

## 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>(1)</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.

#### 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.

(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.

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

### **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

(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>(2)</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.

### **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>(3)</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.

### **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; and
- (b) must be made to the arranging authority within the time limit specified in paragraph 2(1).

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.

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(2) 1998 c.42.

(3) 1972 c.70.

**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; and
- (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.

**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;
- (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.

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

## SCHEDULE 2

Regulation 3

### Amendments

#### **The Education (Amount to Follow Permanently Excluded Pupil) Regulations 1999**

**1.—(1)** The Education (Amount to Follow Permanently Excluded Pupil) Regulations 1999(4) are amended in relation to England only as follows.

(2) In regulation 2—

- (a) at the beginning insert "(1)";
- (b) at the end insert—

“(2) Where a permanently excluded pupil to which paragraph (1) applies is subsequently reinstated by the governing body of the excluding school in the financial year in which the exclusion first takes effect, the new authority must pay to the old authority,

(4) [S.I.1999/495](#), as amended in relation to Wales by regulation 10(3) of [S.I.2003/3227](#) and in relation to England by regulation 2(3) of [S.I.2004/402](#). There are other amendments but none are relevant to this instrument.

and the last authority must pay to the old authority, as the case may be, in connection with the provision of education for that pupil in that financial year an amount which is no less than  $F \times (G/H)$  where—

- (a) F is the amount which the old authority has paid to the new authority, or the intermediate authority has paid to the last authority, as the case may be, under paragraph (1);
  - (b) G is the number of complete weeks remaining in the financial year during which the pupil is reinstated; and
  - (c) H is the number of complete weeks remaining in the financial year calculated from the relevant date.”.
- (3) In regulation 3, for “regulation 2” substitute “regulation 2(1)”.
- (4) In regulation 4—
- (a) omit the “and” after sub-paragraph (a);
  - (b) in paragraph (c), for “on and after 22nd March 2004” substitute “in relation to the period commencing on 22nd March 2004 and ending immediately before 1st September 2012”;
  - (c) in paragraph (c) for “appeal.” substitute “appeal; and”; and
  - (d) after paragraph (c) insert—
    - “(d) on or after 1st September 2012, on the date which is the sixth school day following the date on which the pupil has been permanently excluded.”.

### **The Local Authorities (Members’ Allowances) (England) Regulations 2003**

2. In regulation 34(1)(c)(ii) of the Local Authorities (Members’ Allowances) (England) Regulations 2003(5), for “appeal” substitute “review”.

### **The School Governance (Procedures) (England) Regulations 2003**

3. In regulation 17(2) of the School Governance (Procedures) (England) Regulations 2003(6), for “52(3) and (4)” substitute “51A(3) and (8)”.

### **The Education (Pupil Registration) (England) Regulations 2006**

4.—(1) The Education (Pupil Registration) (England) Regulations 2006(7) are amended as follows.

- (2) For regulation 8(4)(d) substitute—
- “(d) the permanent exclusion of a pupil from a maintained school, an Academy school or an alternative provision Academy does not take effect until the proprietor has discharged its duties under regulations made under section 51A of the Education Act 2002, and—
    - (i) the relevant person has stated in writing that they do not intend to apply for a review under those regulations;
    - (ii) the time for applying for a review has expired and no review has been applied for within that time; or
    - (iii) a review applied for within that time has been determined or abandoned;”.
- (3) In regulation 8(4)(e) omit “an Academy,”.

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(5) [S.I.2003/1021](#), to which there are amendments not relevant to this instrument.

(6) [S.I.2003/1377](#), to which there are amendments not relevant to this instrument.

(7) [S.I.2006/1751](#), to which there are amendments not relevant to this instrument.

### **The Education (Information about Individual Pupils) (England) Regulations 2006**

5. For paragraph 1(2) of Part 2 of Schedule 1 to the Education (Information about Individual Pupils) (England) Regulations 2006<sup>(8)</sup> substitute—

“(2) This Part does not apply to a pupil referred to in sub-paragraph (1) where the pupil is subsequently reinstated by the governing body of the school.”.

### **The School Governance (New Schools) (England) Regulations 2007**

6. In regulation 48(2) of the School Governance (New Schools) (England) Regulations 2007<sup>(9)</sup>, for “52(3) and (4)” substitute “51A(3) and (8)”.

### **The Education (Parenting Contracts and Parenting Orders) (England) Regulations 2007**

7. For sub-paragraphs (i) to (iv) of regulation 4(2)(a) of the Education (Parenting Contracts and Parenting Orders) (England) Regulations 2007<sup>(10)</sup> substitute—

- “(i) the day on which a review panel constituted under regulations made by virtue of section 51A of the Education Act 2002 decided to uphold the exclusion;
- (ii) the day on which the parent stated in writing that they do not intend to apply for a review under those regulations;
- (iii) the day on which a review applied for within the time for applying for a review has been abandoned; or
- (iv) if there was no review (and paragraph (ii) of this sub-paragraph does not apply), the last day on which a review could have been applied for; or”.

### **The Education (Provision of Full-Time Education for Excluded Pupils) (England) Regulations 2007**

8.—(1) The Education (Provision of Full-Time Education for Excluded Pupils) (England) Regulations 2007<sup>(11)</sup> are amended as follows.

(2) In regulation 2—

(a) in paragraph (2)(a)—

- (i) for “sections” substitute “section”; and
- (ii) omit “and 111 (meaning of relevant school)”; and

(b) for paragraph (2)(b) substitute—

“(b) as defined in section 111 (meaning of relevant school) of the 2006 Act for purposes relating to the duties imposed by section 19(1) and (3A) of the 1996 Act (exceptional provision of education in pupil referral units or elsewhere).”.

