

## **REGULATORY APPRAISAL**

### **EDUCATION, WALES**

#### **THE EDUCATION (PARENTING ORDERS) (WALES) REGULATIONS 2006**

##### **Background**

1. Section 8 of the Crime and Disorder Act 1998 allows local authorities to apply to magistrates' courts for Parenting Orders in respect of parents convicted under sections 443 and 444 of the Education Act 1996 of failing to comply with a school attendance order or failing to secure regular attendance at school of a registered pupil.

##### **Purpose and intended effect of the measure**

2. These Regulations prescribe additional conditions to be met (additional to those in section 20 of the Anti-social Behaviour Act 2003) before a local education authority (LEA) may apply to a magistrates' court for a Parenting Order, under section 20 (1)(b) of the Anti-Social Behaviour Act 2003. The Regulations apply to pupils excluded from schools in Wales. They provide an extra means by which LEAs can work with parents to improve pupils' behaviour. They set out:
  - that a pupil must have been excluded either for a fixed term on more than one occasion within a twelve month period or permanently;
  - that an application must be made within 6 months of the last occasion on which the pupil was excluded; and
  - that the costs associated with the requirements of a parenting order shall be borne by the LEA.

##### **Risk Assessment**

3. These Regulations need to be introduced to ensure that LEAs are clear on the circumstances in which they may apply to magistrates' courts for Parenting Orders and that they have to bear full responsibility for costs associated with Parenting Order requirements.

##### **Benefits**

4. The Regulations will allow LEAs to plan their use of Parenting Orders and reduce potential misunderstandings between governing bodies and LEAs as to who is financially responsible.

##### **Options**

###### Option 1: Do Nothing

5. Not implementing Parenting Contracts and Parenting Orders and the associated Regulations would deny schools and LEAs another vehicle by which they could work with parents on their children's behaviour and attendance and help their educational achievement.

#### Option 2: Define the Prescribed Conditions

6. Whilst the conditions in which a Parenting Order can be applied for are set out broadly in the Act, defining these more fully in Regulations ensures that both LEAs and magistrates' courts are clear on their detail.

#### Option 3: Define the Prescribed Conditions and the Relevant Period

7. As the process of exclusion is relatively complex in terms of timings on consideration by the governing body and appeals it is important that the period in which a Parenting Order can be applied for is fully defined.

#### Option 4: Define the Prescribed Conditions, the Relevant Period and the duties in bearing the costs

8. As implementing Parenting Orders will normally have cost implications it is important that the responsibility for bearing these is set out in Regulations to ensure that there is no confusion between governing bodies and LEAs, which may have the consequence of protracted dispute and damage to relationships. This option is therefore being recommended.

#### **Costs**

9. Any direct costs associated with preparing and implementing Parenting Contracts will be incurred voluntarily by either the governing body of a school or the local education authority as the provisions are not statutory. For this reason no additional funding is being provided by the Welsh Assembly Government to directly fund their implementation. However, each LEA in Wales has been provided with a grant of £15K for 2005-06 and 2006-07 to help them develop the ways in which they work with parents, which may include setting up processes for implementing Parenting Contracts and Parenting Orders. In many cases it is expected that the cost of implementing Parenting Contracts will avoid the escalation of behavioural or attendance problems and avoid further more costly interventions at a later date.
10. The range of costs could vary greatly depending on the nature of what is agreed within a Parenting Contract. Parenting Contracts may, at their simplest, contain agreements on improvements in attendance levels and punctuality, which will incur little or no direct cost. At the other extreme they may include more costly interventions such as out-of-school provision that may lawfully be provided, either on a part-time or full-time basis. There will also be indirect costs incurred by governing bodies and LEAs through the staff time required to negotiate any Parenting Contracts with parents and to prepare and conduct applications for Parenting Orders in the magistrates courts.
11. Parenting Orders on average are likely to be more cost intensive than Parenting Contracts as they are likely to include counselling or guidance programmes. The range of costs may vary greatly depending on the nature of the requirements stipulated in the Parenting Order, and on aspects such as whether the LEA provides parenting classes internally or buys these in from an external provider. The Youth Justice Board estimate that a typical cost of a Parenting Order, including application, supervision and provision of parenting classes would be around £1,000.

