



Department
for Education

School Attendance

Schools Bill Factsheet

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Contents

Schools Bill Factsheet: School Attendance	3
What is the government's policy objective?	3
Why is legislation needed?	3
What is the effect of the legislation?	3
How will this work in practice?	4
Key questions and answers	5
Part 2: Additional detail on Delegated Powers	8
Guidance on local authorities' general attendance duty and other attendance functions	8
What does this delegated power do?	8
How does the government intend to use this power?	8
Will there be any further consultation on this issue?	8
Key questions and answers	8
Guidance on schools' attendance policies	10
What does this delegated power do?	10
How does the Government intend to use this power?	10
Will there be any further consultation on this issue?	10
Key questions and answers	10
Regulations on penalty notices	12
What does this delegated power do?	12
How does the government intend to use this power?	12
Will there be any further consultation on this issue?	13
Key questions and answers	13
Regulations on leave of absence from some academies	14
What does this delegated power do?	14
How does the government intend to use this power?	14
Will there be any further consultation on this issue?	14
Key questions and answers	14
Why are regulations required rather than including the detail in legislation?	14

Schools Bill Factsheet: School Attendance

What is the government's policy objective?

Being in school and ready to learn is crucial to pupils' attainment, wellbeing, and wider life chances. The barriers to accessing education are wide and complex, both within and beyond the school gates, and are often specific to individual pupils and families. Yet considerable variation in attendance support and management exists between schools and between local authorities across England.

The objective of this policy is to reduce pupil absence rates by improving the consistency of attendance support and management provided by schools, trusts and governing bodies, and local authorities to families across England by focussing better, more targeted multi-agency support on pupils who need it most before poor attendance becomes deep-rooted.

Why is legislation needed?

To create clear expectations for schools, trusts and governing bodies, and local authorities on what attendance support they should be providing, when they should consider issuing fixed penalty notices, and when academies should grant leaves of absence. Legislation is needed to set a consistent standard of attendance support for pupils and parents, regardless of where in the country they live, and to tackle entrenched, long-standing patterns of absence.

What is the effect of the legislation?

This measure has four parts:

1: Schools attendance: general duties on local authorities – The government proposes to amend the Education Act 1996, to require local authorities to use their existing powers with a view to promoting regular attendance and reducing the number of absences and to have regard to new attendance guidance issued by the Secretary of State. This will set clear standards for local authority attendance services and help improve the consistency of attendance support received by families across England to improve access to education.

2: School attendance policies – The government proposes to amend the Education Act 1996 to require the proprietor of every school in England to ensure policies to promote regular attendance are implemented and published in an attendance policy. The measure outlines the components an attendance policy must include, for example the attendance procedures which must be followed and the responsibilities of particular staff members. This will help set clear attendance expectations for every pupil and parent in England. The measure also requires proprietors to have regard to new attendance guidance

issued by the Secretary of State which will provide further detail on how these components should be implemented and obligations, such as accurately completing attendance and admission register, met.

3: Penalty notices: regulations – The government intends to allow the Secretary of State to set, through regulations at a national level, the circumstances in which the issuing of fixed penalty notices for absence must be considered. Currently this is set at a local authority level meaning there is considerable variation in their usage which can result in unfairness for parents depending on where in the country they live. Provision would also be made for the coordination of arrangements between local authorities, neighbouring local authorities, the police and other authorised officers. This would be achieved through amending the Education Act 1996 and the Education and Inspections Act 2006, to amend the existing power for the Secretary of State to make regulations on the issuing of fixed penalty notices for absence.

4: Academies: regulations as to granting leave of absence – The government proposes to amend section 551 of the Education Act 1996 to extend the Secretary of State's power to make regulations in respect of the granting of leaves of absence to also cover all types of schools that are academies. This means the regulations on the granting of leaves of absence (currently covered in The Education (Pupil Registration) (England) Regulations 2006) can be amended so that they also apply to academies.

The legislation is intended to take effect from 1 September 2023 for the start of the new academic year.

How will this work in practice?

1: Schools attendance: general duties on local authorities – The guidance that local authorities will be required to have regard to will include minimum components of attendance support that local authorities are expected to deliver to schools in their area, regardless of school type. It will also make clear that legal intervention, including fixed penalty notices, should only be used where support has not worked, has not been engaged with or is not appropriate. This will help to ensure that schools and families across England receive a consistent standard of support, reducing unfairness between areas of the country and levelling up standards in areas with poorer attendance.

