

EDUCATION ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Discipline

Section 4: Exclusion of pupils from schools in England: review

80. *Subsection (2)* of section 4 inserts a new section 51A into EA 2002, which applies to schools in England only, providing for the exclusion of pupils from maintained schools and pupil referral units (PRUs). *Subsection (3)* of this section makes amendments to section 52 (exclusion of pupils) of the EA 2002 so that it will only apply now to schools in Wales. The following therefore applies only to England; the current appeal procedure will continue to exist in relation to Wales.
81. Subsections (1) and (2) of new section 51A keep the power in section 52 for head teachers of maintained schools and teachers in charge of PRUs in England to exclude any pupil from school on disciplinary grounds for a fixed period or permanently.
82. Subsection (3) of new section 51A requires the Secretary of State to make regulations regarding the procedure relating to the exclusion of pupils and subsections (3) and (5) to (12) set out what these regulations must cover and what they may also cover. These regulation-making powers broadly mirror those in the current section 52, though the powers of the new review panel are significantly different from those of the current appeal panel.
83. Subsection (4) sets out the powers of a review panel to make a decision when a prescribed person (who it is intended will be, for example, a parent or a pupil if aged over 18) applies to it for a review of a decision, made by a responsible body, not to reinstate a pupil. The responsible body in the case of a maintained school will be its governing body; in the case of a PRU, it will be a person prescribed in regulations. A review panel may uphold the decision of the responsible body or recommend that the responsible body reconsiders the case. If it considers that the decision of the responsible body was flawed when viewed in the light of the principles of judicial review it can direct the responsible body to reconsider the matter, but the review panel does not have the power to order reinstatement. Subsection (5) allows the Secretary of State to make regulations to give the review panel additional powers when it has recommended reconsideration or quashed a decision of the responsible body. This might be used, for example, to allow the panel to make recommendations about what should go on the pupil's record.
84. Subsections (6) and (7) provide that where a panel has quashed a decision of the responsible body and directed that the responsible body considers the decision again, then, in prescribed circumstances, an adjustment of a school's budget may be made. Regulations must make provisions setting out how the amount of such a payment is to be determined and what effect such adjustments will have on the budget shares of other maintained schools.

*These notes refer to the Education Act 2011 (c.21)
which received Royal Assent on 15 November 2011*

85. Subsection (8) provides a regulation-making power to deal with the following matters: the payment of allowances to members of the review panel; requiring the person or body making the exclusion to have regard to guidance from the Secretary of State; requiring local authorities to provide prescribed information to the Secretary of State; and a general power to cover any other matters associated with an exclusion decision.
86. Subsection (10) defines the terms used in this section and provides that regulations may prescribe who is the “responsible body” in relation to a PRU.
87. Subsection (11) provides that when regulations have not prescribed who the “responsible body” is in relation to a permanent exclusion from a PRU, the procedure in subsection (3) has effect with the change that the review panel will review the decision of the teacher in charge not to reinstate the pupil.
88. Subsection (12) provides a regulation-making power to allow the Secretary of State to apply new section 51A and regulations made under it, to Academies, or a description of Academy, with or without modifications.
89. *Subsection (3)* of this section makes amendments necessary to section 52 of EA 2002 because it will only apply now to Wales.
90. *Subsection (4)* gives effect to *Schedule 1* which makes amendments to other legislation consequential on the changes made by *subsections (2) and (3)*.