12. The proposed Regulations provide that the costs associated with the requirements of Parenting Orders, including the costs of providing counselling or guidance programmes, shall be borne by the local education authority. This would appear to be the most appropriate approach as the primary legislation as it stands, only allows LEAs rather than governing bodies of schools to apply for Parenting Orders. Legislation which would allow LEAs to pursue Parenting Orders and subsequently force expenditure on governing bodies is considered inappropriate and impracticable.
13. Magistrates' courts may also incur costs through processing applications for Parenting Orders, staff time required to hear cases and undergoing any training required to implement the new provisions. The Welsh Assembly Government is working with the Department for Constitutional Affairs to ensure that magistrates courts are provided with information and guidance on the changes.
14. It is intended to produce guidance for LEAs and schools covering all elements of Parenting Orders, which will incur the associated costs of preparation and distribution. It is anticipated that these costs will be met out of the existing Pupil Support Division publicity budget for 2006-07

## **Consultation**

### With Stakeholders

15. The intention to introduce Parenting Contracts for parents of excluded and poor attending pupils and Parenting Orders for parents of excluded pupils was consulted on as part of the wider consultation on revisions to National Assembly for Wales Guidance Circular 3/99 'Inclusion and Pupil Support' published on 4 May 2005. The closing date for the consultation was 29 July 2005 and a list of consultees is attached at Annex A.
16. The consultation responses on this issue were largely favourable and justified continuing with the implementation and the content of the regulations. Around two thirds of those who expressed a preference said that they were likely to use the new provisions and there were no comments that the provision should not be introduced. 29 of 34 respondents who commented felt that the definition of serious misbehaviour was suitable and 27 out of 31 thought the time limits within which a local education authority must make an application for a parenting order were appropriate.
17. The views of all respondents have been taken into account in preparing the final draft of the Regulations.

### With Subject Committee

18. These Regulations were notified to the Education and Lifelong Learning (ELL) Committee, via the list of forthcoming legislation, on 22 September 2004 ( ELL(2)11-04 (p6), item no: ELL-11-05) and have remained on the list ever since. They were identified for detailed scrutiny at the Committee on 8 February 2006 following oral notification of the The Anti-social Behaviour Act 2003 (Commencement No.5) (Wales) Order 2006.

19. The Committee scrutinised these Regulations and Commencement Order at its meeting on 2 March 2006 (ELL(2)04-06 (p.2)). The Committee requested clarification regarding the necessity for a Delegations Motion. Legal advice has since confirmed that whilst a delegation under section 62 of the Government of Wales Act 1998 of the legislative functions of sections 21, 22, 93 and 94 of the Anti-social Behaviour Act 2003 is not required for the Commencement Order and Regulations to be made in this case, a delegation is required to allow the Welsh Assembly Government to exercise the Assembly functions in section 19(9) and 21(5) of the 2003 Act of issuing guidance.
20. Delegation of functions conferred or imposed under the Anti-social Behaviour Act 2003 is necessary so that all new Assembly functions created in subordinate legislation made under the Act stand delegated to the Welsh Assembly Government. In accordance with general practice a delegation motion will be laid before the Assembly to delegate all functions in and under Part 3 of the 2003 Act "save those functions that cannot be delegated".
21. The Minister for Education and Lifelong Learning wrote to the Chair of the Committee on 13 March 2006 to confirm this.
22. Several other points of clarification were raised, to which the Minister responded. The Regulations were agreed as clarified. A draft transcript of the meeting is attached at Annex B.
23. In addition, the consultation document was made available to Members of the Committee in May 2005 and no comments were received.

#### **Enforcement, monitoring and Review**

22. Enforcement of the provisions is not relevant in this case as there are no statutory compulsion requirements. However, the Welsh Assembly Government will be looking to review the extent to which LEAs and governing bodies adopt the new provisions.

