



## BRIEFING PAPER

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# Constituency casework: schools in England

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## Summary

Members often receive enquiries from constituents about school-related matters. Many of these can be answered from readily available information on the internet or in standard publications. Where complex issues are raised it may be more appropriate to refer the constituent to specialist bodies and organisations or to a solicitor if legal advice is sought.

This note gives a very brief overview of the structure of the state-maintained school system, including an outline of the different categories of schools, as often an answer to a school-related constituency question may depend upon the type of school in question. The note provides brief background and key sources on a selection of issues that are typically raised with Members by constituents. Members who have questions on topics not covered here may contact the Social Policy Section for information.

The various guidance documents referred to in this briefing are current at the time of writing; however, some sources are updated regularly or from time to time so it is advisable to check the relevant websites, particularly [gov.uk](http://gov.uk), for up-dates.

This note relates to England only. Education is a devolved area and information on school-related issues is available on the websites of the [Welsh Assembly Government](#), [Scottish Government](#), and the [Northern Ireland Department of Education](#).

See also the accompanying Library briefings:

- [Constituency casework: schools in Scotland](#), CBP 7819
- [Constituency casework: schools in Wales](#), CBP 7904

# 1. Quick overview of the school system

The Government department responsible for schools in England is the Department for Education (DFE). While the Secretary of State for Education and the DFE have overall responsibility, local authorities (LAs)<sup>1</sup> have important general and specific duties relating to state schools as do school governing bodies and teachers. In carrying out their powers and duties under education legislation the Secretary of State and LAs must have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents, so far as that is compatible with efficient instruction and training and the avoidance of unreasonable public expenditure.<sup>2</sup>

## 1.1 The Secretary of State for Education

The Secretary of State for Education is required to promote the education of the people of England and Wales.<sup>3</sup> The function of the Secretary of State under this provision is now vested in Welsh Ministers in relation to Wales.

The Secretary of State has wide powers including powers to resolve disputes between LAs and school governors, and between LAs. She has powers of intervention to prevent LAs and school governors from acting unreasonably in the performance of their duties.<sup>4</sup> If the Secretary of State is satisfied that a LA, or school governors of a maintained school<sup>5</sup>, have failed to discharge their duties, she may give directions to enforce the performance of a duty.<sup>6</sup>

The Secretary of State also has powers relating to academies (see below).

## 1.2 Local authorities

LAs have a wide range of general and specific duties and powers in relation to education. The general duties include a duty to secure the availability of efficient primary and secondary education to meet the needs of the population of their area.<sup>7</sup> The duty has been extended to require LAs to promote high standards and ensure fair access to

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<sup>1</sup> The *Children Act 2004* brought education and children's social services together in a single department within each local education authority under a Director of Children's Services. However, for the purposes of many statutes the term local education authority (LEA) or local authority (LA) is used.

<sup>2</sup> *Education Act 1996*, section 9

<sup>3</sup> *Education Act 1996*, section 10. The duty may be traced back to section 1(1) of the *Education Act 1944*

<sup>4</sup> *Education Act 1996*, section 496

<sup>5</sup> This applies to the school governing body of a community, foundation, voluntary school, community or foundation special school or any maintained nursery school. It does not extend to academies but the Secretary of State has control over them through their funding agreement.

<sup>6</sup> *Education Act 1996*, section 497

<sup>7</sup> *Education Act 1996*, section 13(1). The 1996 Act was a consolidation measure.

educational opportunities.<sup>8</sup> They must provide schools and equipment for pupils, secure 'diversity in the provision of schools' and increase 'opportunities for parental choice'.<sup>9</sup> A full account of LAs' powers and duties is given in Butterworths, *The Law of Education*.<sup>10</sup>

### 1.3 Different categories of school

State schools are categorised by their ownership, source of funding and who is responsible for admissions, as well as by their age range.

The *School Standards and Framework Act 1998* established a new framework for the organisation of schools.<sup>11</sup> Definitions of the different categories of school are given on the [DfE Edubase](#), which can be used to check the category of a particular school. There are complicated arrangements for changing from one category to another, and guidance on the process for making changes is provided on the gov.uk [School Organisation](#) website. See section 2 of this briefing for further information. Separate arrangements apply to the conversion of an existing school to an academy - see section 3 of this briefing.

The three main categories of schools maintained by local authorities are:

- Community schools;
- Foundation schools; and
- Voluntary schools, comprising voluntary-aided and voluntary-controlled schools.

