

**SBC Attendance Service  
School Attendance Order  
January 2023  
Guidance Document**

# Guidance on School Attendance Orders – Slough Borough Council

(Sections 437 – 443 Education Act 1996)

## Contents

1	Meaning of ‘suitable education’ .....	2
2	Meaning of ‘parent’ .....	2
3	Parent’s duty to secure education .....	2
4	LA Duties .....	3
5	When a SAO be considered .....	3
	Stage 1 – Notice to Parents (SAO1) .....	3
	Stage 2 – Notice of Imminent Order (SAO2) .....	4
	Selection of schools by the LA .....	4
	Parental Choice .....	5
	EHCP .....	5
	Stage 3 – The School Attendance Order (see Letter SAO 3 attached below) .....	5
8	Revocation of an SAO .....	6
9	Further information .....	6
	Appendix A - Standard Letters .....	7
	School Attendance Order– SAO 1 – Notice to Parent .....	7
	School Attendance Order – SAO 2 – Notice of Imminent Order .....	8
	School Attendance Order – SAO 3 .....	9
	School Consultation Letter .....	11
	Appendix B School Attendance Order – Checklist for commencing the SAO procedure .....	12
	Appendix C – Useful Resources .....	13

## **Introduction**

Local authorities (LAs) have duties to ensure that children of statutory school age are receiving a 'suitable education'. If it appears to a LA that a child is not receiving such education, it can issue a school attendance order ('SAO') compelling the parent to cause the child to be registered at school. Parents should note that failure to comply with a SAO can result in prosecution and a fine of up to £1,000 if the matter is brought before the Magistrates' Court.

More information about the meaning of a 'suitable education'; relevant duties; when a SAO may be considered; the process of issuing an SAO and further information is set out below.

*[Note: Where it appears to LAs that a child is not receiving a suitable education, the LA should consider whether child protection investigation is necessary or whether the family would benefit from a school attendance order. It is important to liaise with other departments to safeguard vulnerable children.]*

### **1 Meaning of 'suitable education'**

- 1.1 Section 436A(3) Education Act 1996 defines a 'suitable education' as efficient full time education suitable to the child's age, ability and aptitude and to any special educational needs the child may have.
- 1.2 Efficient in this context means it achieves what it sets out to achieve, so an education which teaches the child skills needed for future life in the community would be efficient. Full-time is not defined by law and there is no need to replicate school timetables. It can be difficult to assess whether an education meets the full time requirement but where the education is clearly not occupying a significant proportion of the child's life (disregarding holiday periods), it will probably not meet the requirement.
- 1.3 As a result, when considering suitability, LAs should bear in mind that just because a child is not receiving a conventional education in terms of following a school timetable or studying from approved certain text books, or sitting exams, the education could still be suitable.

### **2 Meaning of 'parent'**

- 2.1 The meaning of 'parent' in education law is wider than many suppose and so is not limited to biological parents. But includes any individual who is not a parent of the child but who has parental responsibility for the child, or who has care of the child (s576 Education Act 1996).

### **3 Parent's duty to secure education**

- 3.1 Section 7 Education Act 1996 places the following duty on parents:

The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable to (a) his age, ability and aptitude and (b) to any special educational needs he may have, either by regular attendance at school or otherwise.

- 3.2 The definition of suitable education is set out at para 1 above.

## 4 LA Duties

- 4.1 Section 436A Education Act 1996 requires all LAs to make arrangements to enable them to establish, so far as it is possible to do so, the identities of children in their area who are of compulsory school age but are not registered pupils at a school and are not receiving a suitable education.
- 4.2 Section 437 of the Education Act 1996, confers a duty on LAs to consider issuing a SAO where it appears to it that a child of compulsory school age is not receiving a suitable education, either by regular attendance at school or otherwise and it appears to the LA that it is expedient that the child should attend school. This duty does not apply in relation to children who are registered at a school who are not attending regularly.
- *[Note: Before serving a SAO every effort should be made to engage the parents and help them to get their child/ren onto a school roll. This may include making sure the parents are aware of the location of schools in the area, the availability of places and explaining the admissions, or admission appeal arrangements and waiting list arrangements where necessary.]* Where preferred schools can not be met, parents will be offered the next nearest school with a place. If parents decline offered, subject to availability of school place another alternative school will be offered

