

SCHEDULE

Regulation 7

Constitution and Procedure of Appeal Panels

Time limits and notices waiving right to appeal

1.—(1) No appeal under regulation 7(1) against a decision not to reinstate a pupil may be made after the fifteenth school day after the day on which the relevant person is given notice in writing under regulation 6(6)(b).

(2) For the purpose of calculating the period referred to in sub-paragraph (1), the notice shall be taken to have been given—

- (a) where first class post is used, on the second working day after the date of posting, or
- (b) where the notice is delivered, on the date of delivery,

unless in either case the contrary is shown.

(3) Any notice in writing given by the relevant person to the local education authority which states that he does not intend to appeal against a decision not to reinstate the pupil shall be final.

Constitution of appeal panels

2.—(1) An appeal pursuant to arrangements made by a local education authority under regulation 7(1) shall be to an appeal panel constituted in accordance with this paragraph.

(2) An appeal panel shall consist of three or five members appointed by the authority from—

- (a) persons who are eligible to be lay members;
- (b) persons who are, or have been within the previous five years, head teachers of maintained schools or teachers in charge of pupil referral units; and
- (c) persons who are or have been governors of maintained schools or members of a management committee, provided they have served as a governor or member of a management committee for at least twelve consecutive months within the last six years and have not been teachers, head teachers or teachers in charge of a pupil referral unit during the last five years.

(3) Of the members of an appeal panel—

- (a) where it consists of three members one must be appointed from each of the three categories in sub-paragraph (2);
- (b) where it consists of five members—
 - (i) one must be a person who is eligible to be a lay member and is appointed as such;
 - (ii) two must be persons falling within sub-paragraph (2)(b); and
 - (iii) two must be persons falling within sub-paragraph (2)(c).

(4) For the purposes of this paragraph and paragraph 6 a person is eligible to be a lay member if that person is without personal experience in the management of any school or the provision of education in any school (disregarding any such experience as a governor, as a member of a management committee or in any other voluntary capacity).

(5) Sufficient persons may be appointed by the authority under this paragraph to enable two or more appeal panels to sit at the same time.

(6) No person shall be a member of an appeal panel if he is disqualified by virtue of sub-paragraph (7).

(7) The following persons are disqualified for membership of an appeal panel—

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- (a) any member of the authority or of the management committee of the pupil referral unit in question;
- (b) the teacher in charge of the pupil referral unit in question or any person who has held that position within the previous five years;
- (c) any person employed by the authority other than a person employed as a head teacher or a teacher in charge of a pupil referral unit;
- (d) any person who has, or at any time has had, any connection with—
 - (i) the authority or the pupil referral unit, or with any person within paragraph (c), or
 - (ii) the pupil in question or the incident leading to his exclusion, of a kind which might reasonably be taken to raise doubts about his ability to act impartially;
- (e) any person who does not satisfy the training requirements of paragraph 4.

(8) A person employed by the authority as a head teacher or a teacher in charge of a pupil referral unit shall not be taken, by reason only of that employment, to have such a connection with the authority as is mentioned in sub-paragraph (7)(d).

(9) Where, at any time after an appeal panel consisting of five members has begun to consider an appeal, any of the members—

- (a) dies, or
- (b) becomes unable through illness to continue as a member,

the panel may continue with their consideration and determination of the appeal so long as the number of the remaining members is not less than three and the requirements of sub-paragraph (3) (a) are satisfied.

(10) An appeal panel shall be chaired by the person appointed as a lay member.

Clerks to appeal panels

3.—(1) A local education authority may appoint a clerk to assist the members of an appeal panel.

(2) No person shall serve as a clerk to an appeal panel unless he satisfies the training requirements of paragraph 4.

Training requirements for clerks and members

4.—(1) A person satisfies the training requirements referred to in paragraph 2(7)(e) or 3(2) if—

- (a) subject to sub-paragraph (2), the person has served, as the case may be, as a member of or clerk to an appeal panel since 6th September 2005; or
- (b) the person has, within the last two years, been given sufficient training and received such information and instruction as is suitable and sufficient to know—
 - (i) the requirements of these Regulations, or, where appropriate, the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002;
 - (ii) the role of the chair of an appeal panel;
 - (iii) the role of the clerk to an appeal panel;
 - (iv) the duties of the appeal panel under the Race Relations Act 1976(1);
 - (v) the duties of the appeal panel under the Disability Discrimination Act 1995(2);

(1) 1976 c. 74.
(2) 1995 c. 50.

- (vi) the duties the appeal panel may have under Part 4 of the Equality Act 2006⁽³⁾;
- (vii) the effect of section 6 of the Human Rights Act 1998⁽⁴⁾ (acts of public authorities unlawful if not compatible with certain human rights) and the need to act compatibly with human rights protected by that Act; and
- (viii) the need for the appeal panel to observe procedural fairness and the rules of natural justice.

(2) Sub-paragraph (1)(a) shall cease to have effect from 1st January 2009.

