

2004 No. 402

EDUCATION, ENGLAND

**The Education (Pupil Exclusions) (Miscellaneous Amendments)
(England) Regulations 2004**

<i>Made</i> - - - -	<i>18th February 2004</i>
<i>Laid before Parliament</i>	<i>23rd February 2004</i>
<i>Coming into force</i> - -	<i>22nd March 2004</i>

The Secretary of State for Education and Skills, in exercise of the powers conferred upon him by sections 494 and 569 of the Education Act 1996(a) and sections 52 and 210 of the Education Act 2002(b) and after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992(c) hereby makes the following Regulations:

Citation, commencement, interpretation and application.

1.—(1) These Regulations may be cited as the Education (Pupil Exclusions) (Miscellaneous Amendments) (England) Regulations 2004 and shall come into force on 22nd March 2004.

(2) In these Regulations —

“the 1999 Regulations” means the Education (Amount to Follow Permanently Excluded Pupil) Regulations 1999(d);

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

“the 2002 PRU Regulations” means the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002(f).

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

Relevant date.

2. The 1999 Regulations shall be amended in relation to England only as follows—

(1) In regulation 1(2) of the 1999 Regulations there shall be inserted after the definition of the 1998 Act—

““the 2002 Act” means the Education Act 2002”.

(a) 1996 c.56. Section 494 was substituted by paragraph 128 of Schedule 30 to the School Standards and Framework Act 1998 (1998 c.31).

(b) 2002 c.32

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

(d) S.I. 1999/495, as amended in relation to England by S.I. 2001/870.

(e) S.I. 2002/3178

(f) S.I.2002/3179

(2) For regulation 4(b) of the 1999 Regulations there shall be substituted—

“(b) in relation to the period commencing on 1st September 1999 and ending immediately before 22nd March 2004, on the date that the governing body decide under section 66 of the 1998 Act or under regulations made under section 52 of the 2002 Act that the pupil should not be reinstated.”

(3) After regulation 4(b) of the 1999 Regulations there shall be inserted—

“(c) on and after 22nd March 2004, on the date that an appeal panel constituted under regulations made under section 52 of the 2002 Act decides not to direct reinstatement; or if there is no appeal, on the day after the last date on which an appeal may be made, or on the day (if earlier) that the parent (or pupil who has attained the age of 18) notifies the local education authority that he does not intend to appeal.”

Schools budget.

3. The 1999 Regulations shall be amended in relation to England only as follows—

(1) In regulation 1(2) the following definition shall be added after the definition of “individual schools budget” and “local schools budget”—

“schools budget” has the meaning attributed to it by section 45A of the 1998 Act in relation to any financial year for which that section is in force.”

(2) After the words “local schools budget” in the definition of B in regulation 2 there shall be inserted—

“ or schools budget”.

Exclusions – standard of proof.

4. The following regulation shall be inserted in the 2002 Regulations after regulation 7—

“Exclusions – standard of proof.

7A Where it falls to—

- (a) the head teacher, in exercise of the power conferred by section 52(1) of the 2002 Act,
- (b) the governing body, in exercise of functions under regulation 5, or
- (c) an appeal panel constituted in accordance with paragraph 2 of the Schedule, in exercise of functions under regulation 6,

to establish any fact, any question as to whether that fact is established shall be decided on a balance of probabilities.”

5. The following regulation shall be inserted in the 2002 PRU regulations after regulation 8—

“Exclusions – standard of proof.

8A Where it falls to—

- (a) the teacher in charge of a pupil referral unit, in exercise of the power conferred by section 52(2) of the 2002 Act,
- (b) the local education authority, in exercise of functions under regulation 6, or
- (c) an appeal panel constituted in accordance with paragraph 2 of the Schedule to the 2002 Regulations as modified, in exercise of functions under regulation 7,

to establish any fact, any question as to whether that fact is established shall be decided on a balance of probabilities.”

Constitution of appeal panels.

6. For paragraph 2 (2) (c) of the Schedule to the 2002 Regulations there shall be substituted—
- “(c) persons who are or have been governors of maintained schools, provided they have served as a governor for at least twelve consecutive months within the last six years and have not been teachers or head teachers during the last five years.”
7. Where an appeal panel constituted under the Schedule to the 2002 Regulations has begun to hear an appeal but has not concluded the hearing on the date these Regulations come into force, regulation 6 shall not apply in relation to that appeal panel.

Information.

8. For regulation 4(5) of the 2002 Regulations there shall be substituted —
- “(5) The head teacher shall in each term inform the local education authority and the governing body of any exclusions which do not fall within paragraph (3) and in respect of each exclusion shall provide details of the period of the exclusion and the reason for it.”
9. The following regulation shall be inserted in the 2002 Regulations after regulation 7A —

“Information.

7B. A local education authority shall forward to the Secretary of State at his request any information they have received from a head teacher under regulation 4(4) or (5).”

10. In the 2002 PRU Regulations—

- (a) for regulation 5(5) there shall be substituted —
- “(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 in respect of each exclusion shall provide details of the period of the exclusion and the reason for it.”;
- (b) the following words shall be inserted at the end of regulation 9 —
- “together with any information they have received from a teacher in charge under regulation 5.”

18th February 2004

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations apply in relation to England only.

Regulation 2 amends the definition of the relevant date in regulation 4 of the Education (Amount to Follow Permanently Excluded Pupil) Regulations 1999. The relevant date is the date when the permanent exclusion of a pupil is regarded as taking effect for the purpose of recoupment between local education authorities under section 494 of the Education Act 1996.

The relevant date from 22nd March 2004 is the date when an appeal is finally determined, or if there is no appeal when the last date for lodging an appeal has passed, or when the parent or pupil notifies the local education authority that he does not intend to appeal.

Regulation 3 makes a consequential amendment to reflect the new schools budget introduced in the LEA Budget, Schools Budget and Individual Schools Budget (England) Regulations 2002 (SI 2002/3199).

Regulation 4 amends the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002 to provide that the head teacher, governing body or appeal panel must establish facts on a balance of probabilities. Regulation 5 makes a similar amendment to the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002

Regulation 6 amends the qualification required for a governor member of an appeal panel constituted under the Schedule to the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002. Regulation 7 makes transitional provision in connection with regulation 6.

Regulations 8 to 10 amend the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002 and the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002 to provide that the Secretary of State may obtain information on exclusions from local education authorities.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.

£3.00

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under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E0229 2/2004 140229T 19585

ISBN 0-11-048720-6



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