2: School attendance policies – Requiring schools to publish and publicise an attendance policy covering specified components will help set clear attendance expectations for staff, pupils and parents. Further, it will encourage schools to think strategically about their attendance processes and efforts to improve attendance. Based on the existing effective attendance practice of some schools, the guidance will provide further detail on implementing these components. It will also cover how proprietors should ensure they meet their obligations, for example on accurately completing attendance and admission registers which is crucial to enable schools and local

authorities to quickly identify pupils who require attendance support and put it in place before absence becomes deep-rooted.

1 and 2: Guidance (non-statutory and statutory) – Whilst the intention is that the legislation will not take effect until 1 September 2023, the related guidance will be issued as non-statutory guidance for schools and local authorities to use in academic year 2022/23, allowing them to be ready for the legislative requirement to have regard to statutory guidance in 2023/24.

3: Penalty notices: regulations – The circumstances in which fixed penalty notices for absence are issued are currently determined by individual local authorities. Setting national circumstances for when issuing fixed penalty notices must be considered will therefore help to improve consistency in their usage across England. The new system will retain local authority discretion in deciding whether to use legal intervention in a particular instance however, it will end blanket policies for issuing penalty notices which some local authorities currently have. Instead, local authorities should make decisions on an individual case-by-case basis, only issuing penalty notices where support is not working, being engaged with, or appropriate. The department intends to consult on the circumstances for issuing penalty notices ahead of setting them, likely through revoking and replacing the Education (Penalty Notices) (England) Regulations 2007, as amended, ahead of 1 September 2023.

4: Academies: regulations as to granting leave of absence – Regulations in respect of the granting of leaves of absence (which provide that leaves of absence can only be granted where there are exceptional circumstances) currently only apply to any school maintained by a local authority and any special school not maintained by a local authority. Extending the Secretary of State's power to make regulations so that it covers all types of schools that are academies will help improve the consistency of granting of leaves of absence in all state-funded schools. This is particularly important as we move towards all schools joining or having a plan to join a multi-academy trust by 2030.

Key questions and answers

Why are you prioritising attendance, particularly as we are recovering from the pandemic?

We recognise the impact the pandemic is continuing to have on children's education, and although recent trends in attendance levels have been largely driven by COVID-19, the government is determined to address the wider and longer-term underlying causes of children not being in school because it is the best place for their development and wellbeing. To that end, it is more important than ever that agencies work together to secure the regular attendance of pupils and minimise unnecessary absence as much as possible.

The government intends to put attendance guidance on a statutory footing and set clear roles and responsibilities for schools, trusts and governing bodies, and local authorities.

Will this penalise parents?

The drivers of absence are wide and complex and persistent absenteeism is almost always a symptom of wider problems a family is facing. The new statutory guidance for schools, trusts and governing bodies, and local authorities will help prevent absence from becoming habitual through setting clearer responsibilities. Where issues do develop, schools, trusts and governing bodies, and local authorities will improve the consistency of support offered to pupils and parents in an earlier and more targeted approach to reduce the need for legal intervention.

Where support is not successful, not engaged with or not appropriate, legal intervention remains an important part of local authorities' powers to protect every child's right to a full-time education.

Will additional funding be available to schools and local authorities?

Improving attendance is a core part of school leadership, and regular school attendance is good for children's wellbeing and development. We expect there to be a minimal burden on schools from this measure. Many schools will already have an attendance policy and so will already be doing some or all of what is covered by this measure.

Similarly, whilst some local authorities may need to transition their attendance service to reflect this measure, we expect the day-to-day running of attendance services post-transition to remain within existing budgets and a reduction in duplication across different agencies and services. We have consulted with local authorities already meeting these proposed expectations within their existing budgets, and we have undertaken a full new burdens assessment in partnership with Department for Levelling Up, Housing and Communities and the Local Government Association.

We do, however, recognise that delivering this measure is contingent on current levels of dedicated schools grant and as more schools join or make plans to join strong multi-academy trusts, funding will need to be secured on a more sustainable basis. In line with the move to support first and only using legal intervention where support does not work or is not engaged with, the Secretary of State therefore intends to remove the current restriction on local authorities' use of monies collected through penalty notices. This will mean rather than being restricted to using the money to issue more penalty notices and prosecute for the original offence, the money can be used for preventing the need for their use in the first place through better support to remove the barriers to attendance. Secondly, we intend to consult in the summer of 2022 on which local authority services should be funded through the Central Schools Services Block in future. We will further consider how local authority attendance services are funded longer term as part of that consultation.

What else is the government doing?