There are also community special schools and foundation special schools.

**Community schools** - these are similar to former county schools. The LA employs the school's staff, owns the school's land and buildings and is the admissions authority. Community special schools are the special school equivalent of mainstream community schools, catering wholly or mainly for children with 'statements' of special educational needs.

**Foundation schools** - the governing body is both the employer and the admissions authority. The school's land and buildings are either owned by the governing body or by a charitable foundation. The *Education and Inspections Act 2006* introduced a new type of foundation school called trust schools. There are also foundation special schools, which are the special school equivalent of the mainstream foundation school, catering wholly or mainly for children with 'statements' of special educational needs.

**Voluntary-aided schools** are similar to the former aided schools. The governing body is the employer and the admissions authority. The school's land and buildings (apart from playing fields which are normally vested in the LA) will normally be owned by a charitable foundation.

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<sup>8</sup> *Education Act 1996*, section 13A (inserted by the *Education and Inspections Act 2006*)

<sup>9</sup> *Education Act 1996*, section 14 (The duty to secure 'diversity in the provision of schools' and increase 'opportunities for parental choice' was inserted by the *Education and Inspections Act 2006*, section 14(3A).)

<sup>10</sup> A reference copy of this may be consulted in the Social Policy Section.

<sup>11</sup> *School Standards and Framework Act 1998*, section 20(1)

The governing body contributes to the capital costs of establishing the school and subsequent capital building work.

**Voluntary-controlled schools** are very similar to former controlled schools. The LA is the employer and the admissions authority. The school's land and buildings (apart from the playing fields which are normally vested in the LA) will normally be owned by a charitable foundation.

Foundation, voluntary-aided and voluntary-controlled schools may be designated by the Secretary of State as having a **religious character**. Such schools provide denominational collective worship. The *Education Act 1944* provided for religious schools to be part of the maintained sector. Schools were designated as voluntary-aided (mainly Catholic) and voluntary-controlled (mainly Church of England). In the maintained faith school sector, Roman Catholic and Church of England schools dominate, though there are now Muslim, Sikh and Jewish maintained schools, for example.

The term **grammar school** is applied to a maintained school that had selective admission arrangements on the basis of high ability for all or a substantial proportion of its intake at the beginning of the 1997-98 school year. A Library briefing, [SN07070](#), provides information on grammar schools.

There are also state-funded schools that are independent of the local authority.

State funded **City Technology Colleges** (CTCs) were established in the 1980s and 1990s as independent, all-ability, non-fee paying schools for pupils aged 11-18, operating in accordance with their funding agreements and schemes of governance. They were established in urban areas with the help of private sector sponsors. City colleges for the technology of the arts (CCTAs) were also established.

**Academies** (formerly called City Academies) developed out of Conservative Governments' CTCs. While the Coalition and Conservative Governments have encouraged all existing schools to become academies, the last Labour Government's policy concentrated on the lowest-performing schools in deprived areas.

The first academies opened in 2002, and the programme was a major part of the Labour Government's strategy to improve educational standards in secondary schools in disadvantaged communities and areas of poor educational performance.

The Coalition Government introduced the *Academies Act 2010* to enable all maintained schools to seek academy status.

There are different types of academy. Some have sponsors and were set up to replace schools with a history of failing to achieve good results compared with other schools. Others are schools that have been judged to be outstanding or are performing well and have converted to academy status without a sponsor.

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All academies are independent of the local authority and receive their funding from central government (via the Education Funding Agency), operating in accordance with their funding agreement with the Secretary of State.<sup>12</sup> No fees are paid by parents. Academies have more freedom than other state schools over their finances, curriculum, and teachers' pay and conditions.

There is a dedicated [gov.uk website on the academy conversion process](#).

Library Standard Note [SN07059](#) provides further general background information.

**Free schools** (also known as 'additional schools') are state-funded schools that are independent of the local authority. Free schools are usually new schools set up in response to parental demand. They operate under the same legal structure as academies, and have freedoms over their curriculum (provided it is broad and balanced), the school day and term time, staffing and budgets. No fees are charged for admission. The DFE assesses and approves free school applications, and the Education Funding Agency is responsible for their funding and the oversight of their financial management and governance.

There is a [gov.uk website on opening a free school](#).

FAQs on free schools and academies are addressed in the Library briefing [SN/SP/7059](#).

