restrictions on the number of times a parent or carer may receive a formal warning of the possible issue of a penalty notice.

The Local Authority will receive applications to issue penalty notices from Academies, Schools, Police and neighbouring local authorities. Applications should be submitted on the form provided and sent to the Attendance Manager for the Attendance Team where the child's school is based.

Penalty Notices will be issued provided that:

- The circumstances of the pupil's absence meet the requirements of the Local Authority Code of Conduct.
- The relevant information is provided in the specified manner.

5. Procedure for withdrawing Penalty Notices

A penalty notice may be withdrawn by the Local Authority in any case in which the authority determines that:

- It has not been issued in accordance with the Code of Conduct.
- It ought not to have been issued, or
- It ought not to have been issued to the person named as the recipient, or
- The penalty notice has not been paid in full before the expiry date but it is not appropriate to prosecute the recipient for the offence in connection with which the notice was issued.

If the penalty notice is not paid and does not meet the criteria for withdrawal, the Local Authority will take a prosecution under section 444 or 4441.A. of the Education Act 1996. The school/academy may be required to provide a witness statement and staff may be required to give evidence in court.

6. Payment of Penalty Notices

Arrangements for payment are detailed on the Penalty Notice.

The Local Authority will retain any revenue from penalty notices to cover the administration of the scheme and any legal action arising from it.

Appendix B.1

At risk warning letter

Address

Tel :
Fax :
My ref :
Your ref:

Date:

Dear

The Education (Penalty Notices) (England) Regulations 2007 (Name of pupil). Registered pupil at (School).

This is a formal warning that you are at risk of being in breach of the above regulations. Your child (name of child) has been absent from school and the absence has not been authorised. If the number of unauthorised absence sessions reaches 21 or more in the current and/or previous term the Local Authority may issue you with a Penalty Notice.

The Penalty Notice requires you to pay a fine of £60 within 21 days. If this fine is not paid within the time limit the penalty rises to £120 which must be paid within 28 days.

If you are issued with a Penalty Notice this enables you to discharge your potential liability for an offence under Section 444 of the Education Act 1996 of failure to secure your child's regular attendance at school. If you do not pay the fine you will be liable for prosecution for this offence.

If you wish to discuss the matter further please contact me within 5 working days.

Yours sincerely

Appendix B.2

Breach letter

Address

Tel :
Fax :
My ref :
Your ref:

Date:

Dear

**The Education (Penalty Notices) (England) Regulations 2007
(Name of pupil). Registered pupil at (School).**

This is a formal warning that you are in breach of the above regulations. Your child (name of child) has unauthorised absence of 21 sessions or more in the previous and/or current term and this empowers the Local Authority to issue a Penalty notice.

The penalty notice requires you to pay a fine of £60 within 21 days. If this fine is not paid within the time limit the penalty rises to £120 which must be paid within 28 days.

If you are issued with a penalty notice this enables you to discharge your potential liability for an offence under Section 444 of the Education Act 1996 of failure to secure your child's regular attendance at school. If you do not pay the fine you will be liable for prosecution for this offence.

Unless your child attends regularly a penalty notice will be issued. You will not receive another warning before the fine is imposed.

If you wish to discuss the matter further please contact me within 2 working days.

Yours sincerely

Appendix C

Hertfordshire County Council Children's Services Integrated Services for Learning Attendance Team

Application for a Penalty Notice to be issued

Name of person requesting issue of Penalty Notice:	
Position: (Head, Deputy or Assistant Head Teacher only)	
Contact details:	

Pupil's Name:	
Date of Birth:	
School/Academy:	
Parent(s) name:	
Address:	
Telephone:	

Date of warning letter/s (B1)	
Date of breach letter (B2)	
Please attach copies	

Information on supportive measures offered to family. Please include dates of any meetings held with parents to address poor attendance.

Information on the parent(s) failure to co-operate:

Has the pupil been referred to or discussed with the Attendance Improvement Officer? Yes/No

Any further information:

Please send this application, together with a certificate of attendance signed by the Head Teacher and an up to date registration certificate (from SIMS or equivalent) to the Attendance Manager for the area where the school is based.