- The Secretary of State intends to update the underlying regulations (the Education (Pupil Registration) (England) Regulations 2006) that govern the keeping of the attendance and admission registers, granting leaves of absence and sharing information by schools with local authorities and a separate consultation will be published in due course.
- Elsewhere in the Bill, there is a requirement for local authorities to keep a register of children not in school. This will help local authorities ensure children receive a suitable education and help safeguard all children who are in scope.

Part 2: Additional detail on Delegated Powers

Guidance on local authorities' general attendance duty and other attendance functions

What does this delegated power do?

The measure requires local authorities to have regard to new attendance guidance issued by the Secretary of State. This power allows the government to issue this statutory guidance, explaining (in the level of detail needed to effectively run a frontline service) what local authorities should do to comply with their legal obligations.

How does the government intend to use this power?

The guidance will set out expectations of how existing local authority responsibilities and powers are used to improve attendance. For example, this will include the way local authority officers work with school staff on attendance, and how powers and parental responsibility measures should be utilised. The guidance will also include details of a set of minimum components of attendance support that local authorities will be expected to deliver to all schools in their area, regardless of school type. These will include expectations on providing advice, sharing best practice and meeting regularly to put support in place for pupils who need it.

Will there be any further consultation on this issue?

We have already consulted on this, with a public consultation running from 25 January 2022 to 28 February 2022. 59% of respondents strongly or somewhat agreed that a minimum set of components for local authority attendance services should be set. This included 94% of local authority employee respondents and 84% of schools employee respondents.

Key questions and answers

Why does the government need this power to require local authorities to have regard to guidance?

Requiring local authorities to have regard to the guidance, which includes effective attendance practice, is necessary to ensure that local authorities promote attendance and reduce school absences in a consistent and proportionate way, in order to tackle entrenched, long-standing patterns of absence. It will also set a consistent standard of attendance support which schools and families receive from their local authority, no matter where in the country they live.

Why is guidance required rather than including the detail in legislation?

Achieving a consistent standard of attendance support for families requires user-friendly, practical guidance. It is therefore important to clearly bring together the requirements of local authorities in one place, with adequate explanation to support them to meet their obligations. Moreover, the drivers to attendance are wide and evolve rapidly, so it is important to be able to update the guidance, in collaboration with schools and local authorities, to reflect current best practice which changes over time. This could mean that adjustments are needed more often than Parliament can be expected to legislate for by primary legislation.

Guidance on schools' attendance policies

What does this delegated power do?

The measure requires proprietors of schools to have regard to new attendance guidance issued by the Secretary of State. This power allows the government to issue this statutory guidance, setting out what school proprietors are expected to do in order to comply with their legal obligations.

How does the Government intend to use this power?

The measure requires proprietors to ensure policies to promote regular attendance are implemented and published in an attendance policy, and outlines the components an attendance policy must include. The guidance will provide further detail on the content and nature of these policies, how proprietors should develop a culture of good attendance and the way they should work with families, local authorities and other partners. This is necessary to help prevent absence and ensure that where absence persists, targeted multi-agency support is provided quickly.

The guidance will also cover what else proprietors must do to meet their existing obligations, for example, how they should accurately complete the attendance and admission registers. This is crucial to enable schools and local authorities to quickly identify pupils who require attendance support and put it in place before absence becomes deep-rooted.

Will there be any further consultation on this issue?

We have already consulted on this, with a public consultation running from 25 January 2022 to 28 February 2022. 71% of respondents strongly or somewhat agreed that all schools should be required to publish an attendance policy. This was the case across all respondent groups, including employees of schools or academy trusts (91%), local authority employees (97%) and parents (58%).

Key questions and answers

Why does the government need this power to require local authorities to have regard to guidance?

Requiring school proprietors to have regard to the guidance, which includes effective attendance practice, is necessary to set a consistent standard of attendance support across schools and tackle entrenched, long-standing patterns of absence.

Why is guidance required rather than including the detail in legislation?

Achieving a consistent standard of attendance support for families requires user-friendly, practical guidance. It is therefore important to clearly bring together the requirements of schools in one

place, with adequate explanation to support them to meet their obligations. Moreover, the drivers to attendance are wide and evolve rapidly, so it is important to be able to update the guidance, in collaboration with schools and local authorities, to reflect current best practice which changes over time. This could mean that adjustments are needed more often than Parliament can be expected to legislate for by primary legislation.

Regulations on penalty notices

What does this delegated power do?