**Technical academies, university technical colleges (UTCs) and studio schools** are all part of the Government's plans to promote diversity and to improve vocational education. These schools also operate as academies. Further information is provided on the gov.uk website – see, for example, [Opening a UTC](#) and [Opening a Studio School](#). A Library briefing, [SN07250](#), provides further information on University Technical Colleges.

**Private independent schools** are fee-paying schools and are **not** part of the state sector. The Secretary of State is responsible for keeping a register of independent schools in England. It is an offence to operate an independent school without registration. The Secretary of State is empowered to set standards that independent schools must meet in order to be registered. Registered schools are subject to inspection.

Occasionally, Members are asked about sources of funding for parents who wish to send their children to private independent schools. Parents seeking financial support may wish to ask the individual school if it offers bursaries etc. The [Independent Schools Council](#) may be able to provide information about independent school scholarships and bursaries.

The remainder of this note deals with the state sector only.

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<sup>12</sup> Some commentators have taken issue with the description of academies as state-funded independent schools, see, for example, a letter to the *Guardian* from Peter Newsam, a former chief schools adjudicator, who argued that academies should be described as government-controlled schools: *Guardian*, 11 June 2010, [Democracy at issue in the creation of academy schools](#).

## 1.4 School governing bodies

The DFE's [Governance Handbook](#) (last updated January 2017) is for governors of maintained schools, academies and free schools. It describes the way governing bodies are formed, their powers and their duties.



## 2. School organisation: opening, changing the character of, or closing a school

Local authorities have a duty to ensure that there are sufficient school places in their area, and parents can make representations about the supply of school places. LAs must respond to such representations under section 14A of the *Education Act 1996*, which was inserted by section 3 of the *Education and Inspections Act 2006*. How LAs fulfil their statutory duties will be a matter for each local authority to decide.

Certain changes to LA maintained schools require the publication of statutory proposals which involve a process of consultation and representation before the proposals are decided. The statutory proposals process is set out in guidance issued by the Secretary of State.

The gov.uk [School Organisation website](#) gives links to the guidance documents relating to making significant changes to schools (for example, expansion), closing schools and opening new schools. The guidance sets out who may make proposals, the procedures to be followed and how proposals are decided. The DFE's [School Organisation website](#) should be checked for any updates.

### 2.1 Establishing a new school

On 1 February 2012, section 37 of the *Education Act 2011* was commenced, introducing schedule 11 of the Act. This makes changes to part 2 of the *Education and Inspections Act 2006* (EIA 2006) in relation to the process for establishing new schools. LAs are required to seek proposals to establish an academy/free school in the first instance where they identify a need for a new school. Non-statutory advice is contained in [The free school presumption - Departmental advice for local authorities and new school proposers](#).

If the academy presumption does not result in a suitable academy/free school proposal, a statutory competition can be held with the consent of the Secretary of State.<sup>13</sup>

It is also possible to publish a proposal for new schools outside of the academy presumption and competitions in a limited number of circumstances. Further details about this are given in DFE statutory guidance, [Opening and closing maintained schools](#).

### 2.2 Making significant changes to maintained schools and school closure.

Some changes to schools require statutory procedures. The requirements on this were changed by the School Organisation

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<sup>13</sup> Under section 7(1) of the EIA 2006.

Regulations 2013.<sup>14</sup> DfE statutory guidance on [School organisation: local-authority-maintained schools](#) sets out which changes require statutory procedures and which do not.

Decisions about maintained school closures are taken locally following a statutory process, which is set out in the [statutory guidance](#), Chapter 3.

There is a presumption against the closure of rural schools. However, as the DfE [Guidance for decision-makers](#) explains, this does not mean that a rural school will never close, but the case for closure should be strong and a proposal clearly in the best interests of educational provision in the area. The factors that must be considered are set out in the guidance (chapter 5).

## 2.3 Foundation and trust proposals

The statutory process that must be followed for a maintained school to change category to become a foundation school or a trust school is set out in chapter 6 of the [statutory guidance](#). However, the Department's view is that schools should become academies rather than establish a foundation.

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<sup>14</sup> The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013, and The School Organisation (Establishment and Discontinuance of Schools) Regulations 2013. These replace 2007 regulations with the same name. Proposals published after the 28 January 2014 should follow the requirements and process set out in the 2013 Regulations. Proposals published before 28 January 2014 will be subject to the process set out in the 2007 Regulations until they have been implemented unless the proposal has been withdrawn or revoked.

