

EXPLANATORY MEMORANDUM TO
THE SCHOOL DISCIPLINE (PUPIL EXCLUSIONS AND REVIEWS) (ENGLAND)
REGULATIONS 2012

2012 No. 1033

1. This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Regulations apply to maintained schools, pupil referral units, Academy schools and alternative provision Academies (“AP Academies”), including Free Schools. They limit to 45 the number of days a head teacher can temporarily exclude a pupil within a single school year, in line with the current requirements. They also set out procedures that the head teacher, governing body, local authority and Academy Trust must follow in relation to the exclusion of a pupil from a school and specify the constitution and procedures to be followed by exclusion review panels. The review panels replace the current exclusion appeals panels and have different powers.

3. Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The current exclusion arrangements operate under provisions in The Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002 and The Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2008. The requirements within these regulations currently apply to Academies by virtue of their funding agreements.

4.2 The new regulations replace the above 2002 and the 2008 regulations. They accommodate the change from the current system of independent appeals panels to the new independent review panel arrangements, and establish a new role for an individual with appropriate expertise and experience of special educational needs (a “SEN expert”) to advise the review panel. They also extend coverage of the provisions to include Academy schools and AP Academies, including Free Schools (but not to 16-19 Academies).

5. Territorial Extent and Application

5.1 This instrument applies only to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Government's reforms to the school exclusion arrangements are part of a wider strategy to support schools in promoting good behaviour so that all pupils can benefit from an effective education and have the opportunity to achieve their full potential, regardless of their circumstances.

7.2 The Government believes that head teachers should be able to exclude disruptive pupils, where this is warranted. Any decision to exclude must be robust and fair.

7.3 Section 51A of the Education Act 2002, as inserted by section 4 of the Education Act 2011 ("the 2011 Act"), establishes a new system for challenging a school's decision to permanently exclude a pupil. In particular, it provides for the establishment of independent review panels, which replace the current independent appeal panel arrangements. It also enables a strengthening of the current arrangements through the introduction of the SEN expert, whose role is to advise the review panel on how special educational needs may be relevant to the review.

7.4 Independent review panels are intended to provide a swift, fair and accessible process for reviewing exclusion decisions in a way that takes account of the impact that persistent or significant poor behaviour can have on the education and welfare of the wider school community.

7.5 The local authority or Academy Trust will be required to establish a review panel where they are requested to do so by a parent following a governing body's decision to uphold the decision of a head teacher to permanently exclude their child¹.

7.6 Parents will be able to request that a SEN expert attends a review panel, regardless of whether their child has been formally identified as having SEN.

7.7 Unlike appeal panels, review panels will not be able to direct a school to reinstate a pupil. The review panel will be able to uphold the exclusion; recommend that the governing body reconsiders the exclusion; or quash the decision and direct the governing body to reconsider the exclusion. The panel will only direct reconsideration where it considers the governing body's decision to uphold the

¹ Parents can currently make a claim of disability discrimination to the First-tier Tribunal (Special Educational Needs and Disability) relating to fixed term exclusions. Under the new arrangements, parents will also be able to make a disability discrimination claim to the Tribunal with respect to a permanent exclusion decision.

exclusion to be flawed when viewed in light of the principles applicable in a judicial review. Where a governing body is directed to reconsider but subsequently decides not to offer to reinstate the pupil, the school will be expected to pay an additional financial contribution towards the costs of providing an alternative education for that pupil.

- 7.8 The Government's intention is ultimately to reduce the need for exclusion by supporting and challenging schools to manage poor behaviour and intervene early to address any underlying causes. The Government has also introduced a number of measures to improve the quality of the provision that excluded pupils receive and is trialling over the next three years, an approach whereby the school retains responsibility for the outcomes of permanently excluded pupils.

Consolidation

- 7.9 Not applicable.

8. Consultation outcome

- 8.1 Indicative guidance supporting the proposed new exclusions system was shared with Parliament during the passage of the Education Bill.
- 8.2 On 16 December 2011, the Department launched a consultation to gather views on the Department's draft exclusions guidance and draft regulations supporting the new system. This included proposals for how regulations should be applied to Academy schools and AP Academies. In order to ensure maximum time for schools, governing bodies, local authorities, Academy Trusts and panels to apprise themselves of the new arrangements, which are due to take effect on 1 September 2012, it was decided that the consultation period should be limited to nine weeks.
- 8.3 The consultation attracted 182 responses. Respondents were asked a series of questions including whether they agreed with the scope of the proposed regulations for Academy schools and AP Academies. There were 161 responses to this question. 43(27%) respondents agreed, 41(25%) were not sure and 77(48%) were not content. Local authority officials accounted for 13 of the 'not sure' responses and 47 of the 'no' responses. The main objections were not related to the principle of including Academy schools and AP Academies within the exclusions regulations. Instead concerns tended to be related to a desire for more involvement of the local authority in all exclusions cases, and specifically those relating to pupils excluded from Academy schools and AP Academies. The Department has proceeded with its plans to include Academies within a single set of regulations that apply to Academy schools and AP Academies, maintained schools and pupil referral units, and has provided guidance to Academy Trusts on their legal duty to ensure that independent review panels are impartial.

- 8.4 There were 151 responses to a question concerning the maximum number of days of fixed period exclusions that a pupil can receive in a single school year. The current limit is 45. 67(44%) of respondents felt the current limit should remain; 7(5%) felt the limit should be higher; 39(26%) felt it should be lower; and 38(25%) were not sure. On balance the Department considers it appropriate to maintain the current 45 day limit and has therefore proceeded on that basis.
- 8.5 70% of head teachers agreed that the guidance was sufficiently clear to enable them to fulfil their statutory duties. Four out of the six governors that responded, and a national organisation representing governors, agreed that the guidance was sufficiently clear to enable them to fulfil their statutory duties. 20(29%) local authority officials agreed that the guidance was sufficiently clear to enable them to fulfil their statutory duties, 16(24%) were not sure and 32(47%) did not agree. In revising the draft guidance, the Department has paid particular attention to giving further clarity to the role of the local authority within the exclusions process.
- 8.6 A summary of responses to the consultation can be found at [insert link by time instrument is laid]

9. Guidance

- 9.1 The Department has published, *Exclusion from maintained schools, Academies and pupil referral units in England*, to coincide with the laying of the regulations.

10. Impact

- 10.1 A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

11. Regulating small business

- 11.1 The legislation does not apply to small business.

12. Monitoring & review

- 12.1 During the passage of the 2011 Act, the Government committed to conducting a national study to compare the experiences of those parties involved in cases of permanent exclusion heard by either an independent review panel or the First-tier Tribunal (Special Educational Needs and Disability). The study is due to take place over the 2012/13 academic year.

13. Contact

Malcolm D'Souza or Kevin Dixon at the Department for Education can answer queries regarding the instrument (Tel: 0207 340 7358 or 0207 340 7877; email Malcolm.D'Souza@education.gsi.gov.uk or Kevin.Dixon@education.gsi.gov.uk).