#### **Summary**

23. The new provisions within sections 19-22 and 24 of the Anti-Social Behaviour Act 2003 (Parenting Contracts and Parenting Orders) will give an extra power for schools and LEAs to work with parents to enhance the educational attainment of their pupils by improving their behaviour and attendance at school.

## **Inclusion and Pupil Support – Consultation list**

### **In each of the 22 LEAs:**

Director of Education  
Pupil Support Managers

Education Welfare Service Managers

### **Other organisations** (from main consultation list only)

Teachers Unions  
Diocesan Directors  
Children's Commissioner for Wales  
ACCAC  
Estyn  
Governors Wales  
General Teaching Council for Wales  
Welsh Joint Education Committee  
Welsh Language Board  
Welsh Local Government Association  
Funky Dragon  
SNAP Cymru  
NSPCC Cymru  
Welsh Association of Foundation/Aided schools  
Voluntary Sector Assembly Liaison  
National Association of Governors and Managers  
PTA Wales  
Education Otherwise

### **Schools**

A ten percent sample of independent and maintained primary, secondary and special schools, and pupil referral units in Wales:

Aberbargoed Primary School  
Abercarn Primary School  
Abercynon Infants School  
Alltwen Primary School  
Archdeacon John Lewis  
Arddleen C.P. School  
Argoed Primary School  
Ashgrove School  
Betws Primary School  
Bodfari C.P. School  
Brecon Road Infants School  
Broad Haven C.P. School  
Bryn Bach County Primary School  
Bryn Deri Primary School  
Brynglas Primary School  
Bryngwyn Comprehensive School  
Bryngwyn Primary  
Brynteg County School  
Bryntirion Comprehensive School  
Caehopkin C.P. School  
Caereinion High School  
Caerleon (Lodge Hill) Junior School  
Cefn Mawr Primary School  
Clase Primary School  
Clydach Infant School  
Coed Eva Junior Mixed School  
Coed Glas Primary School

Coedffranc Junior School  
Coedylan Primary School  
Comin Junior Mixed School  
Connah's Quay High School  
Conwy Secondary PRU Unit  
Cowbridge Comprehensive School  
Craigfelen Primary School  
Croesyceiliog School  
Cross Hands C.P. School  
Cross Inn C.P. School  
Cwmafan Infant School  
Cwmbach C.I.W. Primary School  
Cwrt Henry  
Deiniol C.P. School  
Derwendeg Primary School  
Duffryn High School  
Dunvant Infant School  
Dunvant Junior School  
Eveswell Primary School  
Ffaldau Primary School  
Fitzalan High School  
George Street Primary School  
Gladstone Primary School  
Glan Afan Comprehensive School  
Glanffrwd Infant School  
Grange Town Primary  
Grangetown Nursery School  
Greenhill Special School  
Gurnos Nursery School  
Gwynedd C.P. School  
Hafren C.P. Junior School  
Hengoed Primary School  
Heol-Y-Celyn Primary School  
Hillside Primary School  
Hirwaun Primary School  
Holy Name V.R.C. School  
Hook C.P. School  
Howey C.I.W. School  
John Summers High School  
Johnstown C.P. School  
Kemys Fawr Infants School  
Lewis School Pengam  
Llandinam C.P. School  
Llandrindod Wells C.P. School  
Llanfoist C.P. School  
Llangattock C.I.W. School  
Llangunnor C.P. School  
Llangwm VCP School  
Llanhari Primary School  
Llanrhidian Primary School  
Llanwnnen C.P. School  
Maes-Y-Coed Primary School  
Marlborough Infant School  
Meadowbank Special School  
Millbank Primary School  
Morrison Comprehensive School  
Nantymoel Primary School  
Neath Abbey Infants  
Neyland Junior C.P. School  
Ninian Park Primary School

