
STATUTORY INSTRUMENTS

2008 No. 532

EDUCATION, ENGLAND

**The Education (Pupil Exclusions and Appeals)
(Pupil Referral Units) (England) Regulations 2008**

<i>Made</i>	- - - -	<i>26th February 2008</i>
<i>Laid before Parliament</i>		<i>6th March 2008</i>
<i>Coming into force</i>	- -	<i>1st April 2008</i>

The Secretary of State for Children, Schools and Families makes the following Regulations in exercise of the powers conferred by sections 52, 210(7) and 214 of the Education Act 2002⁽¹⁾.

In accordance with section 8 of the Tribunals and Inquiries Act 1992⁽²⁾, he has consulted with the Administrative Justice and Tribunals Council.

Citation, commencement and application

1.—(1) These Regulations may be cited as the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2008 and come into force on 1st April 2008.

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

Interpretation

2.—(1) In these Regulations—

“the 2002 Act” means the Education Act 2002;

“appeal panel” has the meaning given in regulation 7(2);

“management committee” means, in relation to a pupil referral unit, the committee established by the local education authority pursuant to the Education (Pupil Referral Units) (Management Committees etc.) (England) Regulations 2007⁽³⁾;

“relevant person” means—

- (a) in relation to a pupil under the age of 18 years, a parent of the pupil;
- (b) in relation to a pupil who has attained that age, the pupil.

(1) [2002 c.32](#).

(2) [1992 c.53](#), as amended by paragraph 30 of Schedule 8 to the Tribunals, Courts and Enforcement Act 2007 (c.15).

(3) [S.I. 2007/2978](#).

(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 management committee of a pupil referral unit is prescribed as the responsible body.

Power of teacher in charge to exclude pupils

4. The teacher in charge of a pupil referral unit may not exercise the 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, management committee 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, as soon as practicable, inform the relevant person of the following matters—

- (a) the period of the exclusion;
- (b) the reasons for the exclusion;
- (c) that the relevant person may make representations about the exclusion to the management committee; 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 permanently or decides that any exclusion of a pupil for a fixed period should be made permanent, the teacher in charge shall, as soon as is practicable—

- (a) inform the relevant person, the local education authority and the management committee of the decision and the reasons for it;
- (b) if the pupil resides in the area of a different local education authority, in addition, inform that local authority of the decision and the reasons for it; and
- (c) give the relevant person notice in writing of the decision stating the following matters—
 - (i) the reasons for the decision;
 - (ii) that the relevant person may make representations about the decision to the management committee;
 - (iii) the means by which such representations shall be made.

(3) 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, as soon as practicable, inform the local education authority and the management committee of the period of the exclusion and the reasons for it.

(4) The teacher in charge shall in each relevant term—

- (a) inform the management committee and local education authority of any relevant exclusions which do not fall within paragraphs (2) or (3) and in respect of each such exclusion provide details of the period of the exclusion and the reason for it; and

- (b) unless the teacher in charge has already done so, inform the management committee and the local education authority of any exclusions occurring during any previous terms and in respect of each of those exclusions provide details of the period of the exclusion and the reason for it.
- (5) In paragraph (4)—
 - (a) “relevant exclusion”, in relation to a relevant term, means an exclusion which first takes effect in that term;
 - (b) “relevant term” means—
 - (i) where in the school year of a pupil referral unit there are three terms or fewer, each term;
 - (ii) where in the school year of a pupil referral unit there are more than three terms, any term during which a reference date falls.
- (6) In paragraph (5), “reference date” means 31st December, Easter Monday and 31st July.
- (7) For the purposes of paragraph (5)(b)(ii), if a reference date does not fall during a term, the reference to the term during which the reference date falls is to be taken as a reference to the term which last preceded that date.

Functions of management committee in relation to excluded pupils

- 6.—(1) Paragraphs (2) to (6) apply where the management committee is informed under regulation 5(2) or (3) of—
- (a) the permanent exclusion of a pupil;
 - (b) a decision that any exclusion of a pupil should be made permanent;
 - (c) the exclusion of any pupil where that pupil would, as a result of the exclusion—
 - (i) be excluded from the pupil referral unit for a total of more than fifteen school days in any one term, or
 - (ii) lose an opportunity to take a public examination; or
 - (d) the exclusion of any pupil where—
 - (i) the pupil would as a result of the exclusion be excluded from the pupil referral unit for a total of more than five school days in any one term, and
 - (ii) the relevant person makes representations to the management committee in pursuance of regulation 5(1)(c).
- (2) The management committee 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 management committee—
 - (i) by the relevant person in pursuance of regulation 5(1)(c), or
 - (ii) by the local education authority;
 - (c) allow each of the following, namely—
 - (i) the relevant person, and
 - (ii) an officer of the local education authority nominated by the authority,to attend a meeting of the management committee and to make oral representations about the exclusion; and
 - (d) consider any oral representations so made.

(3) Subject to paragraph (7), the management committee 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 the pupil should be reinstated immediately, or reinstated by a particular date.

(4) Subject to paragraph (7), if the management committee decide that the pupil should be reinstated they shall immediately—

- (a) give the appropriate direction to the teacher in charge, and
- (b) inform the relevant person and the local education authority of their decision.

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

(6) If the management committee decide that the pupil should not be reinstated, they shall immediately—

- (a) inform the relevant person, the teacher in charge and the local education authority of their decision, and
- (b) in addition, in the case of a pupil who is permanently excluded, give the relevant person notice in writing referring to that decision and stating the following matters—
 - (i) the reasons for the decision,
 - (ii) his right to appeal against the decision,
 - (iii) the person to whom the relevant person 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.

