
WELSH STATUTORY INSTRUMENTS

2003 No. 3227 (W.308)

EDUCATION, WALES

**The Education (Pupil Exclusions and Appeals)
(Maintained Schools) (Wales) Regulations 2003**

Made - - - - *9th December 2003*

Coming into force - - *9th January 2004*

In exercise of the powers conferred on the National Assembly for Wales by sections 52(3) and (4), 210(7) and 214 of the Education Act 2002⁽¹⁾, and after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992⁽²⁾, the National Assembly for Wales makes the following Regulations:

Name, commencement and application

1.—(1) These Regulations are called the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003 and come into force on 9th January 2004.

(2) These Regulations apply in relation to Wales.

Interpretation

2.—(1) In these Regulations —

“the 1999 Regulations” (“*Rheoliadau 1999*”) means the Education (Amount to Follow Permanently Excluded Pupil) Regulations 1999⁽³⁾;

“the 2002 Act” (“*Deddf 2002*”) means the Education Act 2002;

“the relevant person” (“*y person perthnasol*”) means —

- (a) in relation to a pupil who was aged 10 or below on the day before the beginning of the school year in which that pupil is excluded, a parent of his or hers;
- (b) in relation to a pupil of compulsory school age who was aged 11 or above on the day before the beginning of the school year in which that pupil is excluded, both that pupil and a parent of his or hers;
- (c) in relation to a pupil who is above compulsory school age, the pupil himself or herself.

⁽¹⁾ 2002 c. 32; see section 212(1) for the meaning of “regulations” and “prescribed”.

⁽²⁾ 1992 c. 53, amended by paragraph 22 of Schedule 21 to the Education Act 2002.

⁽³⁾ S.I. 1999/495.

(2) Any exclusion for a fixed period consisting of the period between the morning and afternoon school sessions is for the purposes of these Regulations to be taken as equivalent to a quarter of a school day.

Power of head teacher to exclude pupils

3. A head teacher may not exercise his or her power under section 52(1) of the 2002 Act so as to exclude a pupil from the school 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 the relevant person, governing body and local education authority

4.—(1) Where the head teacher of a maintained school excludes any pupil, the head teacher must without delay take reasonable steps to inform the relevant person of the following matters —

- (a) the period of the exclusion or, if the pupil is being permanently excluded, that he or she is being so excluded;
- (b) the reasons for the exclusion;
- (c) that he or she may make representations about the exclusion to the governing body and that the excluded pupil may also make representations about the exclusion to the governing body where the pupil is not the relevant person; and
- (d) the means by which such representations may be made.

(2) Where the head teacher decides that any exclusion of a pupil for a fixed period should be made permanent, he or she must without delay take reasonable steps to inform the relevant person of —

- (a) his or her decision, and
- (b) the matters specified in sub-paragraphs (b) to (d) of paragraph (1).

(3) Paragraph (4) applies where the head teacher —

- (a) excludes any pupil in circumstances where the pupil would, as a result of the exclusion —
 - (i) be excluded from the school for a total of more than five school days in any one term, or
 - (ii) lose an opportunity to take any public examination,
- (b) excludes a pupil permanently, or
- (c) decides that any exclusion of a pupil should be made permanent.

(4) Where this paragraph applies, the head teacher must without delay inform the local education authority and the governing body of the following matters —

- (a) the period of the exclusion or, if the pupil is being permanently excluded, that he or she is being so excluded, or
- (b) his or her decision that any exclusion of a pupil for a fixed period should be made permanent,

and (in either case) of the reasons for it.

(5) The head teacher must 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 such exclusion must provide details of the period of the exclusion and the reason for it.

Exclusion of pupils: provision of information to the local education authority and the National Assembly for Wales

5.—(1) The governing body must in each term provide the following information on each exclusion to the local education authority —

- (a) the excluded pupil’s name, age, gender and ethnic group;
- (b) whether the excluded pupil has a statement of special educational needs maintained by a local education authority under section 324 of the Education Act 1996(4), is being assessed for such a statement or is receiving support through School Action or School Action Plus pursuant to “The Special Educational Needs Code of Practice for Wales”(5) which was issued under section 313 of the Education Act 1996 and came into force on 1st April 2002;
- (c) whether the excluded pupil is looked after by a local authority;
- (d) the period of the exclusion; and
- (e) the reason for the exclusion.

(2) A local education authority must provide to the National Assembly for Wales at its request any information they have received from a head teacher under regulation 4(4) or (5) or from a governing body under regulation 5(1).

Functions of governing body in relation to excluded pupils

6.—(1) Paragraphs (2) to (6) apply where the governing body of a maintained school are informed under regulation 4(4) 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, and the circumstances are that the pupil would, as a result of the exclusion —
 - (i) be excluded from the school for a total of more than 15 school days in any one term, or
 - (ii) lose an opportunity to take a public examination, or
- (d) the exclusion of any pupil where the pupil would as a result of the exclusion be excluded from the school for a total of more than 5 school days in any one term and the relevant person expresses a wish to make representations in pursuance of regulation 4(1)(c).

