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## Consultation – summary of responses

### Penalty notices for regular non-attendance at school

Date of issue: May 2013

# Penalty notices for regular non-attendance at school

<b>Audience</b>	Primary, secondary and special schools in Wales; Welsh local authorities (LAs) and regional education consortia; Welsh education welfare services; organisations with an interest in school attendance; and members of the public.
<b>Overview</b>	An online consultation on proposals to introduce fixed penalty notices for regular non-attendance at school began on 30 November 2012 and ended on 22 February 2013. This document provides a summary of the responses received.
<b>Action required</b>	None – for information only.
<b>Further information</b>	Enquiries about this document should be directed to: Pupil Wellbeing Branch Department for Education and Skills Welsh Government Cathays Park Cardiff CF10 3NQ  Tel: 029 2082 1076 e-mail: WELLBEINGshare@wales.gsi.gov.uk
<b>Additional copies</b>	This document can be accessed from the Welsh Government's website at <a href="http://www.wales.gov.uk/consultations">www.wales.gov.uk/consultations</a>

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## Background

The *Improving schools*<sup>1</sup> document sets out the Welsh Government's plans for improving the education system in Wales, which includes continuing to progress activities to improve attendance. On 30 November 2012 the Minister for Education and Skills published a consultation on the proposals for introducing a fixed penalty notice system for regular non-attendance at school. The consultation ran for a 12-week period to 22 February 2013.

Therefore, the consultation document set out Welsh Government proposals for the introduction of fixed penalty notices as an alternative option for addressing the issue of persistent unauthorised absences. The proposals sought to reduce the need for lengthy and costly prosecution cases and the use of penalty notices for less entrenched cases which would help reduce the number of prosecutions and enable LA Education Welfare Services (EWS) to target their time and interventions more effectively.

However, in considering the most suitable strategy for improving attendance, particularly for improving levels of unauthorised absences, the consultation proposed that penalty notices would, in some circumstances, provide an additional option for a suitable quick and effective solution.

Targeted intervention and effective engagement plays a vital role in resolving issues of poor school attendance. However, where this fails to have the desired effect and attendance does not improve a number of options already exist to local authorities (LAs) and schools to try to help secure regular attendance.

Section 444A of the Education Act 1996 provides the legal basis for the introduction of penalty notices which can be used as an alternative to prosecution for regular non-school attendance.

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<sup>1</sup> [learning.wales.gov.uk/news/sitenews/improvingschools/?lang=en](http://learning.wales.gov.uk/news/sitenews/improvingschools/?lang=en)

## The consultation

The consultation document asked five specific questions on the proposals for the administration and operation of a penalty notice system, and one general question providing respondents with the opportunity to provide any further comments.

The consultation<sup>2</sup> was circulated across a number of key sectors using a range of networks and included publication in the *Welsh Government DYSG eNewsletter*. The consultation was promoted via direct mailings to contacts within LA Education Welfare Service, schools, parent/carer networks, police forces and the independent sector. The consultation documents were also published on the Welsh Government's website.

### Responses received

Fifty-three written responses to the consultation were received. The responses were received from the following sectors.

Respondent	Number of responses
Las	12
Headteachers/schools	16
Parents/carers	12
Teaching unions	6
Education training providers	1
National organisations and charities	4
Police	2
<b>Total</b>	<b>53</b>

Some responses received did not answer individual questions but detailed the respondent's views; these have also been taken into consideration.

This document sets out the results of the consultation structured around the responses received to each question. The document does not aim to set out every point raised by respondents, but rather highlight the key issues and themes.

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<sup>2</sup> [www.wales.gov.uk/consultations/education/nonattendancepenalty/?status=closed&lang=en](http://www.wales.gov.uk/consultations/education/nonattendancepenalty/?status=closed&lang=en)

## Response to consultation questions

### Question 1 – Is the role of the LA in issuing penalty notices clearly defined?

	<b>Total</b>
Number of respondents	53
Agree	23 (43%)
Disagree	13 (25%)
Neither	6 (11%)
Blank	11 (21%)

Of the 53 respondents, 43 per cent agreed that the role of the LA was clearly defined and a quarter of respondents did not agree. The remaining 32 per cent of respondents neither agreed nor disagreed or did not provide a definitive answer or response.

A significant number commented that a detailed code of conduct providing more specific information would need to be set out in guidance. Some respondents commented that a national code of conduct would be more appropriate than a local code of conduct, ensuring consistency of application across Wales.

