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STATUTORY INSTRUMENTS

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**1994 No. 2092**

**EDUCATION, ENGLAND AND WALES**

**The Education (No. 2) Act 1986  
(Amendment) (No. 2) Order 1994**

<i>Made</i>	- - - -	<i>4th August 1994</i>
<i>Laid before Parliament</i>		<i>8th August 1994</i>
<i>Coming into force</i>	- -	<i>1st September 1994</i>

In exercise of the powers conferred upon the Secretary of State by section 63(3) of, and paragraph 5 of Schedule 3 to, the Education (No. 2) Act 1986(1), the Secretary of State for Education, as respects England, and the Secretary of State for Wales, as respects Wales, hereby make the following Order:

**Citation and commencement**

1. This Order may be cited as the Education (No. 2) Act 1986 (Amendment) (No. 2) Order 1994 and shall come into force on 1st September 1994.

**Interpretation**

2. In this Order references to the Act are to the Education (No. 2) Act 1986 and references to paragraphs are to paragraphs of Schedule 3 to the Act.

**Amendment of Schedule 3 to the Education (No. 2) Act 1986**

3. There shall be substituted for paragraph 1—

“1. The articles of government for every county, controlled and maintained special school shall provide for it to be the duty of the local education authority, when (following the consideration which they are required to give to the case by virtue of section 24(a) of this Act) they inform a pupil, or a parent of his, of their decision that he should not be reinstated, to give to the pupil or (as the case may be) parent notice in writing—

- (a) of his right to appeal against the decision,
- (b) of the last date on which an appeal may be made calculated in accordance with paragraph 3A(1) below,

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(1) 1986 c. 61; paragraphs 7 and 8 of Schedule 3 were amended by the Education (No. 2) Act 1986 (Amendment) Order 1993 (S.I.1993/2709) and the Education (No. 2) Act 1986 (Amendment) (No. 2) Order 1993 (S.I. 1993/2827) respectively.

- (c) of the right of the pupil or (as the case may be) parent to give notice under paragraph 3A(2) below stating that he does not intend to appeal, and
  - (d) that no appeal may be made after notice under paragraph 3A(2) below is given.”.
- 4. There shall be substituted for paragraph 2—
  - “2. The articles of government for every aided and special agreement school shall provide for it to be the duty of the governing body, when (following the consideration which they are required to give to the case by virtue of section 25(a) of this Act) they inform a pupil, or a parent of his, of their decision that he should not be reinstated, to give to the pupil or (as the case may be) parent notice in writing—
    - (a) of his right to appeal against the decision,
    - (b) of the last date on which an appeal may be made calculated in accordance with paragraph 3A(1) below,
    - (c) of the right of the pupil or (as the case may be) parent to give notice under paragraph 3A(2) below stating that he does not intend to appeal, and
    - (d) that no appeal may be made after notice under paragraph 3A(2) below is given.”.
- 5. In paragraph 3—
  - (a) in sub-paragraph (1) there shall be substituted for the words from “of seven” to “on which” the words “ending with the fifth school day ending after”, and
  - (b) in sub-paragraph (2)(a) there shall be inserted after “the local education authority shall” the words “, before the end of the fourth school day after the day on which the appeal is lodged,”.
- 6. There shall be inserted after paragraph 3—
  - “3A.—(1) No appeal under section 26(1)(a) or (2) of this Act against a decision not to reinstate a pupil may be made after the fifteenth school day after the day on which the pupil (if he is aged eighteen or over) or a parent of his (if he is under eighteen) is given notice in writing in accordance with paragraph 1 or 2 above.
  - (2) Any notice in writing given to the body responsible for making any arrangements under section 26 of this Act by a pupil (if he is aged eighteen or over) or a parent of his (if he is under eighteen) stating that he does not intend to appeal against a decision not to reinstate the pupil shall be final.
  - (3) The time limit for appealing under section 26 of this Act shall be treated as having expired on the day on which notice is given under sub-paragraph (2), if earlier than the day after which no appeal may be made referred to in sub-paragraph (1).”.
- 7. There shall be inserted after paragraph 6—
  - “6A. The appeal committee shall meet to consider an appeal—
    - (a) within the period ending with the fifteenth school day after the day on which the appeal is lodged, or
    - (b) if the body responsible for making any arrangements under section 26 of this Act has determined a shorter period, within that period.”.
- 8.—(1) Paragraph 9 shall be re-numbered paragraph 9(1).
- (2) There shall be inserted after paragraph 9(1)—
  - “(2) The body responsible for making any arrangements under section 26 of this Act may when requested to do so by a pupil (if he is aged eighteen or over) or a parent of his (if he is

under eighteen) who has appealed under section 26(1)(a) or (2) of this Act, in exceptional circumstances extend any period in which an appeal committee may hear an appeal and for communicating its decision.”.

**9.** At the beginning of paragraph 12 there shall be inserted—

“Within—

- (a) the period ending with the seventeenth school day after the day on which the appeal is lodged, or
- (b) if the body responsible for making any arrangements under section 26 of this Act has determined a shorter period, that period,”.

**10.** There shall be inserted after paragraph 16—

“**17.**—(1) Where in accordance with paragraph 1 or 2 above notice in writing is required to be given to a person, that notice may be given either by delivering the notice to the person’s last known address or by properly addressing, pre-paying and sending by first class post a letter containing the notice to the person’s last known address.

(2) For the purposes of calculating a period referred to in paragraph 3A(1) above, notice shall be taken to have been given—

- (a) where first class post is used, on the second school day after the date of posting, unless the contrary is shown, and
- (b) where the notice is delivered, on the date of delivery, unless the contrary is shown.”.

**Transitional provision**

**11.** Schedule 3 to the Act shall continue to have effect as if this Order had not been made in any case where on or before 1st September 1994 the head teacher informed the body responsible for making any arrangements under section 26 of the Act of a permanent exclusion.

1st August 1994

*Eric Forth*  
Minister of State  
Department for Education

4th August 1994

*John Redwood*  
Secretary of State for Wales

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

Articles 3 and 4 of this Order substitute new paragraphs 1 and 2 of Schedule 3 to the Education (No. 2) Act 1986. These now provide that as well as notifying parents of a pupil permanently excluded from a county, voluntary or maintained special school (or the pupil himself if aged 18 or over) of the right of appeal, the body responsible for making appeal arrangements must explain the consequences of failure to appeal in time, and of giving notice of intention not to appeal. In the case of an aided or special agreement school this would be the governing body of the school. For other schools it would be the local education authority. Notice must be given in writing.

Article 6 inserts a new paragraph 3A in Schedule 3 which provides that a parent (or the pupil himself if aged 18 or over) may only appeal against a decision not to reinstate the pupil if he does so within fifteen school days of being informed of the decision. It also provides that no appeal may be made if a parent or a pupil aged 18 or over gives written notice to the body responsible for making appeal arrangements that he does not intend to appeal. These amendments to Schedule 3 enable the expiry of the time for appealing to be determined for the purposes of section 262(9)(b) of the Education Act 1993 (exclusion of pupils: funding).

Article 7 of the Order provides that an appeal committee must consider an appeal by a parent or pupil or by school governors within whichever is the shorter of fifteen school days from the appeal being lodged, or within the period determined by the body responsible for making appeal arrangements.

Under article 9 the appeal committee has seventeen school days from the date the appeal is lodged in which to notify interested parties of its decision. The body responsible for making appeal arrangements may fix a shorter period or, at the request of the parent or pupil aged 18 or over only, extend this period.

The Order makes other minor changes to Schedule 3 to the 1986 Act, and transitional provision.