

2002 No. 3179

EDUCATION, ENGLAND

The Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002

Made - - - - - *17th December 2002*
Laid before Parliament *19th December 2002*
Coming into force - - *20th January 2003*

In exercise of the powers conferred on the Secretary of State by sections 52(3), (4) and (5), 210(7) and 214 of the Education Act 2002(a), and after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992(b), the Secretary of State for Education and Skills hereby makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002 and shall come into force on 20th January 2003.

(2) These Regulations apply only in relation to England.

Interpretation

2.—(1) In these Regulations—

“the 2002 Act” means the Education Act 2002

“the 2002 Regulations” means the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002(c)

“the relevant person” means—

(a) in relation to a pupil under the age of 18, a parent of his;

(b) in relation to a pupil who has attained that age, the pupil himself.

(2) Any exclusion for a fixed period consisting of the period between the morning and afternoon school sessions shall for the purposes of these Regulations be taken as equivalent to half a school day.

Responsible Body

3. For the purposes of section 52(5) of the 2002 Act the local education authority which maintains a pupil referral unit(d) is prescribed as the responsible body in relation to a fixed period exclusion from that pupil referral unit.

(a) 2002 c. 32; see section 212(1) for the meaning of “regulations”; by virtue of the definition of “regulations” in that section, these regulations made by the Secretary of State apply only in relation to England.

(b) 1992 c. 53, amended by paragraph 22 of Schedule 21 to the Education Act 2002.

(c) S.I. 2002/3178.

(d) Pupil referral units are established and maintained under section 19 of the Education Act 1996 (c. 56).

Power of teacher in charge to exclude pupils

4. A teacher in charge of a pupil referral unit may not exercise his power under section 52(2) of the 2002 Act so as to exclude a pupil from the pupil referral unit for one or more fixed periods if, as a result, the pupil would be excluded for more than 45 school days in any one school year.

Exclusion of pupils: duty to inform parents and local education authority

5.—(1) Where the teacher in charge of a pupil referral unit excludes any pupil for a fixed period, the teacher in charge shall (without delay) take reasonable steps to inform the relevant person of the following matters—

- (a) the period of exclusion;
- (b) the reasons for exclusion;
- (c) that he make representations about the exclusion to the local education authority, and
- (d) the means by which such representations may be made.

(2) Where the teacher in charge of a pupil referral unit excludes any pupil for a fixed period in circumstances where the pupil would, as a result of the exclusion—

- (a) be excluded from the pupil referral unit for a total of more than five school days in any one term, or
- (b) lose an opportunity to take any public examination,

the teacher in charge shall (without delay) inform the local education authority of the period of the exclusion and the reasons for it.

(3) Where the teacher in charge of a pupil referral unit excludes any pupil permanently or decides that any exclusion of a pupil for a fixed period should be made permanent, the teacher in charge shall forthwith—

- (a) inform the relevant person and the local education authority of the decision and the reasons for it; and
- (b) in addition give the relevant person notice in writing of the decision stating the following matters—
 - (i) the reasons for the decision,
 - (ii) his right to appeal against the decision,
 - (iii) the person to whom he should give any notice of appeal,
 - (iv) that any notice of appeal must contain the grounds of appeal, and
 - (v) the last date on which an appeal may be made.

(4) The notice in writing referred to in paragraph (3)(b) may be given either—

- (a) by delivering it to the relevant person's last known address, or
- (b) by properly addressing, pre-paying and sending by first class post to the relevant person's last known address a letter containing the notice.

(5) The teacher in charge shall in each term inform the local education authority of any exclusions which do not fall within paragraphs (2) or (3) and the reasons for them.

Functions of local education authority in relation to pupils excluded for a fixed period

6.—(1) Paragraphs (2) to (6) apply where the local education authority are informed under regulation 5(2) of the exclusion of any pupil for a fixed period, and the circumstances are that the pupil would, as a result of the exclusion—

- (a) be excluded from the pupil referral unit for a total of more than fifteen school days in any one term, or
- (b) lose an opportunity to take a public examination.