LA comments indicated that they would be keen to limit the issuing power for penalty notices to the LA only, and this view was supported in the comments provided by the teaching unions. The unions felt that issuing penalty notices would increase headteacher workloads, taking them away from other school priorities.

The respondents that made comments to this question identified a range of issues which included the following.

- 'It's just one of those things that you're brought up knowing – if your child doesn't go to school the parent pays the price and could go to prison.'
- 'It is suggested that the final circular that is produced covering Penalty Notices includes within it a Model Code of Conduct and Model Letters so that there is a similar approach to the issuing of Penalty Notices across Wales.'
- 'Clarification should be sought on the recovery of costs by the police service when acting as agents of the LA in the issue of Penalty Notices or in attending court as a result of failures to comply with the payment of such notices.'
- 'Why isn't there a National Code to avoid twenty two different codes? The code needs to be clear, tight and numerically defined. How could the LA, with diminishing resources fund the administration of this initiative? If a

National Code is not available then the Code should be set on a consortium basis.'

- 'School based intervention should play a part in the process. Parents should be allowed to respond to warnings before penalty notices are issued.'
- 'It would be best if the LA issued the notices to preserve the school/parent relationship.'

## Question 2 – Are the examples set out in the consultation for issuing a penalty notice for regular non-attendance at school suitably clear?

	<b>Total</b>
Number of respondents	53
Agree	29 (55%)
Disagree	8 (15%)
Neither	6 (11%)
Blank	10 (19%)

More than half, 55 per cent, of respondents agreed that the examples for issuing a penalty notice were suitably clear. Only 15 per cent disagreed and 30 per cent neither agreed nor disagreed or did not provide a response to this question.

All headteachers/schools and half of parents/carers who provided a response to this question agreed that the examples were suitably clear. Some provided comments that a more definitive list would be required and an agreed percentage of absenteeism would need to be set across Wales.

More than two-thirds of LAs agreed that the examples were clear but all who provided a response to this question requested a more prescriptive list and consistency in the practice of issuing penalty notices across Wales. Half of the teaching unions disagreed with the examples but for the opposite reason: the examples would not provide consistency and as such an unjust and unfair system across authorities.

Voluntary organisations agreed that the examples were clear but there were issues surrounding children living in rural locations and with truancy sweeps, and that these issues would also need to be considered.

The respondents that made comments to this question identified a range of issues which included the following.

- 'The term time holiday issue needs to be defined across all local authorities, there is currently the potential for huge differences across Wales, which is not fair or consistent.'
- 'The terms, 'regular' and 'excessive' will need to be clearly defined in the statutory instrument used to introduce the FPN [fixed penalty notices] procedures for non-attendance at school.'
- 'It would be useful to have guidance on thresholds for 'persistent lateness' so that this is consistently applied throughout all authorities.'
- 'Coming to a decision about the ability of the parent/carer in this context is extremely hard; for example there is no mention of possible circumstances



such as illness, drug and/or alcohol abuse, other family complications that could be affecting the pupil and parent.'

- 'A parent/carer could be making every effort to ensure a child attends school however if they are truanting once at school then the school has to take some responsibility for this.'
- 'Geographical location of the county and the rural locations of some of the area's of Wales are not taken into account e.g. many families can travel over an hour to see their dentist, sometimes longer, depending on where they work and where their child's school is located. It is feasible to assume that some parents and carers may need to take at least 4 hours off if the appointment is in the middle of they day.'

### **Question 3 – Do you agree that penalty notices should be an additional option for tackling regular non-attendance at school among other measures for use by LAs?**

	<b>Total</b>
Number of respondents	53
Agree	29 (55%)
Disagree	4 (7%)
Neither	8 (15%)
Blank	12 (23%)

More than half, 55 per cent, of respondents agreed that penalty notices should be an additional option for tackling regular non-attendance at school. Only 7 per cent disagreed and 38 per cent neither agreed nor disagreed or did not provide a response to this question.

Overall the majority of headteachers/schools and LAs agreed with this question. One-third of parents/carers agreed that penalty notices should be an additional option for tackling regular non-attendance at school, with only one disagreeing.

Half of teaching unions disagreed with this question as they believed that a penalty notice system would need to be subject to statutory control to ensure the powers are applied consistently. The point was also made that it would harm the relationship between schools and parents/carers. A number of unions felt that the consultation proposals were positive in setting out a much larger strategy of intervention. A number of points were raised but mainly that it is not in the best interests of children and young people living in poverty to have their household incomes cut further through penalty notices imposed for non-attendance.