## 5 When a SAO will be considered

- 5.1 Parents who have refused all offers of a school place and have not provided evidence indicating a suitable education is being provided. This applies to all children of statutory school age including children with special educational needs, including children who have been given a named school which the parents will not send them to. *[Note: this also includes those with EHCPs. However, it excludes children who are awaiting tribunal decision].*
- 5.2 Parents who have removed their child from school and it appears are not providing a suitable education.
- 5.3 Parents who have moved into the Slough area and have not secured a school place and who have not engaged with the LA in providing information regarding the education of their child.
- 5.4 Prior to advancing to the stage of issuing notices (see para 5 below), all efforts should be made to engage the parents.

*[Note: if the LA receives no information on the education being provided for a child, the LA can assume that the child is NOT receiving a suitable education.]*

## 6 Notices to Parents

### Stage 1 – Notice to Parents (SAO1)

- 6.1 Where it appears to an LA that a child is not receiving a suitable education, and it is not possible to persuade the parents to make suitable arrangements for their child's education, the parents should be served with a Notice. This Notice will inform them that they must satisfy the LA that they are providing a suitable education within a specified time period (that period shall not be less than 15 days beginning with the day on which the Notice is served).

## **Stage 2 – Notice of Imminent Order (SAO2)**

- 6.2 Upon expiry of the above Stage 1 Notice, where satisfactory evidence has not been received, the LA should write to the parent referring them to the Notice and informing them of the LA's intention to serve an SAO. This Notice should specify the school the LA intends to name in the Order and if they think fit, one or more other schools which they regard as suitable alternatives. The Notice should also provide information regarding parents' choice of schools to be named (see 'Parental Choice') below.
- 6.3 If the parent selects one of the schools within a period of 15 days beginning with the day on which the Notice is served, the school selected by them shall be named in the Order.

### **Selection of schools by the LA**

- 6.4 The LA must specify a school (or schools) in the Stage 2 Notice. Prior to specifying the school, the LA must consult the Governing Body and, if the school is maintained by another authority, that other authority. This consultation needs to take into account the Special Educational Needs Code of Practice and the Code of Practice on School Admissions. Slough Council will give school governors and headteachers early warning of their intention to name the school in advance of the formal notification.
- 6.5 Having decided which school(s) to specify, the LA must serve notice in writing on the Governing Body and Headteacher of that school and, if another LA maintains the school, that other authority.
- 6.6 Where a school's admissions arrangements are not determined by the local authority, the local authority cannot generally specify that school if by admitting the child, the school would exceed its capacity. The exception is where is no maintained school in the area which would not be over capacity by the admission of the child, or there is a school which would not be over capacity but is not a reasonable distance from the child's home, in which case the school can be specified.
- 6.7 Academies sign model funding agreement with the DfE. Those agreements can vary but it is usual for the academy to agree to comply with school admissions and attendance law. If they do not, the LA can write to the DfE asking it to direct the academy to admit the child.
- 6.8 The notice cannot specify a school if admission to the school would prejudice the provision of efficient education or efficient use of resources, for example if it would cause class numbers to exceed a statutory limit.
- 6.9 A local authority shall not specify in a Notice a school from which the child is permanently excluded. *[Note: The existence of a SAO does not prohibit the child from being excluded from that school.]*
- 6.10 Upon receipt of notice that a school will be specified, the Governing Body of that school or the LA (if the school is maintained by another LA) can apply to the Secretary of State for a direction, serving that application upon the LA who served the notice. In that scenario, the school or schools to be specified in the notice shall be determined by the Secretary of State.

