

SCHEDULE 1

Regulation 3

Constitution and procedure of review panels

**Interpretation**

1.—(1) In this Schedule—

“arrangements for a review” means arrangements under paragraph (1) of regulation 7, 16 or 25;

“arranging authority” means—

- (a) where the relevant school is a maintained school or a pupil referral unit, the local authority responsible for maintaining that school or unit;
- (b) where the relevant school is an Academy, the proprietor of that Academy;

“closing date for reviews” means the fifteenth school day after the day on which an application for a review is made;

“Head Teacher” means—

- (a) the head teacher <sup>M1</sup> of a maintained school;
- (b) the teacher in charge of a pupil referral unit or the acting teacher in charge;
- (c) the principal of an Academy or the acting principal;

“relevant school” means the school from which a pupil is permanently excluded;

“responsible body” means—

- (a) where the relevant school is a maintained school, the governing body of that school;
- (b) where the relevant school is a pupil referral unit, the management committee of that unit;
- (c) where the relevant school is an Academy, the proprietor of that Academy.

(2) An application for a review is taken to be made—

- (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.

**Marginal Citations**

**M1** See section 579(1) of the 1996 Act.

**Time limits and notices waiving right to review**

2.—(1) Subject to sub-paragraph (2), an application for a review, and any request that a SEN expert be appointed for the review, must be made to the arranging authority within 15 school days after the day on which the relevant person is given notice in writing of the responsible body's decision under paragraph (6)(b) of regulation 6, 15 or 24.

<sup>F1</sup>(1A) .....

(2) Where the relevant person—

- (a) makes a claim under the Equality Act 2010 alleging that the exclusion amounts to unlawful discrimination; and
- (b) has not applied for a review within the time limit in sub-paragraph (1),

then the period within which the relevant person must apply will commence from the date on which the discrimination claim is finally determined.

(3) For the purposes of sub-paragraph (2), a discrimination claim is “finally determined” when all rights of appeal under the Equality Act 2010 have been exhausted.

(4) Any notice in writing given by the relevant person to the arranging authority which states that the relevant person does not intend to apply for a review will be final.

**F1** Sch. 1 para. 2(1A) omitted (1.9.2023) by virtue of [The School Discipline \(Pupil Exclusions and Reviews\) \(England\) \(Amendment and Transitional Provision\) Regulations 2023 \(S.I. 2023/571\)](#), regs. 1(1), **14(2)** (with regs. 1(3), 16) (as amended by [S.I. 2023/882](#), regs. 1(2), 4, 8 (with reg. 1(4))

### **Constitution of review panels**

**3.—(1)** A review must be conducted by a review panel constituted in accordance with this paragraph.

(2) A review panel must consist of 3 or 5 members appointed by the arranging authority from the following groups—

- (a) persons who are eligible to be lay members;
- (b) Head Teachers, or persons who have held that position during the last 5 years; and
- (c) persons who are or have been—
  - (i) a governor of a maintained school;
  - (ii) a member of a pupil referral unit management committee;
  - (iii) a director of the proprietor of an Academy,
 provided they have served in that capacity for at least 12 consecutive months within the last 5 years and have not been a teacher or a Head Teacher in any school during the last 5 years.

(3) Members must be appointed to a review panel as follows—

- (a) for a panel of 3 members, one from each of the 3 categories in sub-paragraph (2);
- (b) for a panel of 5 members—
  - (i) a person who is eligible to be a lay member;
  - (ii) 2 persons falling within sub-paragraph (2)(b); and
  - (iii) 2 persons falling within sub-paragraph (2)(c).

(4) A person is eligible to be a lay member if the person has never worked in a school in a paid capacity (disregarding any service as a governor or as a paid volunteer).

(5) The following persons are disqualified from membership of the review panel for the purpose of that review—

- (a) any member (or director) of the arranging authority or, if different, the responsible body;
- (b) the Head Teacher of the relevant school (or any person who has held that position within the last 5 years);
- (c) any person employed by the responsible body or the arranging authority (if different), other than the Head Teacher of a school other than the relevant school;
- (d) any person who has, or at any time has had, any connection with—
  - (i) the responsible body, the arranging authority (if different), the relevant school or the relevant person; or
  - (ii) the excluded pupil or the incident leading to the exclusion, of a kind which might reasonably be taken to raise doubts about that person's impartiality.

