Explanatory Memorandum to the Anti-Social Behaviour Act 2003 (Amendment to the Education Act 1996) (Wales) Order 2013

This Explanatory Memorandum has been prepared by the Department for Education and Skills and is laid before the National Assembly for Wales in conjunction with the above Order and in accordance with Standing Order 27.5.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Anti-Social Behaviour Act 2003 (Amendment to the Education Act 1996) (Wales) Order 2013

Leighton Andrews

Minister for Education and Skills

10 June 2013
1. Description

Sections 444A and 444B of the 1996 Act provide a power for a police constable, a local authority officer or the head teacher (or a member of staff authorised by the head teacher) to issue, in accordance with regulations, penalty notices in respect of truancy from school (and from other places where education is provided).

2. Matters of special interest to the Constitutional and Legislative Affairs Committee
There are no matters of special interest.

3. Legislative background
Section 444A and 444B of the Education Act 1996 allows for penalty notices in respect of failure to secure regular attendance at school of a registered pupil and for regulations to be made regarding their operation. These sections currently apply only in England.

Sections 23(9) and (10) of the Anti-social Behaviour Act 2003 (“the 2003 Act”) allows the Welsh Ministers to extend to Wales the application of sections 444A and 444B of the Education Act 1996 by making an Order that removes the words ‘in England’ from those sections. The practical effect of this will be that those sections will apply to both England and Wales.

Table 1, paragraph 35 of Schedule 11 to the Government of Wales Act 2006 (“GoWA 2006”) requires that an Order made under Section 23(9) of the 2003 Act be laid before, and approved by a resolution of the National Assembly for Wales.

4. Purpose & intended effect of the legislation
The purpose of the Order is that sections 444A and 444B of the Education Act 1996 will apply to Wales, as well as to England.

Section 23(9) of the Anti-Social Behaviour Act 2003 provides the Welsh Ministers with the power by Order to amend sections 444A and 444B of the Education Act 1996 (“the 1996 Act”) by removing the words “in England” in each place where they occur. Removing these words means that those provisions will apply to both England and Wales.
The intended effect of the legislation is to provide a power, for a police constable, a local authority officer or the head teacher (or a member of staff authorised by the head teacher) to, in accordance with regulations made under section 444B, issue penalty notices in respect of truancy from school (and from other places where education is provided).

The Order also makes a minor amendment to section 569 of the Education Act 1996 to make it clear that the functions, under sections 444A and 444B of the 1996 Act, are functions of the Welsh Ministers.

5. Consultation

Between 30 November and 22 February 2013, the Welsh Government consulted on the broader proposals to introduce fixed penalty notices for regular non-attendance at school. Fifty three responses were received to the consultation and the summary of responses was published online on 20 May 2013. In summarising the responses officials did not find any convincing argument that would hinder the introduction of penalty notices, nor identify any issues which could not be addressed through Welsh Government guidance which will be published to accompany the regulations that will be made under sections 444A and 444B of the Education Act 1996.

6. Regulatory Impact Assessment (RIA)

There are no new or additional cost implications of this legislation, therefore no Regulatory Impact Assessment has been completed.

Post implementation review
Any regulations that are made under the new powers will be subject to internal review after twelve months and bi-annually thereafter to determine whether they remains valid.