## **Parental Choice**

6.11 In addition to the schools named in the Stage 2 Notice, parents have two other options as outlined below – in all cases the parents must provide proof of an offer of a place and must request the school be named within 15 days of receipt of the Stage 2 notice:

- (i) choose a school in another authority. If the child is offered a place at that school, it will be named in the SAO;
- (ii) notify the LA that they are choosing a fee paying school but do not invite the LA to pay under s517 Education Act 1996 then so long as the child is offered a place and the school is suitable to his age, ability and aptitude and to any special educational needs the child may have, that school will be named in the SAO;

## **EHCP**

6.12 Where a child has an EHC Plan, the following applies:

- (i) where the name of a school is specified in the EHCP, that school shall be named in the SAO.
- (ii) where the EHCP names a type of school only, the authority shall amend the EHC plan so that it names the school named in the SAO.

## **Stage 3 – The School Attendance Order (see Letter SAO 3 attached below)**

6.13 Upon expiry of the above Stage 2 Notice, the authority shall serve the SAO. This has the effect of requiring the parent to cause the child to become registered at a school named in the order.

## **7 Breach of an SAO**

7.1 If the person on whom the SAO has been served fails to comply with the requirements of the SAO they can be prosecuted under s443 of the Education Act 1996, unless they prove that the child is receiving a suitable education otherwise than at school. The SAO will contain a warning to this effect.

*[Note: Before instigating proceedings for this offence, the LA is required to give due consideration as to whether an Education Supervision Order (“ESO”) should be sought in addition or instead of an SAO. The officer should consider this issue and record their reason for proceeding to prosecute before proceedings are instituted. If proceedings are issued for a breach, the Court can direct the LA to consider a ESO. When wider child welfare concerns are involved it might be more appropriate to go to the family proceedings court in the first place.]*

7.1 The offence of failure to comply with a SAO is committed in the area of where the parents live and should therefore be prosecuted by the local authority for that area and heard in the magistrates’ court for that area.

7.2 In cases of continued failure to comply a further prosecution is not possible; another SAO has to be made before a second prosecution can be brought.

- 7.3 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.

## **8. Revocation of an SAO**

- 8.1 Unless it is revoked, an SAO continues to be in force for as long as the child is of compulsory school age.
- 8.2 If at any time the parent applies to the local authority requesting that the Order be revoked on the grounds that arrangements have been made for the child to receive suitable education otherwise than at school, the authority shall comply with the request unless they are of the opinion that no satisfactory arrangements have been made for the education of the child otherwise than at school.
- 8.3 A SAO can be revoked by the Court if a prosecution for breach is brought but the parent is found to be providing a suitable education.

## **9 Further information**

- 9.1 Where the LA is concerned about whether a child is receive a suitable education, it does have the option to refer the case to Children’s Social Care for consideration of Care proceedings, or an application can be made in the family proceedings court for an Education Supervision Order (s36 of the Children’s Act 1989).
- 9.2 Careful consideration will always be given before the process of issuing a SAO is undertaken. Parents are encouraged (but not obliged) to provide information regarding the education.

## Appendix A - Standard Letters

### School Attendance – Sao 1 - Notice To Parent

Education Act 1996, Section 437 (1)

- **From:**
- **To:**
- **Address:**
- **Name of Child:**
- **D.O.B.:**

Following our letter to you on *[insert date of last attempt to obtain satisfactory evidence of education]* we are writing to you because the Local Authority is of the view that your child, *[name of the child]* is not receiving suitable education, either by regular attendance at school or otherwise.

Unless you can satisfy us within 15 days beginning with the date of this letter is issued that your child is receiving suitable education, this Authority will consider whether it will be fit and proper and to *[child's name]* 's advantage, that s/he should attend school.

If this satisfaction is not received, we shall write to you again.

Signature:

Name:

Title:

Date:



**School Attendance Order – Sao 2 - Notice Of Imminent Order  
Education Act 1996, Section 438**

- **From:**
- **To:**
- **Address:**
- **Name of Child:**
- **D.O.B.:**

**School Attendance Notice**

The Local Authority wrote to you on [*date of SAO 1*] asking you to satisfy us within 15 days that your child is receiving suitable education. More than 15 days have now gone by and you have not provided satisfactory evidence that you are providing a suitable education.