(3) In regulation 4—

- (a) in paragraph (1), after “excluded from a relevant school” omit “or pupil referral unit”; and
- (b) in paragraph (3)(a) omit “or a pupil referral unit”.

(4) For regulations 6 and 7 substitute—

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<sup>(8)</sup> S.I.2006/2601, to which there are amendments not relevant to this instrument.

<sup>(9)</sup> S.I.2007/958, to which there are amendments not relevant to this instrument.

<sup>(10)</sup> S.I.2007/1869, to which there is an amendment not relevant to this instrument.

<sup>(11)</sup> S.I.2007/1870, to which there are amendments not relevant to this instrument.



**“Prescribed time for head teacher to give notice to the parent in relation to exclusion of a pupil of compulsory school age**

6.—(1) Paragraphs (2) and (3) prescribe the time by which the head teacher must give the parent a notice in writing under section 104(1) of the 2006 Act.

(2) The notice must be provided without delay and no later than the end of the afternoon session of the first day on which the pupil is excluded.

(3) But where the information prescribed by section 104(2) of the 2006 Act and regulation 7 is not reasonably ascertainable by that time, the information must be provided in a further notice without delay and not less than 48 hours before the start of that suitable full-time education.

(4) Where suitable full-time education for a pupil of compulsory school age who is excluded from the school may start before the relevant day, the 48 hour time limit in paragraph (3) may be waived with the parent’s consent.

(5) In this regulation, “relevant day” has the meaning given in regulation 3.

**Other prescribed information to be provided in a notice relating to an excluded pupil**

7. The following information is prescribed as the other information (in addition to that prescribed by sections 104(2) and (3) of the 2006 Act) which the head teacher must give to the parent in writing under section 104(1) of the 2006 Act—

- (a) the address at which suitable full-time education is to be provided for the pupil;
- (b) particulars identifying the person to whom the pupil should report on first attending that address for the purpose of receiving suitable full-time education;
- (c) in relation to that suitable-full-time education—
  - (i) where 2 sessions per day are provided, the times at which the morning session commences, the afternoon session ends and the break between them commences and ends; or
  - (ii) where a single session per day is provided, the times at which the session commences and ends.”.

(5) For regulation 8(a) substitute—

“(a) a notice given to the parent in accordance with regulations made by virtue of section 51A(3)(a) of the Education Act 2002; and”.

(6) Omit regulation 10.

**The School Finance (England) Regulations 2012**

9.—(1) The School Finance (England) Regulations 2012(12) are amended as follows.

(2) In regulation 23—

(a) in paragraph (2)—

(i) for the formula substitute “ $A \times (B / 52) + C$ ”;

(ii) omit the “and” after sub-paragraph (a);

(iii) in sub-paragraph (b), for “date.” substitute “date; and”; and

(iv) after sub-paragraph (b) insert—

“(c) C is the amount of the adjustment made to the school’s budget share pursuant to a financial adjustment order.”;

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(12) S.I.2012/335.

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- (b) in paragraph (3) for “paragraph (4)” substitute “paragraphs (4) and (4A)”;
- (c) in paragraph (4)(a) after the second “authority” insert “, except that any reduction in the excluding school’s budget share made pursuant to a financial adjustment order must not be taken into account for these purposes”;
- (d) after paragraph (4) insert—  
 “(4A) In redetermining the admitting school’s budget share, the authority may increase it by any amount up to the amount of the adjustment made to the excluding school’s budget share pursuant to a financial adjustment order.”;
- (e) for paragraph (14) substitute—  
 “(14) For the purposes of this regulation—  
 “the relevant date” is the sixth school day following the date on which the pupil has been permanently excluded; and  
 “a financial adjustment order” means an order for the adjustment of a school’s budget share made under regulations made by virtue of section 51A of the Education Act 2002 in respect of the exclusion of the pupil from the excluding school.”.

### SCHEDULE 3

Regulation 3

#### Revocations

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Instruments revoked</i>	<i>References</i>	<i>Extent of revocation</i>
The Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002	<a href="#">S.I. 2002/3178</a> (13)	In full.
The Education (Pupil Exclusions) (Miscellaneous Amendments) (England) Regulations 2004	<a href="#">S.I. 2004/402</a> (14)	Regulations 4, 6, 7, 8 and 9.
The Education (Pupil Exclusions and Appeals) (Miscellaneous Amendments) (England) Regulations 2006	<a href="#">S.I. 2006/2189</a> (15)	Regulations 2, 3, 5 and 6(1).
The Education (Reintegration Interview)(England) Regulations 2007	<a href="#">S.I. 2007/1868</a> (16)	In full.
The Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2008	<a href="#">S.I. 2008/532</a> (17)	In full.

(13) [S.I.2002/3178](#) was amended by [S.I.2003/1377](#), [S.I.2004/402](#), [S.I.2006/2189](#), [S.I.2006/2683](#), [S.I.2007/1870](#) and [S.I.2010/1172](#).

(14) [S.I.2004/402](#) is subject to other revocations not relevant to this instrument.

(15) [S.I.2006/2189](#) is subject to other revocations not relevant to this instrument.

(16) [S.I.2007/1868](#).

(17) [S.I.2008/532](#) was amended by [S.I.2010/1172](#).

<b>(1)</b>	<b>(2)</b>	<b>(3)</b>
<b><i>Instruments revoked</i></b>	<b><i>References</i></b>	<b><i>Extent of revocation</i></b>
The Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order 2008	<a href="#">S.I. 2008/2683</a>	Paragraph 203 of Schedule 1.