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**ANTI SOCIAL BEHAVIOUR ACT 2003  
PUPIL ATTENDANCE RELATED PROVISION**

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**Responsible Cabinet Member(s) -Councillor Stephen Harker, Education Portfolio**

**Responsible Director(s) - Geoff Pennington, Director of Education**

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**Purpose of Report**

1. The purpose of this report is to inform Cabinet Members of new measures available to Local Education Authorities to address poor school attendance.

**Information and Analysis**

2. New provisions under the Anti Social Behaviour Act 2003 came into force on 27th February 2004. The measures include Parenting Contracts, Parenting Orders and Penalty Notices. Of these provisions the most significant change is that of Penalty Notices, which is the focus of this report.
3. The Act empowers the LEA, Head Teachers and the policy to issue Penalty Notices – although there is no requirement for them to do so. Specific concerns have been voiced by schools about the implications of these powers in terms of the impact on home-school relationships. Penalty Notices represent a fundamental shift to school level in disposal of enforcement responsibilities previously solely vested in the LEA. The key consideration in deciding whether to issue a Penalty Notice will be whether it can be effective in helping to get the pupil back to school.
4. Penalty Notices are for use in cases of unauthorised absence only. Under existing legislation, parents of a registered pupil whose child fails to attend school regularly have committed an offence for which prosecution is the only available sanction. Penalty Notices will provide an alternative to prosecution under Section 444(1) and enable parents to discharge potential liability for conviction for that offence by paying a penalty. The offence for irregular attendance has not changed. A penalty may be issued to each parent liable for the offence. As in the case of Section 444 they are for the enforcement of attendance and not for use as a punishment for absence.
5. The provision of Penalty Notices will require clear thresholds to be applied consistently and equitably in the form of a local code of conduct (**Appendix 1**).
6. Penalty Notices will range from £50 (if paid within 28 days) to £100 (to be paid within 42 days). If the penalty is unpaid then the parent will be prosecuted for the offence to which the notice relates. Unlike other penalty notice schemes the prosecution is not for non payment of the notice. A notice may only be withdrawn if it has been issued outside the

terms of the local code, where no offence has been committed or where it has been issued to the wrong person.

7. There is an expectation that Parents will receive a warning letter prior to a Penalty Notice being issued. It is good practice to allow 15 working days on receipt of a warning letter for parents to effect an improvement in attendance. **The deliberate taking of a holiday in term time without/against school permission will not require a warning to be issued.**
8. It is appropriate to issue a Penalty Notice for parentally condoned absences, overt truancy (including pupils caught during truancy sweeps), excessive holidays during term time, excessive delayed return from extended holiday without prior school agreement and persistent late arrival at school.
  - (a) Penalty Notices will only be issued by post – never by hand or as ‘on the spot’ action, this is to satisfy Health and Safety requirements. It should be noted that current practice within Darlington encourages family, school and other agency working in partnership to resolve issues.
  - (b) Regulations provide that the LEA can retain revenue from their penalty notice scheme to cover the costs of issuing or enforcing notices. (Non payment is actioned through ‘normal’ procedures under section 444 of the Education Act 1996). It is suggested that LEAs consider making arrangements with another LEA service already involved in revenue collection to administer collection of receipts from penalty notices.
  - (c) Payment of a Penalty notice discharges liability for prosecution for the offence to which the notice relates. This means that neither the fact that a penalty notice was issued and paid, nor the pattern of unauthorised absence to which a notice relates can be submitted as evidence in a prosecution for any subsequent offence. If a penalty is not paid LEAs may use the fact that a notice was issued and unpaid in a subsequent prosecution. The unauthorised absence for which the notice was issued can be used as evidence in the usual way.
  - (d) Darlington LEA already has a clear enforcement process which is shared with parents at an early stage of contact. A Penalty Notice may be suitable intervention where there is parentally condoned absence i.e. holidays taken in term time which are unauthorised. We would need to reach a Borough wide agreement in principle to the application of criteria. Consultation with Head Teachers is underway. The relevant guidance does not advocate a blanket ban on holidays in term time.
  - (e) Cross border issues – the responsibility to prosecute for non school attendance lies with the Authority in which the pupil attends school. It is therefore evident that the issuing of notices remains with the Authority in which the pupil attends school.