Old Road C.P. Primary School  
Pennant C.P. School  
Pentyrch Primary School  
Penyreglyn Primary School  
Pil Primary School  
Plasmarl Primary School  
Pontlloftyn Primary School  
Porthcawl Primary School  
Queen's Hill PRU  
Rhosddu Primary School  
Rhydlewis C.P. School  
Rhydyfelin Nursery School  
Sennybridge C.P. School  
Shirenewton Junior & Infant School  
St Alban's R.C. Primary School  
St Asaph V.P. Infants  
St Cenydd Comprehensive School  
St David's C.I.W. Primary  
St David's R.C. Junior & Infants  
St Elfod Junior School  
St Fagans C.I.W. Primary School  
St Giles Junior Controlled School  
St John Baptist C.I.W. High School  
St Josephs C.P. School  
St Mary's R.C. (A) School  
St Mary's Aided Primary School  
St Mary's Junior & SEN Unit  
St Mary's R.C. Primary  
St Monica's C.I.W. Primary School  
St Peter's C.V. Junior & Infants  
Sully Primary School  
Tenby Junior Community School  
Tonyrefail Comprehensive School  
Trefnanney C.P. School  
Trelawnyd V.A.  
Tremains Junior School  
Twynrobyn Community School  
Ty Afan Primary Centre  
Ty Isaf Infants & Nursery School  
Upper Rhymney Primary School  
Wepre C.P. School  
Windsor Clive Infant School  
Y.G. Abergynolwyn  
Y.G. Llwyngwriol  
Y.G. Nantgaredig  
Y.G. Sirol Hayscastle  
Y.G. Swyddffynnon  
YGGD Gwauncaegurwen  
YGGD Trebannws  
Ynysmaerdy Primary School  
Ynyswen Infant School  
Ysgol Bod Alaw  
Ysgol Bro Carmel  
Ysgol Caer Drewyn  
Ysgol Capel Cynfab  
Ysgol Capelulo  
Ysgol Carreg Hirfaen  
Ysgol Clydau  
Ysgol Croes Atti  
Ysgol Delyn

Ysgol Dewi Sant  
Ysgol Dyffryn Ardudwy  
Ysgol Eifionydd  
Ysgol Emrys Ap Iwan  
Ysgol G.G. Aberdar  
Ysgol Glanrafon  
Ysgol Gyfun Gwyr  
Ysgol Gyfun Gymraeg Plasmawr  
Ysgol Gyfun Penweddig  
Ysgol Gymraeg Llantrisant  
Ysgol Gymuned Bryngwran  
Ysgol Gynradd Beddgelert  
Ysgol Gynradd Chwilog  
Ysgol Gynradd Dolgellau  
Ysgol Gynradd Gymraeg Lonlas  
Ysgol Gynradd Llanfachraeth  
Ysgol Gynradd Maesincla  
Ysgol Gynradd Parcyrhun  
Ysgol Gynradd Pum Heol  
Ysgol Gynradd Rhiwlas  
Ysgol Gynradd Santes Gwenfaen  
Ysgol Gynradd Trefeurig  
Ysgol Hiraddug  
Ysgol Ieuan Gwynedd  
Ysgol Llanbedrog  
Ysgol Llanfarian  
Ysgol Mair R.C. School  
Ysgol Pen Barras  
Ysgol Penmachno  
Ysgol Porth y Felin  
Ysgol Rhiwabon  
Ysgol Rhydygors  
Ysgol Sant Baruc  
Ysgol Sant Dunawd  
Ysgol Santes Tudful  
Ysgol Teilo Sant  
Ysgol Uwchradd Glan Clwyd  
Ysgol Waunfawr  
Ysgol Y Bannau  
Ysgol Y Ddol  
Ysgol Y Parc Infants  
Ysgol y Tywyn



**Is-ddeddfwriaeth: Rheoliadau Addysg (Gorchmynion Rhianta) (Cymru) 2006 a Gorchmyn Deddf Ymddygiad Gwrthgymdeithasol (Cychwyn Rhif 5) (Cymru) 2005  
Secondary Legislation: the Education (Parenting Orders) (Wales) Regulations 2006 and the Anti-social Behaviour Act (Commencement No. 5) (Wales) Order 2005**

[198] **Peter Black:** We will be provided with a copy of the Order and regulations, together with the explanatory memorandum and the regulatory appraisal, where appropriate. There is not a regulatory appraisal with the commencement Order.