(6) Review panel members must satisfy the training requirements of paragraph 5.

(7) Subject to sub-paragraph (8), a person is not to be appointed as the SEN expert for the purpose of a review if that person would be disqualified under sub-paragraph (5)(d) from appointment as a member of a review panel.

(8) The following employees of an arranging authority are not, by reason only of that employment, disqualified under sub-paragraph (5)(d)—

- (a) a Head Teacher; or
- (b) any employee appointed as a SEN expert for the purpose of the review.

(9) Where at any time after a review panel has begun a review any member of the panel becomes unable to continue as a member, the panel may continue with the review so long as the number of the remaining members is not less than 3 and the requirements of sub-paragraph (3)(a) are satisfied.

(10) A review panel must be chaired by the person appointed as a lay member.

(11) After a review panel has begun a review a panel member may not be substituted or replaced with a different panel member for any reason.

(12) Where a review panel has begun a review and for any reason it ceases to be constituted in accordance with this paragraph, the review must cease and a new review panel must be constituted to conduct the review afresh.

(13) Review panel members and, if appointed, the SEN expert, must declare any known potential conflict of interest, whether pursuant to sub-paragraph (5)(d) or otherwise, to the arranging authority before the review begins.

### **Clerks to review panels**

**4.—(1)** An arranging authority may appoint a clerk to advise the members of a review panel and the parties to a review on the procedure of a review and the law and statutory guidance relating to exclusions.

(2) A person who does not satisfy the training requirements of paragraph 5 must not serve as a clerk to a review panel.

(3) Where a clerk is appointed the clerk must—

- (a) make reasonable efforts to circulate to all the parties to the review copies of relevant documents at least 5 school days before the start of the review;
- (b) make reasonable efforts to inform all the parties to a review that—
  - (i) they are entitled to make written representations for the purposes of the review;
  - (ii) they may attend the review; and
  - (iii) if they elect to attend, that they may make, either in person or through a representative, oral representations at the review;
- (c) provide to all parties details of those attending the review and their respective roles;
- (d) attend the review and ensure that minutes of the review are produced in accordance with any instructions provided by the review panel;
- (e) report to the arranging authority or the review panel as required on the discharge of the clerk's functions;
- (f) perform such other functions as may be determined by the arranging authority or the review panel from time to time.

(4) For the purpose of sub-paragraph (3)(a), relevant documents include—

- (a) the responsible body's decision;
- (b) the relevant person's application for a review; and

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- (c) documents to which the responsible body was required to have regard when making its decision.
- (5) Where no clerk is appointed or present the arranging authority must exercise the functions in sub-paragraphs (3)(a) to (d).

### **Training requirements for clerks and members**

5.—(1) A person satisfies the training requirements if during the 2 years before the review the person received sufficient information and instruction to know and understand—

- (a) the requirements of legislation and statutory guidance governing exclusions;
- (b) the role of the chair of a review panel;
- (c) the role of the clerk to a review panel;
- (d) the relevant effect of the Equality Act 2010;
- (e) the effect of section 6 of the Human Rights Act 1998 <sup>M2</sup>, and the need to act compatibly with human rights protected by that Act; and
- (f) the need for the review panel to observe procedural fairness and the rules of natural justice.

(2) An arranging authority that is required to make arrangements for a review must ensure that all review panel members and the clerk to the review panel have received the information and instruction referred to in sub-paragraph (1) as necessary during the 2 years before the review.

#### **Marginal Citations**

M2 1998 c.42.

### **Allowances for members of review panels**

6.—(1) This paragraph applies only where the relevant school is a maintained school or a pupil referral unit.

(2) For the purpose of the payment of financial loss allowance under section 173(4) of the Local Government Act 1972 <sup>M3</sup>, that section applies to a member of a review panel as if the reference to the performance of an approved duty were a reference to the member's attendance at a meeting of a review panel.