(7) Where the period of the exclusion has expired before the management committee considers the exclusion pursuant to paragraph (3), the management committee shall consider whether the exclusion was appropriate and shall notify the teacher in charge, the relevant person and the local education authority of their decision.

(8) Where—

- (a) the teacher in charge of a pupil referral unit excludes a pupil in a case where paragraphs (2) to (6) do not apply, and
- (b) the management committee receive any representations made in pursuance of regulation 5(1)(c) by the relevant person about the exclusion,

they shall consider those representations.

(9) Subject to paragraph (10), the management committee shall take each of the steps referred to in paragraph (2)—

- (a) not earlier than 6 school days; and
- (b) not later than 15 school days in the case of a permanent exclusion or a fixed period exclusion 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) or (3).

(10) Where a pupil has been excluded in circumstances in which the pupil would, as a result of the exclusion, lose an opportunity to take a public examination, the management committee 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 (9).

(11) The management committee 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 (9) and (10).

(12) The notice in writing referred to in paragraph (6)(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.

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 management committee under regulation 6 not to reinstate a pupil who has been permanently excluded from a pupil referral unit maintained by the authority.

(2) The Schedule to these Regulations has effect in relation to the making and hearing of appeals pursuant to arrangements made under paragraph (1); and in these Regulations “appeal panel” means an appeal panel constituted in accordance with paragraph 2 of the Schedule.

(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 in respect of which the appeal is brought.

(5) The decision of an appeal panel on an appeal pursuant to arrangements 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 decision not to reinstate the pupil;
- (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) the management committee,
- (c) a local education authority, or
- (d) an appeal panel,

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.

Exclusions : standard of proof

9. 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 management committee, in exercise of functions under regulation 6, or
- (c) an appeal panel, 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.

Information

10. A local education authority shall give to the Secretary of State at his request any information they have received from a teacher in charge under regulation 5.

Revocation and transitional provisions

11.—(1) The following provisions are revoked.

(2) Subject to paragraph (6), the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002(4).

(3) Regulations 5 and 10 of the Education (Pupil Exclusions) (Miscellaneous Amendments) (England) Regulations 2004(5).

(4) Regulations 2(2), 4 and 5(3) of the Education (Pupil Exclusions and Appeals) (Miscellaneous Amendments) (England) Regulations 2006(6).

(5) Regulation 10(2) of the Education (Provision of Full-Time Education for Excluded Pupils) (England) Regulations 2007(7).

(6) Where a pupil is excluded from a pupil referral unit before 1st April 2008, the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002 shall continue to have effect in relation to that exclusion.

26th February 2008

Kevin Brennan
Parliamentary Under-Secretary of State
Department for Children, Schools and Families

(4) [S.I. 2002/3179](#).
(5) [S.I. 2004/402](#).
(6) [S.I. 2006/2189](#).
(7) [S.I. 2007/1870](#).

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(8);
 - (v) the duties of the appeal panel under the Disability Discrimination Act 1995(9);

(8) 1976 c. 74.

(9) 1995 c. 50.

- (vi) the duties the appeal panel may have under Part 4 of the Equality Act 2006⁽¹⁰⁾;
- (vii) the effect of section 6 of the Human Rights Act 1998⁽¹¹⁾ (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⁽¹²⁾ (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⁽¹³⁾ 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

⁽¹⁰⁾ 2006 c. 3.

⁽¹¹⁾ 1998 c. 42.

⁽¹²⁾ 1972 c. 70.

⁽¹³⁾ 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.

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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](#)(14).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke the previous regulations relating to exclusions from pupil referral units and re-enact them so as to provide a role for management committees as established by the Education (Pupil Referral Units) (Management Committees etc.) (England) Regulations 2007 and to bring the exclusions process effectively in line with that for maintained schools as set out in the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002.

The Regulations specify the steps to be taken by the teacher in charge of a pupil referral unit when excluding a pupil under section 52 of the Education Act 2002, and they set out the procedure which is to be followed by the management committee of the unit, and the local education authority following an exclusion from a pupil referral unit.

Regulation 3 prescribes the management committee of the unit as the body responsible under section 52(3) of the 2002 Act for considering whether a pupil should be reinstated. This gives the management committee the same role as the governing body for maintained schools.

Regulation 5 requires the teacher in charge to inform 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 and management committee if an exclusion is either permanent, will result in a pupil missing a public examination, or takes the total exclusions for that pupil over a total of five days in a term.

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Regulation 6 relates to the consideration of the exclusion by the management committee. Where the exclusion is either permanent; will result in the pupil missing a public examination; or takes the total exclusions for that pupil to over 15 days in a term; or the parent wishes to make representations and the exclusion takes the total exclusions for that pupil to over 5 days in a term the management committee is required to consider the circumstances, listen to any representations from the parent (or pupil if he is 18 or over) or the local education authority, and decide whether the pupil should be reinstated. Where the exclusion has expired by the time it is considered by the management committee, the committee must consider whether the exclusion was appropriate

Regulation 7 with reference to the Schedule 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 management committee not to reinstate a pupil who has been permanently excluded. The appeal panel must 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. If the appeal panel accepts that there are exceptional circumstances or other reasons which make it not practical to direct reinstatement, they may decide not to make a direction to reinstate the pupil but may indicate such a direction would otherwise have been appropriate.

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

Regulation 9 sets the balance of probabilities as the standard of proof in the establishment of facts by the teacher in charge, the management committee and the appeal panel in their respective roles.

Regulation 10 requires the local education authority to give to the Secretary of State specified information about excluded pupils.

The Schedule prescribes the constitution and procedure for appeal panels.