

Pupil absence for holidays during school term time

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26/04/17

Following a recent Supreme Court decision, this article aims to explain the legal position in Wales regarding pupil absence from school during term time due to family holidays. The ruling of the case applies to Wales as well as England but does not change the position here.

The Supreme Court's ruling

Last month (6 April 2017), [the Supreme Court ruled](#) that a head teacher, rather than a child's parent, must decide what constitutes 'regular attendance' at school. This confirms that a **parent needs the permission of the head teacher** to remove their child from school for a family holiday.

Section 444 of the [Education Act 1996](#)

makes it an offence for a parent to fail to ensure their child (if of compulsory school age) regularly attends school. The case taken to the Supreme Court by Isle of Wight Council, which was supported by the Department of Education in England, is something of a 'test case' and clarifies the legal position in England and Wales.



The ruling confirms that 'regular attendance' means in accordance with the rules prescribed by the school. However, it does not change the position in Wales where regulations already set out what is permitted.

Summary of the position in Wales

Under section 444 of the 1996 Act, a parent's failure to secure their child's regular attendance at school it is not an offence if the reason for the child's absence is 'leave'. In Wales, as in England, only a person authorised by the governing body or proprietor of the school (usually the head teacher) may grant leave of absence. However, the



[Education \(Pupil Registration\) \(Wales\) Regulations 2010](#) give head teachers in Wales discretion to authorise up to ten school days leave in any school year, upon application by parents, for the purpose of a holiday. This is explained in the [Welsh Government's guidance on Inclusion and Pupil Support](#) (PDF 2.57MB) (see paras 5.2.27–5.2.31).

However, in recent years there has been an increased emphasis from the Welsh Government that 'parents should not expect [...] that schools will agree to family holidays during term time'. **Any leave from school is conditional on the head teacher's consent** and therefore parents have no legal right to take their child out of school. If they do so without the head teacher's permission, this can lead to penalty notices being issued to parents in Wales under the [Education Penalty Notices\) \(Wales\) Regulations 2013](#).

[Statistics on pupil absenteeism in Wales](#) are available on the Welsh Government website.

Clarification in January 2016

In January 2016, the then Minister for Education and Skills, Huw Lewis, [wrote to all local authorities and head teachers](#) (PDF 258KB) to clarify that head teachers do have discretion to approve up to ten days holiday in term time per school year. The Minister felt the need to clarify this as he was 'concerned that some local authority or consortia guidance appear[ed] to indicate that head teachers should not exercise their discretion and should instead refuse all requests for term time absence as a matter of course regardless of the particular circumstances leading to such a request'.

The Minister outlined his view that head teachers should exercise their discretion when dealing with term time absences and that their policies 'should not preclude **individual cases being considered on their merits**'. However, he also asserted that headteachers 'will know the pupil and family best and this is why [they] are best placed to make that decision [regarding the course of action to take in the event of a term time absence]'.

Difference to position in England

The situation is different to England where **head teachers in England do not have any discretion** to allow pupils to take holidays in term time, **other than in exceptional**



circumstances. All such leave is likely to be recorded as unauthorised and the parents will be liable for prosecution in the event they are not prepared to pay a fixed penalty. In the case before the Supreme Court this meant that the only way the parent could avoid prosecution for non-payment was to argue that a five day absence did not mean that his daughter was not a regular attender at school.

A [House of Commons Library blog article](#) explains the position in England and how 'in 2013, the Coalition Government **tightened the existing rules** to remove references to family holidays and extended leave, as well as removing a statutory threshold of ten school days'.

Welsh Government guidance

The Welsh Government's [Inclusion and Pupil Support Guidance](#) (PDF 2.57MB) (2016) provides some advice on how head teachers should use their discretion on whether to authorise pupil absence:

A headteacher should consider individual circumstances on a **case-by-case basis**. A number of aspects will be taken into account, including the time of year, length and purpose of the holiday, impact on continuity of learning, timing of exams or tests, circumstances of the family and the wishes of parents/carers, as well as the **overall attendance and attainment of the pupil**.
[Research Service's emphasis]

The guidance also says:

If a headteacher decides not to grant a parent's/carer's request for a holiday in term time, but the parent/carer takes the child on holiday regardless, this is classed as an 'unauthorised' absence. (...)

If they fail to secure their child's regular attendance at school, ie **if there is regular 'unauthorised' absence, parents face a penalty notice** under the [Education Penalty Notices\) \(Wales\) Regulations 2013](#). This amounts to a **£60 fine** if paid within 28 days, rising to £120 thereafter if paid within 42 days from the notice being issued.

Other Welsh Government guidance, the [All Wales Attendance Framework](#) (PDF 536KB) (2011), indicates that schools should grant leave sparingly:



Parents should not expect, or be led to expect, that schools will agree to family holidays during term time. Schools may need to remind parents of this from time to time (see Section 2). School staff should consider each request individually – **“blanket approval” policies are not acceptable.** (...)

Leave of **absence for more than two weeks must be seen as exceptional.** Schools should carefully explore with parents why such leave of absence is necessary. [Research Service’s emphasis]

The Welsh Government has also provided some [answers to Frequently Asked Questions \(FAQs\)](#) on its website.

Article by [Michael Dauncey](#), National Assembly for Wales Research Service.

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