[199] **Janet Ryder:** Having read through the memoranda in particular, there are several questions—

[200] **Peter Black:** Do you want to present it first, Minister, rather than the committee going straight into questions?

[201] **Jane Davidson:** It might be worth introducing it and saying that Anna Thomas from the pupil support division is here to answer specific questions. These regulations provide school governing bodies and local education authorities with new powers to work with the parents of pupils who have been excluded on disciplinary grounds or whose attendance at school is poor. We know that parenting is a challenging job and parenting contracts and orders will help parents to access the support that they sometimes need to enable them to fulfil their responsibilities. Parenting contracts are two-sided, formal, written agreements between a parent and either the local authority or the governing body of a school. Contracts are voluntary and in a contract the parent agrees to comply with specific requirements that are tailored to the individual situation and the local authority or governing body agrees to provide specified support that is tailored to parents' needs. So, it is a voluntary process.

[202] The parenting order is a civil order imposed by a magistrates' court and it requires a parent to attend a parenting programme for up to three months and to comply with other requirements specified in the order for up to 12 months. Studies of hard-to-reach, high-need parents, who often fail to engage with services, show that many who are persuaded to attend parenting support services report being glad that they have attended and perceive significant gains in parenting confidence and competence as a result of their having attended.

[203] In Wales, we are placing the emphasis on the use of parenting contracts, as they are voluntary and can be used by schools or the local education authorities to engage parents effectively at an early stage to help prevent the worsening of behaviour or attendance and, therefore, reduce the need to consider applications for parenting orders. However, where schools or local authorities identify parenting as a factor in a child's poor behaviour or attendance, and where the parents are failing to engage, we would expect them to consider using parenting orders on a case-by-case basis as appropriate, along with other available measures to help to combat poor attendance and behaviour in schools.

[204] The regulations have been subject to consultation with a very wide range of bodies: local education authorities, schools, teacher unions and voluntary organisations. All the comments made have been taken into account in drawing up the regulations before you now. New guidance will be issued to schools, local education authorities and other practitioners to support the implementation of the regulations.

[205] It is worth adding that LEAs already have experience of parenting orders in the case of non-attendance at school, because they came through under section 8 of the Crime and 02/03/2006

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Disorder Act 1998, with parents being convicted of children's non-attendance at school, or under section 443 and 444 of the Education Act 1996. Breaches of parenting orders, for example, will reflect guidance that operates in exactly the same way in England.

[206] **Janet Ryder:** On the breach of an order, the orders are not enforceable and I would like to know what mechanisms will be in place for tracking the number of orders that are made, any correlation that might emerge in, say, a year's time between where orders are made and authorities, as well as how well they are adhered to. I would also like to know what mechanisms are in place for tracking the added expense on authorities, as it is very clear in these papers that the estimated cost to an authority is about £1,000 per order. How are we

going to monitor this, how do you intend to report back to the committee, have you set a date a year from the date of implementation to report back? It would be at that point that I would be interested to see the costs that have accrued and the success.

[207] **Jane Davidson:** I will start and then I will ask Anna to carry on regarding the monitoring. It is important to say that the parenting order is the remedy through the magistrates' court. If a parent fails to comply with the requirements of a parenting order, the responsible officer should make contact to find out the reason for the failure. If there is no acceptable reason for non-compliance, a written warning should be given. In the event of one or more unacceptable failures to comply within a period of three months, the responsible officer should then meet the parent to review the order, and, following that, should consider whether the failure to comply should form the basis of a prosecution. If a prosecution is brought, there will be a hearing to determine whether the parent is guilty of failing without reasonable excuse to comply with the requirement of a parenting order. If convicted, the parent will be liable to a fine, which cannot exceed £1,000. That is the mechanism for dealing with the breaches. In terms of our role, Anna, perhaps you could help us regarding what monitoring arrangements we will be putting in place.