(3) Section 174(1) of that Act applies in relation to a review panel as if the reference to payments at rates determined by the body in question were a reference to payments at rates determined by the local authority.

#### **Marginal Citations**

M3 1972 c.70.

### **Indemnity**

7. An arranging authority required to make arrangements for a review, must indemnify the members of a review panel and any SEN expert appointed for a review against any reasonable legal costs and expenses which they reasonably incur in connection with any decision or action taken by them in good faith in pursuance of their functions in relation to the review.

## Procedure on a review

8. The following provisions set out the procedure on a review.
9. An application for a review—
  - (a) must be in writing setting out the grounds on which a review is sought; <sup>F2</sup> ...
  - (b) must be made to the arranging authority within the time limit specified in paragraph 2(1) <sup>F3</sup>; and
  - (c) may include a remote meeting request.]

<b>F2</b>	Word in Sch. 1 para. 9 omitted (1.9.2023) by virtue of <i>The School Discipline (Pupil Exclusions and Reviews) (England) (Amendment and Transitional Provision) Regulations 2023</i> (S.I. 2023/571), regs. 1(1), <b>14(3)(a)</b> (with regs. 1(3), 16) (as amended by S.I. 2023/882, regs. 1(2), 4, 8 (with reg. 1(4))
<b>F3</b>	Sch. 1 para. 9(c) and word inserted (1.9.2023) by <i>The School Discipline (Pupil Exclusions and Reviews) (England) (Amendment and Transitional Provision) Regulations 2023</i> (S.I. 2023/571), regs. 1(1), <b>14(3)(b)</b> (with regs. 1(3), 16) (as amended by S.I. 2023/882, regs. 1(2), 4, 8 (with reg. 1(4))

10.—(1) The review panel must meet to consider a review on the date determined by the arranging authority.

(2) The date so determined must not be later than the closing date for reviews.

<sup>F4</sup>(3) Sub-paragraph (4) applies if a remote meeting request has been made.]

(4) Where this sub-paragraph applies, the meeting referred to in sub-paragraph (1) <sup>F5</sup>must] be held using remote access, provided the arranging authority is satisfied that the following conditions are met—

(a) the participants will be able fully to make representations or discharge their functions (as the case may be);

<sup>F6</sup>(b) .....

(c) each participant has access to the electronic means to allow them to hear and be heard and (where using a live video link) see and be seen, throughout the meeting; and

(d) the meeting is capable of being held fairly and transparently.

<sup>F7</sup>(4A) Sub-paragraph (4B) applies if—

(a) for a reason related to extraordinary events or unforeseen circumstances, it is not reasonably practicable for the meeting referred to in sub-paragraph (1) to be held in person; and

(b) the meeting is not already required to take place using remote access pursuant to sub-paragraph (4).

(4B) Where this sub-paragraph applies, the meeting referred to in sub-paragraph (1) may be held using remote access, provided the arranging authority is satisfied that the conditions referred to in sub-paragraph (4)(a), (c) and (d) are met.

(4C) Sub-paragraph (4D) applies where, immediately before the date determined by the arranging authority as referred to in sub-paragraph (2), the meeting referred to in sub-paragraph (1) has not been held because—

(a) it has not been reasonably practicable to meet in person for a reason related to extraordinary events or unforeseen circumstances; and

(b) it has not been reasonably practicable to meet by way of remote access for a reason related to the satisfaction of the conditions in sub-paragraph (4)(a), (c) and (d).

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(4D) Where this sub-paragraph applies, the date determined by the arranging authority as referred to in sub-paragraph (2) is extended by such period as is reasonably necessary for a reason related to the extraordinary events or unforeseen circumstances.

(4E) Subject to the exception made for persons referred to in paragraph 12(4), a meeting referred to in sub-paragraph (1) must be held in person unless—

- (a) a remote meeting request is made; or
- (b) for a reason related to extraordinary events or unforeseen circumstances, it is not reasonably practicable for the meeting to be held in person, and the arranging authority is satisfied that the conditions in sub-paragraph (4)(a), (c) and (d) are met.]