The respondents that made comments to this question identified a range of issues which included the following.

- ‘The best interests of these children are not going to be served through the application of financial penalties. The solutions to education non-attendance should be firmly based in measures to improve the wellbeing of children and young people and not in a system of financial penalties and prosecutions.’
- ‘Each case needs to be looked at on an individual basis before appropriate action is taken. It is important that schools and local authorities explore all options to promote and encourage attendance.’
- ‘The process at the moment can be slow. Penalty notices would ensure that we can deal with unauthorised absence matters quickly in order to ensure that pupils attend school in order to receive education.’

- 'If a school or authority threatens issuing a penalty notice and then not doing so, quite quickly parents will come to realise the emptiness of the threat.'
- 'This system could lead to a large number of prosecutions because of the requirement to prosecute if the penalty is not paid unless there is a valid reason for withdrawing the notice. Therefore the policy could be counter productive in relation to this specific aim.'
- 'The disproportionate impact of such a financial penalty on low income families and the increased risk of non-payment related to inability to pay increase the probability that the most disadvantaged families will be at the highest risk of prosecution for non payment.'

#### Question 4 – Are the proposals for the content of the local code of conduct (paragraph 31) sufficient?

	<b>Total</b>
Number of respondents	53
Agree	19 (36%)
Disagree	17 (32%)
Neither	7 (13%)
Blank	10 (19%)

There was very little difference between respondents who agreed (36 per cent) and those that disagreed (32 per cent) that the proposals for the content of a local code of conduct were sufficient. Thirty-two per cent of respondents neither agreed nor disagreed or did not provide a response to this question.

There was no clear agreement or disagreement from parents/carers, teaching unions and LAs about the proposals for the local code of conduct. Although 69 per cent of headteachers/schools agreed with the question, the main comments were that consistency across LAs would be needed if penalty notices are to be successfully implemented.

Mainly respondents wanted more detailed guidance about the content and operation of a code of conduct and that the code should be a national code set out by the Welsh Government.

The respondents that provided comments to this question identified a range of issues which included the following.

- 'Establishing local codes will not ensure consistency, fairness and transparency. The proposals lack prescription and provide for far too much interpretation. The suggestion that the code could be tailored to local needs and resources casts grave doubt on the credibility of the scheme in terms of fair and equitable application across Wales.'
- 'The proposed Code of Conduct should be an All Wales or Consortia encompassing document, to ensure there is absolute clarity and consistency across Authorities particularly within the context of cross border working that may be necessary.'
- 'The proposals give good guidance for the code of conduct, but would welcome a draft document that could be used by all authorities which can be amended to suit local needs. This would allow for more consistency and fairness of practice for parents and more uniform delivery of the penalty notice initiative.'
- 'It would be very helpful if the Welsh Government was to produce a Model Code of Conduct as this would avoid a possible postcode lottery. The code should also include model letters and flyers and should refer to the child's

right to education under the United Nations Convention on the Rights of the Child.’

- ‘The operating code will have to be tight and consistently applied. There is insufficient detail in relation to the code. We ask that Welsh Government considers the development of a National Code or at least a consortium led level in order that families are treated consistently and fairly across Wales.’
- ‘If LAs are left to develop their own individual Local Code of Conduct this could prove easy for parents/carers to mount a legal challenge as there could be perceived unfairness – a postcode lottery to how the Penalty Notices are issued.’
- ‘There needs to be more information that is clear, especially if the guidance is for the parents; how long a gap would be between one fixed penalty and another – how long are parents given to improve the situation and what support is available?’

### Question 5 – Do you agree with the proposed level of fines (£60 increasing to £120 if not paid within 28 days)?

	<b>Total</b>
Number of respondents	53
Agree	18 (34%)
Disagree	15 (28%)
Neither	10 (19%)
Blank	10 (19%)

Just over one-third of respondents, 34 per cent, agreed with the proposed level of fines and 28 per cent disagreed, while 38 per cent neither agreed nor disagreed or did not provide a response to this question.

The majority of parents/carers who provided a response to this question did not agree with the proposed level of fines. Those that commented about their disagreement felt that the timescale for paying the fine was not long enough and that this could have an effect on low-income families.