### 3. Becoming an academy

Each academy application will be considered by the Secretary of State/DFE, with the decision being informed by various factors which are set out in DFE guidance on becoming an academy. For details see the [gov.uk website on the academy conversion process](#).

Most conversions to academy status will be voluntary. However, in certain circumstances the Secretary of State can require an underperforming school to be partnered with sponsors to convert to an academy.

The *Academies Act 2010* allows the governing body of each maintained school in England to apply to convert the school to an academy provided it has passed a resolution to do so. The Secretary of State is empowered to make an academy order to convert a school to an academy in two circumstances: where a school has made an application or where a school is 'eligible for intervention'.

Academies must operate within the terms of their funding agreement with the Secretary of State. The [gov.uk website on the academy conversion process](#) gives links to model funding agreements and articles of association.

The Government emphasises certain 'freedoms' associated with academy status:

- freedom from local authority control
- the ability to set their own pay and conditions for staff
- freedom from following the National Curriculum
- greater control of their budget
- greater opportunities for formal collaboration with other public and private organisations
- freedom to change the length of terms and school days
- freedom to spend the money the local authority currently spends on their behalf<sup>15</sup>

Further background on academies is provided in the Library briefing on free schools and academies, [SN07059](#).

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<sup>15</sup> Gove: 'Teachers not politicians know how best to run schools, DFE Press Notice, 26 May 2010

## 4. Setting up a free school

The gov.uk website, [setting up a free school](#) explains that applications to set up a free school should be made to the DfE. All applications to set up a free school must be approved by the Secretary of State for Education. Free schools must:

- meet a genuine need in the community, backed up by evidence
- have a good financial plan
- have 'fair and transparent' [admissions criteria](#)

Details of the application process are given in guidance documents on the DfE website, [Opening a free school](#).

The [New Schools Network](#) can provide pre-application support to those hoping to open free schools. The NSN is a registered charity and receives funding from the DfE.

## 5. School admissions

All admission authorities (see below) must consider and decide on applications for school places in accordance with their published arrangements.<sup>16</sup> It is for admission authorities to formulate their own admission arrangements; however, they must do so in accordance with legislation and the statutory [School Admissions Code](#)<sup>17</sup> issued by the Secretary of State.

The type of school is relevant to the school admission process. The following relates to maintained mainstream schools and academies (not special schools).

'National Offer Day' refers to the day each year on which local authorities are required to send the offer of a school place to all parents of secondary-age pupils in their area. For secondary pupils, offers are sent out by the home local authority on 1 March in the year the child will be admitted. For primary pupils, the offer is made on or about 16 April in the year the child will be admitted.<sup>18</sup>

### 5.1 School admission authorities

If the school is a community school or voluntary-controlled school, the local authority is the admissions authority and it decides the admission arrangements. If the school is a foundation school (including a trust school) or voluntary-aided school, the school governing body is the admissions authority.

The academy trust is the admission authority for an academy. Admission arrangements for academies are approved by the Secretary of State as part of the individual academy's funding agreement. Generally speaking, funding agreements require compliance with admissions legislation and the [School Admissions Code](#). However, the Secretary of State for Education can agree different arrangements for individual academies and free schools but would only do so in limited circumstances where it would benefit local children.<sup>19</sup> Any question that relates to a particular academy may require looking at the individual funding agreement.

### 5.2 The admission process and statutory guidance

The admission process is summarised in the introductory section to the [School Admission Code](#).

Where a school is oversubscribed the school's admission authority must rank applications in order against its published oversubscription criteria. The [School Admission Code](#) states that certain children must be given

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<sup>16</sup> i.e. the overall procedure and oversubscription criteria used in deciding the allocation of school places.

<sup>17</sup> DFE, 19 December 2014

<sup>18</sup> [School Admission Code](#), Glossary

<sup>19</sup> HC Deb 28 April 2014 cc551-2W

the highest priority. The oversubscription criteria must be 'reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation' (para 1.8 of the Code). While it is for admission authorities to formulate their admission arrangements, the Code sets out certain things that they must not do. The Code does not seek to give a definitive list of acceptable oversubscription criteria since it is for the admission authority to decide which criteria would most be suitable to the school in the local circumstances. However, the Code does set out the most common acceptable criteria used. These may, for example, include siblings of pupils at the school; distance between home and school; catchment areas; feeder primary schools; and, social and medical need. Sample admission arrangements are given for illustrative purposes only in the Appendix to the Code.