<sup>F8</sup>(5) .....

<sup>F8</sup>(6) .....

<sup>F8</sup>(7) .....

<sup>F8</sup>(8) .....

<b>F4</b>	Sch. 1 para. 10(3) substituted (1.9.2023) by <a href="#">The School Discipline (Pupil Exclusions and Reviews) (England) (Amendment and Transitional Provision) Regulations 2023 (S.I. 2023/571)</a> , regs. 1(1), <b>14(4)(a)</b> (with regs. 1(3), 16) (as amended by S.I. 2023/882, regs. 1(2), 4, 8 (with reg. 1(4))
<b>F5</b>	Word in Sch. 1 para. 10(4) substituted (1.9.2023) by <a href="#">The School Discipline (Pupil Exclusions and Reviews) (England) (Amendment and Transitional Provision) Regulations 2023 (S.I. 2023/571)</a> , regs. 1(1), <b>14(4)(b)(i)</b> (with regs. 1(3), 16) (as amended by S.I. 2023/882, regs. 1(2), 4, 8 (with reg. 1(4))
<b>F6</b>	Sch. 1 para. 10(4)(b) omitted (1.9.2023) by virtue of <a href="#">The School Discipline (Pupil Exclusions and Reviews) (England) (Amendment and Transitional Provision) Regulations 2023 (S.I. 2023/571)</a> , regs. 1(1), <b>14(4)(b)(ii)</b> (with regs. 1(3), 16) (as amended by S.I. 2023/882, regs. 1(2), 4, 8 (with reg. 1(4))
<b>F7</b>	Sch. 1 para. 10(4A)-(4E) inserted (1.9.2023) by <a href="#">The School Discipline (Pupil Exclusions and Reviews) (England) (Amendment and Transitional Provision) Regulations 2023 (S.I. 2023/571)</a> , regs. 1(1), <b>14(4)(c)</b> (with regs. 1(3), 16) (as amended by S.I. 2023/882, regs. 1(2), 4, 7, 8 (with reg. 1(4))
<b>F8</b>	Sch. 1 para. 10(5)-(8) omitted (1.9.2023) by virtue of <a href="#">The School Discipline (Pupil Exclusions and Reviews) (England) (Amendment and Transitional Provision) Regulations 2023 (S.I. 2023/571)</a> , regs. 1(1), <b>14(4)(d)</b> (with regs. 1(3), 16) (as amended by S.I. 2023/882, regs. 1(2), 4, 8 (with reg. 1(4))

**11.—**(1) For the purpose of fixing the time (in accordance with paragraph 10) of the review, the arranging authority must take reasonable steps to ascertain any times falling on or before the closing date for reviews when the following persons would be unable to attend—

- (a) a person who wishes, and would be entitled, to appear and make oral representations in accordance with paragraph 12;
- (b) any SEN expert appointed for the review.

(2) When arranging for the review to take place, the arranging authority must, so far as it is reasonably practicable to do so, ensure that the review is fixed for a time when the persons described in sub-paragraph (1) are able to attend the review.

**12.—**(1) A review panel must allow the following persons, and any representative they instruct, to attend the review and to make representations—

- (a) the relevant person (and, if requested by the relevant person, a friend of the relevant person);
- (b) the Head Teacher of the relevant school; <sup>F9</sup>...

[<sup>F10</sup>(ba) the social worker; and

- (bb) the virtual school head;]
- (c) the responsible body and, if different, the arranging authority.

(2) A review panel must consider written or oral representations made to it by the persons in sub-paragraph (1) when determining a review.

(3) Where the relevant school is an Academy, if requested by the relevant person, a representative of the local authority in which that Academy is located (and, if applicable, the home local authority) must be permitted to attend the review as an observer but may only make representations with the consent of the arranging authority.

[<sup>F11</sup>(4) Where a social worker, a virtual school head, a representative as referred to in sub-paragraph (1), or a representative as referred to in sub-paragraph (3) attends a meeting referred to in paragraph 10(1) which is taking place in person, they may do so using remote access provided the arranging authority is satisfied that the conditions referred to in paragraph 10(4)(a), (c) and (d) are met.]