This will amend existing regulation-making powers under the Education Act 1996 and the Education and Inspections Act 2006 to enable the Secretary of State to set the circumstances for when issuing a penalty notice must be considered, such as when a pupil has a particular number of unauthorised absences in a set period. It will also set how local authorities, neighbouring local authorities, the police and authorised officers must co-ordinate on issuing penalty notices, in order to prevent duplicate penalty notices and ensure they are not issued if the local authority is considering prosecution for the offence. The regulation-making powers will continue to be subject to negative Parliamentary procedure.

How does the government intend to use this power?

The government plans to use this power to set national thresholds for considering the issuing of fixed penalty notices. This is so that common rules apply to all schools and local authorities, meaning that pupils should be treated more equally when it comes to enforcing non-attendance.

To achieve this, the government intends to replace each local authority's existing duty to create a code of conduct under the Education (Penalty Notices) (England) Regulations 2007, as amended, with a new regulatory framework for the issuing of fixed penalty notices ahead of 1 September 2023. The new regulations would cover the same areas as existing local authority codes of conduct but replace individual local thresholds with national thresholds at which a penalty notice must be considered. Local authorities will continue to have discretion in deciding whether to use legal intervention in a particular instance.

The government will consult on the detail of the new regulations (see below). Subject to the outcome of that consultation, the government intends that the new regulations would cover:

- the circumstances in which a penalty notice must be considered:
 - a number of sessions of unauthorised absence in a fixed period
 - an incidence of unauthorised leave of absence in term time
 - any sessions of unauthorised absence immediately following a period of authorised leave in term time
 - a number of occurrences of lateness
 - an incidence of being in a public place during school hours when excluded (with reasonable exceptions)
- a requirement for those with authority to issue a penalty notice (a head teacher (or an authorised deputy or assistant head teacher) or a police constable) to check with the local authority before issuing a penalty notice to prevent the issuing of duplicate penalty notices and ensure that a penalty notice is not issued when a prosecution for the particular offence is already being contemplated or has been commenced by the local authority
- the maximum number of penalty notices that may be issued to one parent in a fixed period before considering prosecution at the next offence
- a requirement for the local authority to make arrangements for coordination between the local authority, neighbouring authorities and the police

Will there be any further consultation on this issue?

The government ran a public consultation on the measure from 25 January 2022 to 28 February 2022. Whilst a small majority (51%) of respondents either strongly or somewhat disagreed that a national framework for the use of attendance legal intervention should be set, the majority of local authority employees (87%) and school or academy trust employees (81%) strongly or somewhat agreed. The government now intends to consult in summer 2022 on the circumstances for issuing penalty notices ahead of setting them (see above).

Key questions and answers

Why are regulations required rather than including the detail in primary legislation?

The circumstances in which the Secretary of State deems consideration must be given to the issuing of penalty notices will likely be subject to frequent change over time given that the causes of poor attendance evolve and can be unpredictable, as demonstrated recently by the impact of the COVID-19 pandemic on attendance. It is not thought appropriate to require the government to propose primary legislation and take up Parliamentary time each time a change is necessary. The level of operational detail relating to the making of co-ordination arrangements is not appropriate for primary legislation as detail will need to be provided on the types of things that should be included in arrangements, the processes for making such arrangements and what happens where arrangements have not, or cannot, be agreed.

Regulations on leave of absence from some academies

What does this delegated power do?

It will allow the regulations on the granting of leaves of absence made under section 551 of the Education Act 1996 to be amended so that they also apply to all schools that are academies. The regulation-making powers will continue to be subject to negative Parliamentary procedure.

How does the government intend to use this power?

Regulations in respect of the granting of leaves of absence (which provide that leaves of absence can only be granted where there are exceptional circumstances) currently only apply to any school maintained by a local authority and any special school not maintained by a local authority. This power will allow the government to amend the regulations on the granting of leaves of absence (currently covered in The Education (Pupil Registration) (England) Regulations 2006) so that they apply to all schools that are academies.

Will there be any further consultation on this issue?

No, a public consultation on the measure ran from 25 January 2022 to 28 February 2022. We have already consulted on this, with a public consultation running from 25 January 2022 to 28 February 2022. 66% of respondents somewhat or strongly agreed that there should be consistency in the rules around granting leaves of absence across all state funded schools. This included the majority of school and multi-academy trust employees (88%), local authority employees (93), and parents (53%).

Key questions and answers

Why are regulations required rather than including the detail in legislation?

Section 551 already confers a regulation-making power on the Secretary of State in relation of granting of leave of absence and the government's view is that it continues to be appropriate for this to be set out in delegated legislation, due to the technical detail that is needed on how leave for absences should be granted in schools. The government also considers that it is helpful to those who are required to comply with the legislation for the provisions to be set out in a single place.



Department
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