The Code sets out in some detail the rules relating to selection by ability or aptitude. There is also guidance on banding as a permitted form of selection.

The Code also provides guidance on faith-based oversubscription criteria in schools with a religious character. Any new academy<sup>20</sup> and free school with a religious character will be required to admit 50 per cent of their pupils without reference to faith, where they are oversubscribed.<sup>21</sup>

The [gov.uk website](http://gov.uk) on school admissions offers general guidance on the school admissions process.

### 5.3 Infant class size rule

Section 1 of the *School Standards and Framework Act 1998* limits the size of an infant class (i.e. a class in which the majority of children will reach the age of five, six or seven during the school year) to 30 pupils per school teacher. However, there are exceptions to the general rule, and these are set out in paragraph 2.15 of the [School Admissions Code](#).

### 5.4 School admission appeals, the Local Government Ombudsman and Schools Adjudicator

Statutory guidance on the appeal process is contained in the [School Admissions Appeal Code](#). An appeal panel will consider whether the admission arrangements complied with the mandatory requirements and whether the admission arrangements were correctly and impartially applied in the case in question. The panel must also decide whether admission of additional children would prejudice the provision of efficient education or efficient use of resources. Section 4 of the Code deals with infant class size appeals. Section 5 of the Code describes possible further avenues for appeals and complaints in certain circumstances.

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<sup>20</sup> i.e. not converters from the maintained or independent sectors, or those sponsored academies with a predecessor school.

<sup>21</sup> [School Admissions Code](#), paragraphs 1.36 to 1.38, in particular see footnote 30.

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Where there is evidence that a school place has been refused because of some unfairness or mistake by the admissions authority and/or a school admissions appeal has been handled incorrectly, a complaint may be made to the Local Government Ombudsman (LGO). However, the Ombudsman is not another level of appeal and cannot question decisions if they were taken properly and fairly by the admissions authority or the appeal panel. The [LGO website](#) provides information about making complaints in relation to school admissions.

The Schools Adjudicator decides on objections to published admission arrangements of all state-funded schools and variations of determined admission arrangements for maintained schools.<sup>22</sup> Further Information is available on the [Office of the Schools Adjudicator website](#).

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<sup>22</sup> [School Admission Code, section 3 and glossary](#)

## 6. School transport

The duties and powers of local authorities in England to provide home to school transport are governed by the *Education Act 1996*, as amended. In addition to the legislation there has been case law on school transport, and the Government has issued guidance on the interpretation of the law and on good practice.

Local authorities are under a statutory duty to have regard to guidance on home to school travel and transport issued by the Secretary of State for Education. The guidance provides a summary of the statutory duties on local authorities when making home to school travel arrangements. It sets the circumstances in which local authorities must provide free transport and it also notes that local authorities have discretionary powers to make provision for children for whom they are not obliged to make provision. Revised Government [guidance on school transport](#) was published in July 2014.<sup>23</sup>

The [gov.uk free school transport website](#) provides information about which children of compulsory school age<sup>24</sup> are eligible for free school transport:

All children between 5 and 16 qualify for free school transport if they go to their nearest suitable school and live at least:

- 2 miles from the school if they're under 8
- 3 miles from the school if they're 8 or older

Find details on [free school transport](#) from your local council.

If there's no safe walking route, they must be given free transport, however far from school they live. Contact your local council if you think that the walk to school isn't safe.

### **Families on low incomes**

If you get the maximum Working Tax Credit or your children are entitled to free school meals, they'll get free school transport if they're:

- aged 8 to 11 and the school's at least 2 miles away
- aged 11 to 16 and the school's 2 to 6 miles away - as long as there aren't 3 or more suitable schools nearer to home
- aged 11 to 16 and the school's 2 to 15 miles away - if it's their nearest school preferred on the grounds of religion or belief

### **Children with special educational needs (SEN) or disabilities**

Children are entitled to free transport however far they live from the school if:

<sup>23</sup> Department for Education, [Home to school transport and travel guidance](#), July 2014

<sup>24</sup> For information about transport for post 16 year olds in education, please contact my colleague Susan Hubble, Social Policy Section.



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- they have a statement of SEN that says the local council will pay transport costs
- they can't walk because of their SEN, a disability or mobility problem

Find details on [free school transport for children with SEN](#) from your local council.