(2) The local education authority shall in any such case—

- (a) consider the circumstances in which the pupil was excluded;
- (b) consider any representations about the exclusion made to the local education authority by the relevant person in pursuance of regulation 5(1)(c);
- (c) allow each of the following, namely—
 - (i) the relevant person, and
 - (ii) the teacher in charge of the pupil referral unit,

to attend a meeting with the local education authority and to make oral representations about the exclusion; and

(d) consider any oral representations so made.

(3) The local education authority shall consider whether or not the pupil should be reinstated and where they consider that the pupil should be reinstated, they shall in addition consider whether he should be reinstated immediately, or reinstated by a particular date.

(4) If the local education authority decide that the pupil should be reinstated, they shall forthwith—

(a) give the appropriate direction to the teacher in charge, and

(b) inform the relevant person of their decision.

(5) The teacher in charge shall comply with any direction of the local education authority for the reinstatement of a pupil who has been excluded from the pupil referral unit.

(6) If the local education authority decide that the pupil should not be reinstated, they shall forthwith inform the relevant person and the teacher in charge of their decision and the reasons for it.

(7) Where—

(a) the teacher in charge of a pupil referral unit excludes a pupil for a fixed period in a case where paragraphs (2) to (6) do not apply; and

(b) the local education authority receive any representations made in pursuance of regulation 5(1)(c) by the relevant person about the exclusion,

they shall consider those representations.

(8) Subject to paragraph (9), the local education authority shall take each of the steps referred to in paragraph (2)—

(a) not earlier than six school days; and

(b) not later than 15 school days, in the case of an exclusion for a fixed period of more than 15 school days; or

(c) not later than 50 school days, in the case of an exclusion for a fixed period of 15 school days or fewer,

after the date on which they were informed of the matters referred to in regulation 5(2).

(9) Where a pupil has been excluded for a fixed period in circumstances in which he would, as a result of the exclusion, lose an opportunity to take a public examination, the local education authority shall (so far as it is practical for them to do so) take each of the steps referred to in paragraph (2) before the date on which the pupil is due to take the examination and in any event no later than is required by paragraph (8).

(10) The local education authority shall not be relieved of the duty to take any step referred to in paragraph (2) because it has not been taken within the periods specified in paragraphs (8) and (9).

Appeals against permanent exclusion of pupils

7.—(1) A local education authority shall make arrangements for enabling the relevant person to appeal against any decision of the teacher in charge under section 52(2) of the 2002 Act to permanently exclude a pupil from a pupil referral unit maintained by the authority.

(2) The Schedule to the 2002 Regulations has effect, with the modifications prescribed in the Schedule to these Regulations, in relation to the making and hearing of appeals pursuant to arrangements made under paragraph (1); and in paragraphs (3) to (6) 'appeal panel' means an appeal panel constituted in accordance with paragraph 2 of the Schedule to the 2002 Regulations as modified.

(3) In making any decision on an appeal pursuant to arrangements made under paragraph (1), an appeal panel shall have regard both to the interests of the excluded pupil and to the interests of other pupils and persons working at the pupil referral unit (including persons working at the unit voluntarily).

(4) An appeal panel shall not determine that a pupil is to be reinstated merely because of the failure of any person to comply with any procedural requirement imposed by or under these Regulations in relation to the decision under section 52(2) of the 2002 Act against which the appeal is brought.

(5) The decision of an appeal panel on an appeal pursuant to arrangements made under paragraph (1) shall be binding on the relevant person, the teacher in charge and the local education authority.

(6) On such an appeal the appeal panel may—

- (a) uphold the exclusion;
- (b) direct that the pupil is to be reinstated (either immediately or by a date specified in the direction), or
- (c) decide that because of exceptional circumstances or for other reasons it is not practical to give a direction requiring his reinstatement, but that it would otherwise have been appropriate to give such a direction.

Exclusion of pupils: guidance

8.—(1) This regulation applies to any functions of—

- (a) the teacher in charge of a pupil referral unit,
- (b) a local education authority, or
- (c) an appeal panel constituted in accordance with paragraph 2 of the Schedule to the 2002 Regulations as modified,

under section 52(2) of the 2002 Act or these Regulations.