Watford, Three Rivers, Bushey and Radlett Attendance Team

Kim Claridge -Taylor, Attendance Manager, Post Point AP 1102, Apsley 2, Brindley Way, Hemel Hempsted HP3 9BF

St Albans and Dacorum Attendance Team

Yasmin Sharif, Attendance Manager, Post Point AP 2115 Apsley 2, Brindley Way, Hemel Hempsted HP3 9BF

Welwyn Hatfield and Hertsmere Attendance Team

Sharon Newey , Attendance Manager, Post Point MU204, 2nd floor, Mundells, Welwyn Garden City AL7 1FT

North Herts and Stevenage Attendance Team

Chris Hall, Attendance Manager, SFAR114, 1st Floor, Farnham house, Six Hills Way, Stevenage SG1 2FQ

East Herts and Broxbourne Attendance Team

Lillian Willerton, Attendance Manager, East Area Office, County Hall, Pegs Lane, Hertford SG13 8DF

Appendix D

PENALTY NOTICE
S.444A EDUCATION ACT 1996

Please read these notes carefully

PART 1

If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, his/her parent is guilty of an offence under s.444 Education Act 1996.

To: Parent name
Of: Parent address

You are the parent of <<pupil name>> (called in this notice “the pupil”) who is a registered pupil at << school name>>
Between (date) and (date) the pupil failed to attend regularly at <<name of school>>.

This notice gives you the opportunity to pay a penalty fine instead of being prosecuted for the offence given above. The amount of the penalty is £60 / £120 in accordance with the table overleaf. If you pay this penalty within the time limits set out below, no further action will be taken against you in connection with the offence set out in this notice.

Payment should be made within 21 days. If paid after 21 days but within 28 days the penalty is doubled to £120. For payment details please see over.

No reminders will be sent. If payment is not received by () you will be liable for prosecution for the offence and could be subject to a fine of up to £1,000.

This notice is issued by:

Date of issue:

Signed.....

PART 2

Pupil's Name:

Please complete the following and return this notice with your payment to
County Lead for Behaviour & Attendance, Hertfordshire County Council, c/o
Room 132a, County Hall, Hertford. SG13 8DF

Name:

Address:

I attach payment in the sum of £

Signed:

Date:

Payment of **£60** should be received by (). **No reminders will be sent.**
After this date the penalty rises to **£120**. This should be received by () after
this date you will be liable for prosecution for the offence and could be subject
to a fine of up to **£1,000**.

A cheque or postal order (made out to Hertfordshire County Council) should
be sent to Hertfordshire County Council, Room 132a, County Hall, Hertford,
SG13 8DF.

If you wish to pay by Debit/Credit Card please contact 01992 555407/8
quoting 742300/26084, your child's name, school and reference number
<<IES reference number>> Without this information your payment may not be
processed correctly and you risk prosecution in relation to the non payment of
this fine.

Note

1. Local Code of Conduct

This notice is issued in accordance with a local code of conduct drawn up by
Hertfordshire County Council. Any correspondence about the code should be
addressed to:

The County Lead for Behaviour and Attendance, Room 132a County Hall, Hertford,
SG13 8DF telephone 0300 123 4043

2. Withdrawal

This notice may be withdrawn by Hertfordshire County Council if it is shown that it
should not have been issued to you or has not been issued to you in accordance with
the local code of conduct. If you believe that the notice was wrongly issued you should
contact the County Council to ask for it to be withdrawn as soon as possible, stating
why you believe the notice to have been incorrectly issued. The County Council will
consider your request and contact you to let you know whether the notice is withdrawn.

If the notice is not withdrawn and you do not pay, you will be liable for prosecution for the offence that your child has failed to attend school regularly.

3. Payment

You should complete the notice above and send or deliver it to Hertfordshire County Council at the address given. If you wish to pay in person you must make an appointment or it will not be possible to receive your payment. If you wish to pay by Debit/Credit Card please contact 01992 555407/8 quoting 742300/26084, your child's name, school and reference number. Without this information your payment may not be processed correctly and you risk prosecution in relation to the non payment of this fine.

4. Prosecution

If you do not pay the penalty, and the notice is not withdrawn, you will be liable for prosecution for the offence of failing to ensure your child's regular attendance at school. You will receive a separate summons for this which will give you notice of the time and date of the court hearing. You will be able to defend yourself and you will be advised to seek legal representation; in some cases you may be entitled to legal aid. Information on obtaining legal advice and legal aid can be obtained from Community Legal Advice 0845 345 4345 Mon- Fri 9.00 am – 8pm Sat 9.00am – 12.00 pm or from www.direct.gov.uk