## 7. School attendance

Parents are responsible for ensuring that their children of compulsory school age receive efficient full-time education that is suitable to the child's age, ability and aptitude and to any special educational needs the child may have. This can be by regular attendance at school, alternative provision, or by 'education otherwise' (i.e. elective home education).<sup>25</sup>

Where a parent fails to secure adequate provision the local authority must, after giving appropriate warning, serve a **School Attendance Order** on a parent, requiring the parent to register the child at a named school. It is a criminal offence to fail to comply with such an order, and it is a criminal offence if the parent does not ensure that the child registered at the school attends regularly.<sup>26</sup> There are, however, statutory defences - for example, where the child is ill. And there is a particular link between the school transport provisions and school attendance as the absence of necessary home-school transport (as defined) is a defence against non-attendance.

A **penalty notice** may be issued instead of prosecution in court.

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<sup>25</sup> *Education Act 1996*, section 7

<sup>26</sup> *Education Act 1996*, as amended, sections 443 and 444

## 8. Holidays during school term-time

### Supreme Court ruling: April 2017

On 6 April 2017, the [Supreme Court unanimously ruled against Jon Platt](#), a father from the Isle of Wight who had refused to pay a £120 fine for taking his daughter on holiday to Disney World during term-time, missing seven days of lessons.

Following an initial ruling by magistrates in Mr Platt's favour, the Isle of Wight Council appealed the case to the High Court, which also ruled in favour of Mr Platt in May 2016.

The Department for Education provided support to the Isle of Wight Council in their subsequent appeal to the Supreme Court. The appeal was heard in January 2017.

Under [section 444 of the Education Act 1996](#), parents are guilty of an offence if their child "fails to attend regularly" at the school where they are registered. The Act does not define 'regularly'. Mr Platt argued that the holiday did not break this rule as his daughter had a good school attendance record for the rest of the year.

The Supreme Court ruling centred on the Court's view that the word 'regularly' means 'in accordance with the rules prescribed by the school'. Contrary definitions were rejected as inappropriate or too vague for purpose.

The Schools Minister had described the High Court judgment as "a significant threat to one of the Government's most important achievements in education over the last six years, improving school attendance."<sup>27</sup>

As a result of the judgment, the position set out in this section remains in place.

### 8.1 Overview: current rules

Parents cannot authorise absence; only schools can do this. Head teachers have discretion to grant leave during school term-time, but this is not an automatic entitlement. The law governing such leave of absences was tightened up from September 2013.

The [Education \(Pupil Registration\) \(England\) \(Amendment\) Regulations 2013](#), SI 2013 No 756, amended the [Education \(Pupil Registration\) \(England\) Regulations 2006](#), SI 2006 No. 1751, to remove references to family holiday and extended leave as well as the statutory threshold of ten school days.

Under the new regulations, **head teachers may not grant leave of absence during term-time unless there are exceptional circumstances**. The new regulations took effect from 1 September 2013. Background on the change is contained in the DFE's [Explanatory Memorandum](#) on the 2013 regulations.

The DFE guidance [School attendance: Departmental advice for maintained schools, academies, independent schools and local authorities](#) summarises the legal powers and duties that govern school attendance, and explains how they apply to local authorities, head teachers, school staff, governing bodies, pupils and parents. Section 1 of the guidance is on pupil registers and attendance codes. The frequently asked questions section states:

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<sup>27</sup> [PQ 40958, 29 June 2016](#)

### Can a parent take their child on holiday during term time?

Head teachers should only authorise leave of absence in exceptional circumstances. If a head teacher grants a leave request, it will be for the head teacher to determine the length of time that the child can be away from school. Leave is unlikely, however, to be granted for the purposes of a family holiday as a norm.

## 8.2 Fines for unauthorised absences

The imposition of penalty notices (fines) for unauthorised absence from school is not new; however, the rules on enforcing fines were also tightened up from September 2013.

Section 23 of the *Anti-Social Behaviour Act 2003*, which came into force on 27 February 2004, made provision for parents to be fined for their child's unauthorised absence from school. The section inserted a new provision in the *Education Act 1996*, section 444A.

Since September 2013, the amount of time a parent has to pay a fine was reduced to allow swifter enforcement of unpaid notices. Parents now have to pay £60 within 21 days; and this will rise to £120 if paid within 22 to 28 days of the notice being issued.<sup>28</sup> If the fine is not paid the parent can be prosecuted.

