

School Attendance Orders (SAOs)

School Attendance Orders are issued to parents of children who are outside the school system when the local authority has reason to believe that children are not receiving an education. The School Attendance Order will name the school the child must attend, and will direct the parents to register the child at the named school. The relevant legislation comes from section 437 -444 of the Education Act 1996. Government Guidelines on Home Education state: 'A school attendance order should be served after all reasonable steps have been taken to try to resolve the situation.'

School Attendance orders are often threatened but rarely issued, according to statistics collected by EO. However, they are often threatened – probably because families are likely to feel intimidated by a legally worded letter mentioning 'school' or 'court' and will therefore be more likely to comply with the authority's requests. The process could culminate in a court appearance, where the parent will have the opportunity to provide evidence that they are providing an education. In other words, it will NOT be the local authority which ultimately decides whether a child is being home educated.

Common requests from the local authority are

- to have more information about the home education being provided
- to see the child
- to see samples of work
- for the home education to be more structured or to include particular academic subjects.

SAOs are not issued by Home education Advisors/Inspectors and schools, but by the Education Welfare Department in conjunction with the legal department. For this reason, the home education officer may say that the family will be 'referred to Education Welfare'.

First Steps. The home education officer at the local authority should give some indication to parents that there are problems with the home education, either in terms of the education itself or in terms of lack of information about the home education being provided.

If the family decides not to challenge the authority, there should be sufficient time for the family to address the authority's concerns, either by changing the delivery of home education or by providing additional information about the home education programme. The Education Otherwise Information Sheet 'Education Philosophies' sets out ways in which the family may choose to provide additional information.

If the family chooses to challenge the authority's view, there may be a period of dialogue between the family and the authority, the outcome of which might be conclusive, i.e. one side backs down. On the other hand, the process may well be inconclusive, in that the local authority might give short term conditional approval with the proviso that someone will return to assess the home education in a few months.

Statutory Notice Periods. As can be seen from the Government Guidance on School Attendance cited below, there are periods of statutory notice which must be given to the family. The family is first served with a notice of intention to issue an SAO. After receiving the notice of intent, the family can either provide information about home education, or can challenge the authority's view that education is not taking place. If the authority pronounces itself dissatisfied with the information provided by the family, it may - on rare occasions - proceed to issue a School Attendance Order. At any point in the proceedings, the family can cause the SAO to be halted by giving evidence or otherwise demonstrating to the local authority that the child is receiving education at home.

Court. Once the School Attendance Order has been issued, if the parents do not register the child at the named school, the authority may choose to prosecute. The case then goes to the Magistrates court. At this point the parents are no longer dealing with the authority, but with the court. This gives the family a fresh chance to show that education is being provided, irrespective of any disagreements which may have arisen with the local authority. The parent may be convicted or acquitted. Section 443 states: 'a person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.' If the parent is acquitted, 'the court may direct that the school attendance order shall cease to be in force.'

Government Guidelines say that 'at any stage following the issue of the Order, parents may present evidence to the local authority that they are now providing an appropriate education and apply to have the Order revoked.'

Government Guidance on School Attendance.

The Teachernet website has a useful reference page on School Attendance here <http://www.teachernet.gov.uk/wholeschool/behaviour/attendance/laduties/>

Government Guidelines on School Attendance Orders may be found at: <http://tinyurl.com/2dgdrbw> It is highly recommended that home educators read this short booklet in order fully to understand the legal position.

Extracts from the Government Guidelines on Attendance

'If it is not possible to persuade the parent to make suitable arrangements for their child's education, then the parent should be served with a notice stating that they are failing in their duty to provide their child with education. The notice must inform them that they must satisfy the authority that they are providing an education at school or otherwise within a specified time period (but not less than 15 days beginning with the day the notice was served).

'Upon expiry of the notice the authority should write to the parent referring them to the authority's intention to serve an SAO. The authority should inform the parent of schools that are suitable for the child to attend and should also inform the parent that they have the right to educate their child at home if they choose to. The parent should be told that they have 15 days in which to take action or the authority will proceed to make an SAO.

'If the 15 days expire without the parent registering their child at school then the authority should issue an SAO. The Order should specify which school the child should attend and

inform the parent that they have 15 days to comply. If a parent on whom an SAO has been served fails to comply with the requirements of the Order they are guilty of an offence under Section 443 of the Education Act 1996, unless they prove that the child is receiving a suitable education otherwise than at school. The case should be taken to the magistrates court where a summons can be obtained. The parent will be named on the summons and will have to appear before the Court or enter a guilty plea in writing.'

And on the offence of failing to ensure regular school attendance:

'There are two offences relating to parental responsibility for ensuring regular attendance at school or alternative provision: if a registered pupil is absent without authorisation from school or alternative provision then the parent is guilty of an offence under section 444(1) of the Education Act 1996. If the parent knows that his child is failing to attend regularly at the school and fails to cause him to do so he is guilty of an offence under section 444 (1A) of the Education Act 1996. No offence is committed if the parent proves any of the following statutory grounds: [including] If the child is receiving an education otherwise than by regular attendance at school (for example, by home education.)'

Government Guidelines on Home Education

The following paragraphs about School Attendance Orders are taken directly from the Government's Elective Home Education Guidelines for England.

'Prior to serving a notice under section 437(1), local authorities are encouraged to address the situation informally. The most obvious course of action if the local authority has information that makes it appear that parents are not providing a suitable education, would be to ask parents for further information about the education they are providing. Such a request is not the same as a notice under section 437(1), and is not necessarily a precursor for formal procedures. Parents are under no duty to respond to such enquiries, but it would be sensible for them to do so.'

2.9 Section 437(3) refers to the serving of school attendance orders:

'If – (a) a parent on whom a notice has been served under subsection (1) fails to satisfy the local education authority, within the period specified in the notice, that the child is receiving suitable education, and (b) in the opinion of the authority it is expedient that the child should attend school, the authority shall serve on the parent an order (referred to in this Act as a "school attendance order"), in such form as may be prescribed, requiring him to cause the child to become a registered pupil at a school named in the order.'

2.10: 'A school attendance order should be served after all reasonable steps have been taken to try to resolve the situation. At any stage following the issue of the Order, parents may present evidence to the local authority that they are now providing an appropriate education and apply to have the Order revoked. If the local authority refuses to revoke the Order, parents can choose to refer the matter to the Secretary of State. If the local authority prosecutes the parents for not complying with the Order, then it will be for a court to decide whether or not the education being provided is suitable and efficient. The court can revoke the Order if it is satisfied that the parent is fulfilling his or her duty.'

2.11: 'Where the authority imposes a time limit, every effort should be made to make sure that both the parents and the named senior officer with responsibility for elective home education in the local authority are available throughout this period. In particular the Department recommends that the time limit does not expire during or near to school holidays when there may be no appropriate point of contact for parents within the local authority.'

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