(3) Any local education authority who are required to make arrangements under regulation 7(1) shall provide the training, information and instruction referred to in sub-paragraph (1)(b) as necessary and without cost to the persons trained.

(4) In sub-paragraph (1)(a) the reference to an appeal panel includes an appeal panel constituted in accordance with the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002.

Allowances for members

5.—(1) Section 173(4) of the Local Government Act 1972⁽⁵⁾ (which provides for the payment of financial loss allowance) shall apply to any member of an appeal panel constituted in accordance with paragraph 2; and in that section as it so applies the reference to an approved duty shall be read as a reference to attendance at a meeting of an appeal panel.

(2) Section 174(1) of that Act shall apply in relation to an appeal panel constituted in accordance with paragraph 2 and in that section as it so applies the reference to payments at rates determined by the body in question shall be read as a reference to payments at rates determined by the local education authority.

Duty to advertise for lay members

6.—(1) Any local education authority who are required to make arrangements under regulation 7(1) shall, at the intervals specified in sub-paragraph (2), secure the publication of an advertisement for lay members of appeal panels constituted by that authority.

(2) An advertisement shall be published before the end of the three year period starting when the last advertisement was issued under the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002⁽⁶⁾ and thereafter in every three year period following the date upon which an advertisement (or the final advertisement of a series of advertisements) was last published in accordance with this paragraph.

(3) The advertisement referred to in sub-paragraph (1) shall—

- (a) identify by name, class, or general description the schools served by the appeal panels to which the advertisement relates;
- (b) be placed in at least one local newspaper circulating in the area in which the schools identified in the advertisement are situated;
- (c) allow a period of at least 21 days from the date of publication of the advertisement for replies.

(4) Before appointing any lay member the local education authority shall consider any persons eligible to be so appointed who have applied to the authority in response to the most recent

(3) 2006 c. 3.

(4) 1998 c. 42.

(5) 1972 c. 70.

(6) S.I. 2002/3178 to which there are amendments not relevant to these Regulations.

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advertisement or series of advertisements placed in accordance with this paragraph indicating that they wish to be considered for such appointment.

Indemnity

7. Any local education authority required to make arrangements under regulation 7(1) shall indemnify the members of any appeal panel required to be constituted for the purposes of those arrangements against any reasonable legal costs and expenses reasonably incurred by those members in connection with any decision or action taken by them in good faith in pursuance of their functions as members of that panel.

Procedure on an appeal

8. In the following provisions of this Schedule “appeal” means an appeal under regulation 7(1) and “the closing date for appeals” means the fifteenth school day after the day on which the appeal is lodged.

9. An appeal shall be by notice in writing setting out the grounds on which it is made.

10.—(1) The appeal panel shall meet to consider an appeal on such date as the local education authority may determine.

(2) The date so determined must not be later than the closing date for appeals.

11.—(1) For the purpose of fixing the time (in accordance with paragraph 10) at which the hearing of an appeal is to take place, the local education authority shall take reasonable steps to ascertain any times falling on or before the closing date for appeals when—

- (a) the relevant person, or
- (b) any other person who wishes, and would be entitled, to appear and make oral representations in accordance with paragraph 12,

would be unable to attend.

(2) Where in accordance with sub-paragraph (1) the authority have ascertained any such times in the case of any such person, they shall, when fixing the time at which the hearing is to take place, take those times into account with a view to ensuring, so far as it is reasonably practicable to do so, that that person is able to appear and make such representations at the hearing.

12.—(1) The appeal panel shall give each of the following persons an opportunity of making written representations and appearing and making oral representations, and shall allow that person to be represented, or (except in the case of the management committee and local education authority) to be accompanied by a friend—

- (a) the relevant person,
- (b) the teacher in charge,
- (c) the management committee, and
- (d) the local education authority.

(2) The appeal panel may from time to time adjourn the hearing.

13. Appeals shall be heard in private except when the local education authority direct otherwise; but if the panel so direct, one member of the local education authority may attend, as an observer, any hearing of an appeal by an appeal panel.

14. Two or more appeals may be combined and dealt with in the same proceedings if the appeal panel consider that it is expedient to do so because the issues raised by the appeals are the same or connected.

15. In the event of a disagreement between the members of an appeal panel, the appeal under consideration shall be decided by a simple majority of the votes cast and, in the case of an equality of votes, the chairman of the panel shall have a second or casting vote.

16. The decision of an appeal panel and the grounds on which it is made shall—

- (a) be communicated by the panel in writing to the relevant person, the local education authority, the management committee and the teacher in charge, and
- (b) be so communicated by the end of the second working day after the conclusion of the hearing of the appeal.

17.—(1) Subject to paragraphs 9 to 16, all matters relating to the procedure on appeals shall be determined by the local education authority.

(2) The local education authority shall, in setting any time limits in connection with appeals, have regard to the desirability of securing that appeals are disposed of without delay.

18. In paragraphs 1(2) and 16 “working day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the [Banking and Financial Dealings Act 1971\(7\)](#).

(7) 1971 c. 80.