Penalty notices can only be issued by a head teacher or someone authorised by them (a deputy or assistant head authorised by the head teacher), a local authority officer or the police. Penalty notices can be issued to each parent liable for the attendance offence or offences.<sup>29</sup> *The Education (Penalty Notices) (England) Regulations 2007*, SI 2007 No. 1867 state:

Several penalty notices in respect of the same offence

13. Where there is more than one person liable for the offence, a separate notice may be issued to each person.

The DFE guidance [Parental responsibility measures for school attendance and behaviour: Statutory guidance for maintained schools, academies, local authorities and the police](#), dated January 2015, provides further information – penalty notices are covered on page 9 of the guidance.

The [gov.uk website](#) on school attendance and absence summarises the legal action that currently may be taken to enforce school attendance, including imposing fines for unauthorised absences:

#### Legal action to enforce school attendance

Local councils and schools can use various legal powers if your child is missing school without a good reason:

- Parenting Order

<sup>28</sup> [The Education \(Penalty Notices\) \(England\) \(Amendment\) Regulations 2013](#), SI 2013 No 757, see also the DFE [Explanatory Memorandum](#) on the 2013 regulations.

<sup>29</sup> DFE, [Guidance on School Attendance](#) (the copyright is dated 2012; however the DFE has confirmed that it was issued in 2013 and should be dated copyright 2013). <http://media.education.gov.uk/assets/files/pdf/a/advice%20on%20school%20attendance%20-%20final%20cleared%20v2-march22.pdf>

- Education Supervision Order
- School Attendance Order
- penalty notice
- prosecution

You can be given one or more of these orders but the council doesn't have to do this before prosecuting you.

### **Parenting Order**

This means you have to go to parenting classes. You'll also have to do what the court says to improve your child's school attendance.

### **Education Supervision Order**

If the council thinks you need support getting your child to go to school but you're not co-operating, they can apply to a court for an Education Supervision Order.

A supervisor will be appointed to help you get your child into education. The local council can do this instead of prosecuting you, or as well.

### **School Attendance Order**

You'll get a School Attendance Order if the local council thinks your child isn't getting an education. You have 15 days to provide evidence that you've registered your child with a school or that you're giving them home education.

The order will require you to send your child to a specific school. If you don't, you may be prosecuted.

### **Penalty notice**

Instead of being prosecuted, you can be given a penalty notice. The penalty is £60, rising to £120 if it isn't paid within 28 days. If you don't pay the fine, you'll be prosecuted.

### **Prosecution**

You could get a fine of up to £2,500, a community order or a jail sentence up to 3 months. The court also gives you a Parenting Order.

## **NAHT guidance**

In October 2014, the National Association of Head Teachers published [guidance](#) for its members on authorised absence from school, which is intended to provide more detailed information on what constitutes exceptional circumstances for granting absence during term time. It states that the principle for defining 'exceptional' is that the leave is "rare, significant, unavoidable and short." The guidance describes several instances that might qualify (for instance a family bereavement, or religious observances), but also states that:

3. If an event can reasonably be scheduled outside of term time then it would not be normal to authorise absence.
4. Absence during term time for holidays/vacations is therefore not considered an exceptional circumstance.

## **Government comment**

The restrictions on term-time holidays have proved controversial. A [petition](#) arguing for the introduction of an allowance for up to two

weeks term-time leave from school for holiday was submitted to Parliament in summer 2015, and at the time of writing has received over 120,000 signatures.

As a result, the petition received a Parliamentary [debate](#), which took place in Westminster Hall on 26 October 2015. The Schools Minister, Nick Gibb, stated that the Government would not be relaxing the rules:

When evidence attests to the benefits of good school attendance so clearly, parents have a duty to ensure that their children attend school regularly. No one in the Department for Education says that holidays are not enriching experiences—of course they are—but schools are in session for 190 out of 365 days a year, leaving 175 days in a year in which parents can take their children away on holiday.

[...]