[208] **Ms Thomas:** The responsible officer is usually a member of the education and welfare service of the local education authority or, in some cases, the behaviour support manager, depending on the nature of the parenting order. We meet termly with all of the senior managers of the education and welfare service and the behaviour support service. We can easily ask for a termly update on the number of parenting orders pursued in each local authority area. No date has been set for when we will report back, but I believe that these are due to come into force on 6 May, and we are quite happy to arrange to provide a report in a year's time to provide that information.

[209] **Peter Black:** Paragraph 3 of the explanatory memorandum to the parenting orders says that responsibility for issues relating to the content of these regulations are due to be delegated to the First Minister on 2 May 2006. Can you explain why we need a delegation Order?

[210] **Jane Davidson:** Perhaps we could ask our solicitor here.

[211] **Ms Thomas:** I can clarify that point and get back to you. I believe that it is something to do with the Anti-social Behaviour Act 2003.

[212] **Ms Jackson:** Delegations to the First Minister are normally in respect of functions under a piece of primary legislation. The making of subordinate legislation cannot be delegated in any instance. Therefore, there is no delegation required to make the commencement Order or the parenting orders regulations. From what I have seen of the Antisocial Behaviour Act 2003, there are no functions in the relevant sections that can be delegated, because they are either legislation-making functions or functions given to local authorities and governing bodies. I am a little confused about this. I tried to make some inquiries before the meeting, but I failed to get a response in time, but I am sure that, between 02/03/2006

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us, we can check it out.

[213] **Peter Black:** I think that you would need to clarify that before it goes before the Business Committee and the Legislation Committee.

[214] I have another question, which relates to costs. I am not convinced by the paragraph in the regulatory appraisal on the costs. I understand that you are trying to use parenting contracts rather than parenting orders, but the regulatory appraisal relates largely to the orders, which, as has been pointed out, cost around £1,000 apiece. You are effectively saying that the cost of any such orders will be picked up by the schools from within their own budgets.

[215] **Ms Thomas:** The cost of parenting orders is picked up by the local education authority. A school governing body can ask a local education authority to apply to the magistrates' court for a parenting order on its behalf, but the costs would be picked up by the local education authority.

[216] **Peter Black:** You are not sure how many parenting orders are likely to be used, are

you?

[217] **Ms Thomas:** No, not at this stage. Evidence from England, where the orders have been in operation for the past 18 months or two years, indicates that quite a small number of parenting orders are used. Local authorities and schools tend to go for parenting contracts as early intervention.

4.20 p.m.

[218] **Peter Black:** So, are you asking the LEAs to pick that up within their budgets without any additional resources?

[219] **Ms Thomas:** We have provided an additional £15,000 for each local authority for this financial year and the next to put the processes in place to set up support for parenting orders and the relevant support that will be needed for parenting programmes. Many local authorities already have existing contracts in place with voluntary organisations to provide the parenting programme elements, because, as the Minister said, parenting orders have been available to local authorities and have been used by them since 1998.

[220] **Peter Black:** Was that £15,000 a direct grant, or was it included in the revenue support grant?

[221] **Ms Thomas:** It was a direct grant specifically for working with parents.

[222] **Peter Black:** Okay. Finally, why are we so far behind England in implementing this legislation?

[223] **Ms Thomas:** A lot of it is about the fact that we are looking to see how it worked in England, and whether it was relevant and would work within the approach that we have to tackling behaviour and attendance issues in Wales.

[224] **Jane Davidson:** May I just add something? We look at issues around attendance in terms of wanting people to work with each other before we move towards taking any punitive measures, and it is exactly the same with this. I wanted to make my introduction to emphasise the difference between the parenting orders and the parenting contracts, which people see as extremely supportive and are in the context of our parenting action plan, which we published in December, as you know.

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[225] **Peter Black:** Having sat on the Business Committee for a bit, I know that these delays are often not conscious ones on the behalf of Ministers, and I am glad to see that it was a conscious one in this case. Are there any more questions? I see that there are none. We will produce a report for the Business Committee in due course on this when it comes before it.