(2) In discharging any such function, such a person or body shall have regard to any guidance given from time to time by the Secretary of State.

Information

9. A local education authority shall give to the Secretary of State in each school term the information referred to in Schedules 9 or 10 (as appropriate) to the Education (School Performance Information) (England) Regulations 2001(a) in respect of exclusions from a pupil referral unit.

Revocation

10.—(1) Subject to paragraph (2) the Education (Pupil Referral Units) (Appeals against Permanent Exclusion) (England) Regulations 2002(b) are hereby revoked.

(2) Nothing in paragraph (1) shall affect the continued application of those Regulations by virtue of paragraph 4 of the Schedule to the Education Act 2002 (Commencement No. 3 and Savings and Transitional Provisions) Order 2002(c) (pupils excluded before 20th January 2003).

17th December 2002

Ivan Lewis
Parliamentary Under Secretary of State
Department for Education and Skills

(a) S.I. 2001/3446.
(b) S.I. 2002/2550.
(c) S.I. 2002/2952.

SCHEDULE

Regulation 7

MODIFICATIONS OF THE SCHEDULE TO THE EDUCATION (PUPIL EXCLUSIONS AND APPEALS) (MAINTAINED SCHOOLS) REGULATIONS 2002

1. For paragraph 1(1) there shall be substituted—

“1.—(1) No appeal under regulation 7(1) against a decision to permanently exclude 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 5(3)(b).”
2. In paragraph 1(3) for the words “not to reinstate” there shall be substituted the words “to permanently exclude”.
3. For “regulation 6(1)” in each place where it occurs, there shall be substituted “regulation 7(1)”.
4. In paragraph 2(2)(b) the words “or teachers in charge of a pupil referral unit” shall be added after the word “schools”.
5. For paragraph 2(7) there shall be substituted—

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

 - (a) any member of the authority or of the management committee (where one exists) 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.”
6. For paragraph 10(2) there shall be substituted—

“(2) The panel shall also allow—

 - (a) the teacher in charge to make written representations and to appear and make oral representations,
 - (b) the local education authority to make written representations, and
 - (c) an officer of the authority nominated by the authority to appear and make oral representations.”
7. In paragraph 14(a) “, the governing body” shall be omitted.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe limits on the powers of teachers in charge of pupil referral units to exclude pupils under s.52 of the Education Act 2002, and the procedure which is to be followed by the teacher in charge and the local education authority following an exclusion from a pupil referral unit.

Regulation 3 prescribes the local education authority as the body responsible under section 52(3) of the 2002 Act for considering whether the excluded pupil should be reinstated.

Regulation 5 requires the teacher in charge to inform the parents (or pupil if he is 18 or over) of details of an exclusion. The teacher in charge must also inform the local education authority if the exclusion is permanent, will result in the pupil missing a public examination, or takes the total exclusions for that pupil over five days in a term.

Regulation 6 requires the local education authority, where the exclusion will result in the pupil missing a public examination, or takes the total exclusions for that pupil over 15 days in a term, to consider the circumstances, listen to any representations from the parent (or pupil if he is 18 or over) or the teacher in charge, and to decide whether the pupil should be reinstated or not.

Regulation 7 requires the local education authority to make arrangements for the parent (or pupil if he is 18 or over) to appeal against a decision of the teacher in charge to permanently exclude a pupil. The appeal panel shall have regard to both the interests of the excluded pupil and those of other pupils and persons working at the pupil referral unit. A failure to follow procedural requirements is not of itself to lead to a decision to reinstate. The decision of the appeal panel is binding. The panel may decide not to issue a direction requiring reinstatement of the pupil if they consider it is not practical because of exceptional circumstances or other reasons.

Regulation 8 requires teachers in charge, local education authorities and appeal panels to have regard to guidance given by the Secretary of State.

Regulation 9 provides for the local education authority to give the Secretary of State information about excluded pupils.

The Schedule prescribes the constitution and procedure for appeal panels by making appropriate modifications to the Schedule to the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002.

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**The Education (Pupil Exclusions and Appeals) (Pupil
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£2.00

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Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.
E1939 1/2003 121939 19585

ISBN 0-11-044595-3



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