In his 2012 report “Improving attendance at school”, Charlie Taylor [the Government’s expert adviser on behaviour] calculated that if children are taken away for a two-week holiday during term time every year and have an average number of days off for sickness and appointments, by the time they leave school at 16 they will have missed a year of school. It is for that reason that I cannot support the request set out in the petition.<sup>30</sup>

### 8.3 The impact of absence

In March 2016, the Department for Education published statistics on [Absence and attainment at key stages 2 and 4: 2013 to 2014](#), which included the Department’s conclusion that all absence had an adverse impact on attainment:

The analysis of the link between overall absence (and individual reasons for absence) and attainment when taking prior attainment and pupil characteristics into account showed that, for each KS2 and KS4 measure, overall absence had a statistically significant negative link to attainment – i.e. every extra day missed was associated with a lower attainment outcome. Extending this to look at individual reasons for absence did not add a greater understanding of the link between absence and attainment.<sup>31</sup>

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<sup>30</sup> [HC Deb 26 Oct 2015 c27WH](#)

<sup>31</sup> Department for Education, [Absence and attainment at key stages 2 and 4, 2013 to 2014](#), March 2016, p4

## 9. School exclusion

Schools must have a written policy setting out the standards of behaviour it expects from pupils.<sup>32</sup>

The legislation governing the exclusion of pupils from maintained schools is now contained in section 51A of the *Education Act 2002*, as amended, and associated regulations. Head teachers, school governing bodies, local authorities and appeal panels must have regard to guidance issued by the Secretary of State when carrying out their functions in relation to exclusions. Departmental guidance on exclusions has been revised on several occasions. Statutory guidance is provided in [Exclusion from maintained schools, Academies and pupil referral units in England](#).

Introductory information about exclusion and the appeal process is provided on the [gov.uk School discipline and exclusions website](#).

Under the *Education Act 2011* new arrangements for school exclusion came into force in September 2012. These apply to any pupil excluded on or after 1 September 2012 from a maintained school, academy/free school, alternative provision academy/free school or pupil referral unit in England. Independent appeal panels were replaced by independent review panels, which do not have the power to order reinstatement of a pupil. The independent review panels are able to impose financial penalties on schools that exclude pupils unreasonably.

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<sup>32</sup> Section 88 of the *Education and Inspections Act 2006*

## 10. Special educational needs (SEN)

The *Children and Families Act 2014* makes provision for a new system for identifying children and young people (aged 0-25) with special educational needs (SEN), assessing their needs and making provision for them. The changes began to be implemented in September 2014. For children and young people with SEN who are already receiving support, for instance through a SEN statement, transitional measures are in place through which they will be moved on to the new system, a process which is intended to be completed by April 2018.

The Library standard note on the reformed system, [Special Educational Needs: support in England](#), SN07020, provides information on the changes and their implementation.



# 11. Complaints about schools

The following relates to complaints about schools that are not about admissions, exclusions or special educational needs provision – as noted above, there are specific arrangements for appeals in those areas.

All school governing bodies should have a procedure to deal with complaints relating to aspects of the school and to any community facilities or services that the school provides. The procedure must be publicised.

A complaint about a local authority maintained school may be made to the Secretary of State for Education if the complainant believes that the governing body is acting 'unreasonably' or is failing to carry out its statutory duties. Complaints about academies are handled by the Education Funding Agency (EFA) on behalf of the Secretary of State.

The DfE's [Governance Handbook](#) states:

## 6.15 Complaints

330. The boards of all schools have a duty to consider complaints about the school and any community facilities or services that it provides.

331. Following recent amendments to the School Information (England) Regulations 2008, from 1 September 2016, all local-authority-maintained schools must publish their complaints procedures online.

332. Academies must make available on request a procedure for dealing with complaints. The expectation is that this should be published online. For complaints from parents of pupils, this procedure must comply with The [Education \(Independent School Standards\) Regulations 2014](#). In accordance with the Part 7 of the regulations, the standard about the manner in which complaints are handled is met if the proprietor provides that correspondence, statements and records relating to individual complaints are kept confidential except where the Secretary of State or a body conducting an inspection under section 109 of the 2008 Act requests access to them.

333. An individual can complain to the Secretary of State for Education if they believe that a local authority maintained school board is acting 'unreasonably', or is failing to carry out its statutory duties properly. EFA handle complaints about academies on behalf of the Secretary of State.

334. If requested to do so, a LA maintained school board must provide the department with any specific information relevant to the department's consideration of a complaint.

335. [Guidance](#) on making a complaint about a school gives detailed information about the role of the Secretary of State and EFA in the complaints process. [Guidance](#) to help LA maintained schools and academy trusts draw up a complaints procedure is available.

336. By law, and in certain circumstances, Ofsted is able to investigate complaints by parents about their child's school to decide whether to use its inspection powers. It has powers to

obtain information to facilitate an investigation. Boards may find it useful to familiarise themselves with Ofsted's guidance to parents.

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