**F9** Word in Sch. 1 para. 12(1)(b) omitted (1.9.2022) by virtue of *The School Discipline (Pupil Exclusions and Reviews) (England) (Amendment) Regulations 2022* (S.I. 2022/788), regs. 1(2), **20(2)(a)** (with reg. 3(2))

**F10** Sch. 1 para. 12(1)(ba)(bb) inserted (1.9.2022) by *The School Discipline (Pupil Exclusions and Reviews) (England) (Amendment) Regulations 2022* (S.I. 2022/788), regs. 1(2), **20(2)(b)** (with reg. 3(2))

**F11** Sch. 1 para. 12(4) inserted (1.9.2023) by *The School Discipline (Pupil Exclusions and Reviews) (England) (Amendment and Transitional Provision) Regulations 2023* (S.I. 2023/571), regs. 1(1), **14(5)** (with regs. 1(3), 16) (as amended by S.I. 2023/882, regs. 1(2), 4, 8 (with reg. 1(4))

**13.—**(1) A review panel may from time to time adjourn a review but, before doing so, must consider the effect of any adjournment on—

- (a) each of the parties to the review;
- (b) any victim of the incident leading to the exclusion; and
- (c) where such person is not the relevant person—
  - (i) the pupil; or
  - (ii) any parent of the pupil.

(2) If the relevant person has requested the appointment of a SEN expert but the SEN expert is not in attendance, the relevant person may ask the review panel to adjourn the review to a later date or time so that the SEN expert, or an alternative SEN expert, may attend.

(3) Where a relevant person asks the review panel to adjourn the review in pursuance of sub-paragraph (2) the review panel must adjourn the review.

(4) The review panel must ensure that the relevant person is aware of their right to request an adjournment in pursuance of sub-paragraph (2).

(5) A review may be adjourned if the effect of the adjournment is that the review will not have concluded before the closing date for reviews.

**14.** Reviews must be heard in private except where the arranging authority directs otherwise.

**15.** Two or more reviews may be combined and dealt with in the same proceedings where—

- (a) the review panel considers that it would be fair and expedient to do so because the issues raised by the reviews are the same or connected; and
- (b) the parties to each review agree.

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**16.** In the event of a disagreement between the members of a review panel, the review under consideration must be decided by a simple majority of the votes cast and, where the votes are tied, the chair of the review panel is to have a second or casting vote.

**17.** Where a SEN expert is present the review panel must seek and consider the SEN expert's views on how special educational needs may be relevant to the pupil's exclusion.

**18.** The SEN expert's functions in relation to the review are limited to advising the review panel, orally or in writing or both, impartially, of the relevance of special educational needs in the context and circumstances of the review but do not include making an assessment as to whether the pupil has special educational needs.

**19.—(1)** Upon conclusion of a review the review panel must without delay give notice of its decision in writing to—

- (a) the relevant person;
- (b) the responsible body;
- [<sup>F12</sup>(ba) the social worker; and
- (bb) the virtual school head;]
- (c) the local authority; and
- (d) if applicable, the home local authority.

(2) The notice must include—

- (a) the review panel's decision, indicating whether the review panel—
  - (i) upholds the responsible body's decision;
  - (ii) recommends that the responsible body reconsiders its decision; or
  - (iii) quashes the responsible body's decision;
- (b) the reasons for the review panel's decision;
- (c) any order under regulation 7, 16 or 25; and
- (d) any information that must be recorded on the pupil's educational record.

**F12** Sch. 1 para. 19(1)(ba)(bb) inserted (1.9.2022) by *The School Discipline (Pupil Exclusions and Reviews) (England) (Amendment) Regulations 2022 (S.I. 2022/788)*, regs. 1(2), **20(3)** (with reg. 3(2))

**20.** Any other matters of procedure not provided for by these Regulations are to be determined by the arranging authority.



**Changes to legislation:**

There are currently no known outstanding effects for the The School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012, SCHEDULE 1.