### **Outcome of Consultation**

9. No consultation has yet been undertaken on this matter. This report is part of the consultation to be carried out.

### **Legal Implications**

10. This report has been considered by the Borough Solicitor for legal implications in accordance with the Council’s approved procedures. There are no issues which the Borough Solicitor considers need to be brought to the specific attention of Members, other than those

highlighted in the report.

### **Section 17 of the Crime and Disorder Act 1998**

11. The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely, the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. It is not considered that the contents of this report have any such effect.

### **Council Policy Framework**

12. The issues contained within this report do not represent change to Council policy or the Council's policy framework

### **Decision Deadline**

13. For the purpose of the 'call-in' procedure this does not represent an urgent matter

### **Key Decisions**

14. Although this matter covers all wards it is not yet a key decision as further consultation is to be undertaken.

### **Recommendation**

15. It is recommended that members note the contents of this report and receive a further report following consultation with schools.

### **Reasons**

16. This will enable further consultation on detail to be undertaken.

**Geoff Pennington, Director of Education**

### **Background Papers**

DfES Guidance on Education Related Parenting Contacts, Parenting Orders and Penalty Notices.  
(Ref: DfES/0234/2004)

Anti Social Behaviour Act 2003 Pupil Attendance Related Provision

The Education Act 1996

G. Bowen: Extension:2861

*DARLINGTON BOROUGH COUNCIL  
DRAFT CODE OF CONDUCT  
EDUCATION RELATED PENALTY NOTICES*

1. Legal Basis:

**Section 23 of the Anti Social Behaviour Act 2003 empowers designated LEA officers, Head Teachers (& Deputy and Assistant Headteachers authorised by them) and the Police to issue Penalty Notices in cases of unauthorised absence from school.**

**The Education (Penalty Notices) (England) Regulations 2004 come into force on 27<sup>th</sup> February 2004.**

**The issuing of Penalty Notices must conform with all requirements of the Human Rights Act and all Equal Opportunities legislation.**

**The LEA has the prime responsibility for developing the protocol within which all partners named in the Act will operate**

2. Rationale:

**Regular and punctual attendance at school is both a legal requirement and essential for pupils to maximise their educational opportunities.**

**In law an offence occurs if a parent/carer fails to secure a child's attendance at a school at which they are a registered pupil and that absence is not authorised by the school. Penalty notices supplement the existing sanctions currently available under Sec 444, Education Act 1996 or Sec 36, the Children's Act 1989 to enforce attendance at school where appropriate.**

**The Pupil Attendance and Education Welfare Service (EWS) delivers this LEA responsibility.**

**Parents and pupils are supported at school and LEA level to overcome barriers to regular attendance through a wide continuum of assessment and intervention strategies. Sanctions of any nature are for use only where parental co-operation in this process is either absent or deemed insufficient to resolve the presenting problem.**

**Sanctions are never used as a punishment, only as a means of enforcing attendance where there is a reasonable expectation that their use will secure an improvement.**

3. Circumstances where a Penalty Notice may be issued:

**A Penalty Notice can only be issued in cases of unauthorised absence.**

**Use of Penalty Notices will be restricted to no more than two notices per pupil per academic year.**

**In cases where families contain more than one poor-attending pupil multiple issue may occur but this will be the subject of careful consideration and co-ordination.**

There will be no restriction on the number of times a parent/carer may receive a formal warning of a possible issue of a Penalty Notice. The issuing of a Penalty Notice is considered appropriate in the following circumstances:

**overt truancy (including pupils caught on truancy sweeps)  
parentally-condoned absences  
excessive holidays in term-time  
excessive delayed return from extended holidays without prior school agreement  
persistent late arrival at school (after the Register has closed).**

To ensure consistent delivery of Penalty Notices the following criteria will apply:

- at least 10 sessions (5 school days) lost to unauthorised absence by the pupil during the current term.
- other than in specific circumstances\* the liable parent/carer will receive a formal warning of the possibility of a Penalty Notice being issued and given a maximum of 15 school days to effect an improvement .