Fifty-six per cent of headteachers/schools agreed with the proposed level of fines and slightly more LAs (42 per cent) agreed as opposed to those who didn't agree (33 per cent). The main points raised by LAs were in relation to the impact on low-income families and court proceedings. Similarly, half of teaching unions disagreed and one comment felt that £60 was overcharging and would create further problems for low-income families.

No charities or national organisations agreed with the proposed level of fines and wanted to know if there would be an option to pay fines in instalments, or whether there would be discretion if a family was making steps to improve a situation, or an ability to challenge a penalty notice.

The respondents that made comments to this question identified a range of issues which included the following.

- 'I agree with the highest level of fine, however not with the timing and subsequent increase failing payment within 28 days. This could be perceived as a form of enticement to plead or admit guilt, without consideration being made to mitigating circumstances.'
- 'The level of fine should be set for everyone i.e. it is not reduced for those parents who do not work and are in receipt of benefits.'
- 'Family circumstance should be taken into consideration. Perhaps a system of phased payments to help those on low incomes.'
- 'There is a possibility that magistrates issue a fine of less than the penalty notice as is often the experience of local authorities and therefore this may not act as a deterrent.'

- 'The financial implications of penalty notices, as set out in the consultation document, are appropriate and acceptable at present but there should be regular reviews of these figures to ensure that they remain appropriate in the future.'
- 'The costs were pitched about right given other fine systems and it is felt that the costs had to act as a deterrent.'
- 'Hope that there would be a defined period between the warning letter and Penalty Notice being issued.'

## Question 6 – Additional information provided by respondents

The following provides details of further comments made by respondents and comments where a response to the consultation document was provided but did not refer to a specific question.

- 'This introduction constitutes another tax on the squeezed middle-income workers. A review of school holiday periods is long overdue and this should at least be considered in advance of introducing fines.'
- 'I am worried that these new powers will be abused by local authorities to make easy money from, for example families who make every effort to ensure their children are regular attendees, support their child's learning and provide a positive ethos to education but have holidays in school time.'
- 'Headteachers already have far too many roles and responsibilities without the additional burden of issuing FPNs which could lead to legal challenges.'
- 'I think that this is a good idea as long as the local authority/school are sure the child's non-attendance is not down to any underlying issues at home.'
- 'Penalty notices could provide a means of improving levels of unauthorised absence. However, if such a system was to be adopted, then the circumstances in which penalty notices could be issued would need to be clearly defined to ensure consistency and fairness across the local authorities.'
- 'I think that this is a very positive step forward by WG in helping schools to challenge persistent unauthorised absence. My concern is over the involvement of the LA and the potential for protracted negotiations between Heads and ESWs over who should be issued with fixed penalty notices.'
- 'I don't think headteachers should issue the fines as this will cause parent/teacher issues in schools.'
- 'There would be concern as to protection for staff from irate parents or indeed if any error was made. Would schools be liable for prosecution or being sued from any errors?'
- 'Heads issuing fines may have a negative effect on relationships between schools and families. Would a court appearance be more beneficial to a fine? Should family allowance payments be at risk for non-attendance at school? Where will the funds go? Will schools benefit or will it go to the LA? Will it be reinvested in strategies to improve attendance?'



- ‘Accredited persons needs clarifying, level of fines, too much ambiguity surrounding persons eligible to issue the notices.’
- ‘One area that should be referred to within the document is the cross-border issue. Clarification is needed as to which authority will take action in relation to the issuing of Penalty Notices for pupils who reside in other authorities but who attend schools in this Authority's area.’
- ‘The LA are concerned that given the current economic climate with ever diminishing resources as to how we will find the additional capacity to undertake the administration of penalty notices particularly if schools, police, accredited persons can issue them. The volume may be considerable.’
- ‘We feel that in conjunction with the introduction of penalty notices that this would be an opportune time to work with Magistrates on a national basis to look at standardising levels of fines/sentencing – if there were more appropriate sentences imposed when a parent is found guilty of failing to ensure their child's attendance at school (i.e. more community sentencing) there would be less of a need for penalty notices.’
- ‘The Children Act 1989 charges the EWS to assist, advise and befriend families and young people to try and secure regular attendance. This is contrary to a penalty notice which is a punitive and non supportive approach. The EWS already has the statutory responsibility to recourse to legal action and does so appropriately.’
- ‘If children are playing truant and parents can afford to pay the fines, it will not make much of a difference to unauthorised absences in those cases; if parents are not able to afford it, they should receive support to tackle the issues e.g. Team Around the Family who can address whole family issues.’