Therefore, the Local Authority has reason to believe that you are not complying with your duty to provide your child with suitable full-time education either by regular attendance at school or otherwise. You have also failed to satisfy the Local Authority of the same.

Therefore, on behalf of the Local Authority, we consider that it is expedient that your child should attend school and as such we serve this formal notice on you under s437(1) of the Education Act 1996 to inform you of the Local Authority's intention to serve on you a **School Attendance Order** pursuant to section 473(3) of the Education Act 1996, which will require you to cause your child to come to be a registered pupil at the school specified in the Order.

In the **School Attendance Order**, we intend to name [*name of School*].

we consider that [*name of other schools*] would be a suitable alternative(s).

If you select that or one of the alternative school(s) within 15 days beginning with the day you receive this letter, the school you select will be named in the Order.

You do have two other options in the next 15 days from the date of service of this letter:

- I. If you apply for a place your child at a school in another local authority's area and inform me, then if your child is offered a place there, that school will be named in the Order.
- II. If you apply for a place for your child at a fee-paying school, and notify us of your application *without asking us to pay the fees*, and your child is offered a place; and the school is suitable to his /her age, ability and aptitude and to any special educational needs s/he may have, that school will be named in the Order.

Please now choose a school for your child and tell me which school you choose.

Should you have any queries about this notice then please do not hesitate to contact me, my details are as set out below.

- Name:
- Title:
- LA:
- Date:

**School Attendance Order – Sao 3  
Education Act 1996, Section 437 (3)**

- **From:**
- **To:**
- **Address:**
- **Name of Child:**
- **D.O.B.:**

As you [*insert parent's name*] of [*insert address*] being the parent(s) of a child of compulsory school age in the area of the Authority, have failed to satisfy the Authority in accordance with the requirements of the notice served on you under Section 437(1) of the Education Act 1996 by the Authority on [*insert date*] that your child is receiving suitable education, either by regular attendance at school or otherwise.

**And** as, in the opinion of the Authority [*child*] should attend school,

**You** are required to cause [*child*] . to become a registered pupil at the following school [*specify school*],

being the school (specified by the Authority) (selected by you) (determined by a direction of the Secretary of State for Education) (as the school named in this Order) or (specified in the EHC Plan for the child).

*(Delete where applicable).*

**Failure** to comply with the requirements of this Order is an offence unless you can prove that your child [*child's name*] is receiving suitable education otherwise than at school.

**Failure** will result in this case being taken to the Magistrates' Court where a summons can be obtained. The parent will be named on the Summons and have to appear before the court or enter a guilty plea in writing.

Name:

Title:

LA:

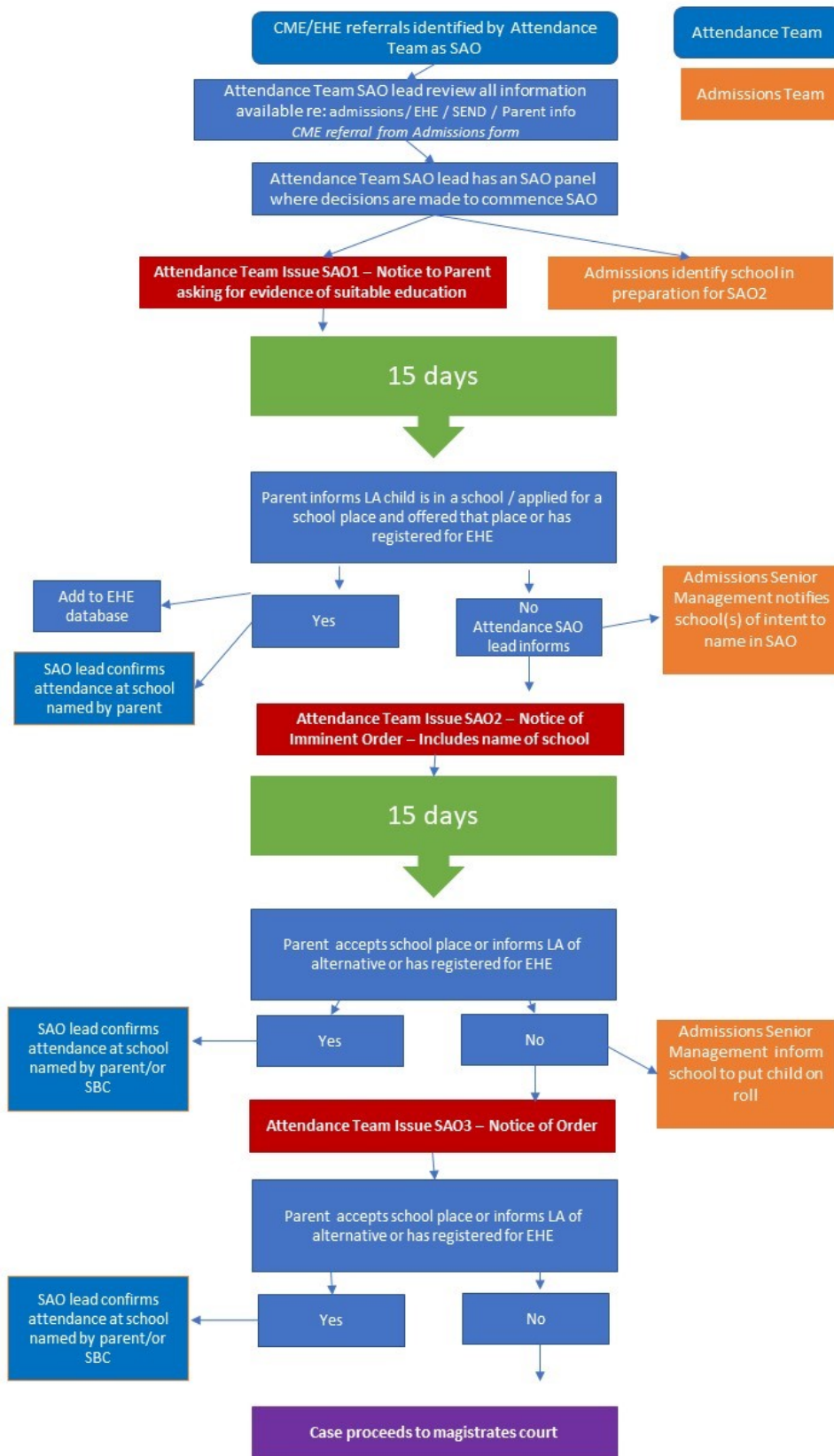
Date:

*If a person on whom an SAO has been served fails to comply with the requirements of the Order they are guilty of an offence under s443 of the Education Act 1996, unless they prove that the child is receiving a suitable education otherwise than at school.*

**School Consultation Letter**

[This needs to be completed in the way that you would normally consult with a school, for example on a moved into county]

## Appendix B - Flow chart – SAO Process



- [See also accessible version of SAO Process Flow Chart](#)

## Appendix C - School Attendance Order – Checklist For Commencing The Sao Procedure

*[Note: this is a guide only, each case should be taken on its own facts and if in doubt, the matter should be discussed with managers.]*

Checklist for issuing of Stage 1 Notice to Parents	Tick as relevant
Slough resident	
Not on school roll and not receiving a suitable education	
Written record of place offers made	
Written record of parents' refusal of place offers	
Proof of explanation of admission processes and rules and the implications of non acceptance of place or registering for EHE having been given.	
Admissions service confirmation of having complied with Admissions Code and local policy.	
Attendance team - written record of approaches to parents and proof of refusals via telecom and email	

## Appendix D– Useful Resources

- [Elective home education: Departmental guidance for local authorities, April 2019 \(GOV.UK\)](#)
- [Children missing education: Statutory guidance for local authorities, September 2016 \(GOV.UK\)](#)