*\* the deliberate taking of a holiday in term time without / against school permission (where it can be clearly demonstrated that the parent/carer understood that permission had not/would not be given)and where this has created a period of unauthorised absence in the current term of at least 10 sessions.*

Schools must consider every aspect of a pupil's case before considering whether a Penalty Notice would be appropriate. This must include strategic discussions with the assigned EWO and any other attendance-support staff who have involvement with or knowledge of the pupil/family.

#### 4. Procedure for issuing Penalty Notices:

The primary responsibility for issuing Penalty Notices rests with the LEA and the EWS will take on this responsibility in Darlington. This will ensure consistent and equitable delivery, retain school-home relationships and allow cohesion with other enforcement sanctions.

Schools can also issue Penalty Notices if they feel it is appropriate – this must be done with the support and agreement of the Governing Body following advice from the Education ~Welfare Service.

**Penalty Notices will only be issued by post and never as an on the spot action; this to satisfy that all evidential requirements are in place and to meet Health and Safety requirements.**

**The EWS will receive requests to issue Penalty Notices from schools, Police and neighbouring LEAs. These requests will be actioned provided that:**

- **all relevant information is supplied in the specified manner,**
- **the circumstances of the pupil's absence meets all the requirements of this Protocol,**
- **the issue of a Penalty Notice does not conflict with other intervention strategies in place or other enforcement sanctions already being processed.**

**The EWS will respond to all requests within 10 school days of receipt and where all criteria are met will:**

- **issue a formal written warning to the parent/carer of the possibility of a Penalty Notice being issued.**
- **in the same letter set a period of 15 school days within which the pupil must have no unauthorised absence.**
- **issue a Penalty Notice through the post at the end of the 15 day period if the required level of improvement has not been achieved.**

**5. Procedure for withdrawing Penalty Notices:**

**Once issued, a Penalty Notice will only be withdrawn in the following circumstances:**

- **proof has been established that the Penalty Notice was issued to the wrong person**
- **the use of the Penalty Notice did not conform to the terms of this Protocol**

**6. Payment of Penalty Notices:**

**Arrangements for payment will be detailed on the Penalty Notice.**

**Payment of a Penalty Notice discharges the parent/carer liability for the period in question and they cannot subsequently be prosecuted under other enforcement powers for the period covered by the penalty Notice.**

**Payment of a Penalty Notice within 28 days is £50 and payment after this time but within 42 days is £100.**

**The LEA retains any revenue from Penalty Notices to cover enforcement costs (collection or prosecuting in the event of non-payment).**

7. Non-payment of Penalty Notices:

**Non-payment of a Penalty notice will result in the withdrawal of the Notice and will trigger the fast-track prosecution process under the provisions of Sec 444, 1996 Education Act.**

8. Policy & Publicity

**Deployment of Penalty Notices as a sanction is included in the Authority's Attendance Policy.**

**All school Attendance Policies will include information on the deployment of Penalty Notices and this will be brought to the attention of all parents.**

**The LEA will include information on the use of penalty Notices and other attendance enforcement sanctions in promotional/ public information material.**

9. Reporting & Review:

**The EWS will report at regular intervals to the Headteacher Associations and Police on the deployment and outcomes of Penalty Notices.**

**The termly reports to Select Committee on attendance matters will include Penalty Notice use.**

**EWS will review Penalty Notice use at regular intervals and amend the general enforcement strategy as appropriate.**