(2) The governing body must in any such case —

- (a) consider the circumstances in which the pupil was excluded;
- (b) consider any representations about the exclusion made to the governing body —
 - (i) by the relevant person in pursuance of regulation 4(1)(c),
 - (ii) by the excluded pupil where the pupil is not the relevant person in pursuance of regulation 4(1)(c),
 - (iii) by the head teacher, and
 - (iv) by the local education authority;
- (c) convene a meeting and allow the following, namely —
 - (i) the relevant person,
 - (ii) the excluded pupil where the pupil is not the relevant person,

(4) 1996 c. 56.

(5) ISBN 0 7504 27574.

- (iii) the head teacher, and
 - (iv) an officer of the local education authority nominated by the authority, to attend that meeting and to make oral representations about the exclusion; and
 - (d) consider any oral representations so made.
- (3) The governing body must consider whether or not the pupil should be reinstated and where they consider that the pupil should be reinstated, they must in addition consider whether he or she should be reinstated immediately, or reinstated by a particular date.
- (4) If the governing body decide that the pupil should be reinstated, they must without delay —
- (a) give the appropriate direction to the head teacher, and
 - (b) inform the relevant person and the local education authority of their decision.
- (5) The head teacher must comply with any direction of the governing body for the reinstatement of a pupil who has been excluded from the school.
- (6) If the governing body decide that the pupil should not be reinstated, they must without delay —
- (a) inform the relevant person, the head teacher 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 or her right to appeal against the decision,
 - (iii) the person to whom he or she 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 —
- (a) the head teacher of a maintained school excludes a pupil in a case where paragraphs (2) to (6) do not apply, and
 - (b) the governing body receive any representations made in pursuance of regulation 4(1)(c) by the relevant person about the exclusion,
- they must consider those representations.
- (8) Subject to paragraph (9), the governing body must take each of the steps referred to in paragraph (2) —
- (a) not earlier than six school days; and
 - (b) not later than 15 school days, in the case of a permanent exclusion or an exclusion for a fixed period 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 4(4).
- (9) Where a pupil has been excluded in circumstances in which he or she would, as a result of the exclusion, lose an opportunity to take a public examination, the governing body must (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 (8).
- (10) The governing body are not to 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 (8) and (9).
- (11) The notice in writing referred to in paragraph (6)(b) may be given either —

- (a) by delivering it by hand to the relevant person's last known address, or
- (b) by sending it by first class post in a properly addressed, pre-paid envelope to the relevant person's last known address.

Appeals against permanent exclusion of pupils

7.—(1) A local education authority must make arrangements for enabling the relevant person to appeal against any decision of the governing body under regulation 5 not to reinstate a pupil who has been permanently excluded from a school 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 paragraphs (3) to (5) “appeal panel” means an appeal panel constituted in accordance with paragraph 2 of the Schedule.

(3) An appeal panel is not to determine that a pupil is to be reinstated merely because of a failure to comply with any procedural requirement imposed by or under these Regulations in relation to —

- (a) the decision under regulation 6 against which the appeal is brought, or
- (b) the exclusion or decision by the head teacher to which that decision related.

(4) The decision of an appeal panel on an appeal pursuant to arrangements made under paragraph (1) is binding on the relevant person, the governing body, the head teacher and the local education authority.

(5) On such an appeal the appeal panel may —

- (a) uphold the exclusion;
- (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 or her 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 head teacher or the governing body of a maintained school,
- (b) a local education authority, or
- (c) an appeal panel constituted in accordance with paragraph 2 of the Schedule,

under section 52(1) of the 2002 Act or these Regulations.

(2) In discharging any such function, such a person or body must have regard to any guidance given from time to time by the National Assembly for Wales.

Consequential Amendments

9.—(1) The Education (School Government) (Wales) Regulations 1999⁽⁶⁾ are amended as follows —

- (a) in regulation 42(3), for “sections 65 to 68 of the 1998 Act” there is substituted “regulations 4 to 8 of the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003”, and

(6) S.I. 1999/2163.

- (b) in regulation 48(3), for “subsections (2) to (4) of section 66 of the 1998 Act” there is substituted “paragraphs (2) to (4) and (6)(a) of regulation 6 of the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003”.

(2) Regulation 9(4)(d) of the Education (Pupil Registration) Regulations 1995(7) is amended as follows —

- (a) for the words “section 66 of the 1998 Act” there is substituted “regulations made under section 52 of the Education Act 2002”;
- (b) in sub-paragraph (i), for the words “section 67 of the 1998 Act” there is substituted “those regulations”.

Amendment of the 1999 Regulations

10.—(1) Regulation 1(2) of the 1999 Regulations is amended by—

- (a) inserting after the definition of the 1998 Act—

““the 2002 Act” means the Education Act 2002;” and

- (b) adding the following definition 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 of the 1999 Regulations there is inserted—
“or schools budget (in Wales)”.

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

- “(c) in relation to Wales only (and in place of sub-paragraph (b) above) in relation to the period commencing on 1st September 1999 and ending immediately before 9th January 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.
- (d) in relation to Wales only and subject to sub-paragraph (e), on or after 9th January 2004, on the date that an independent 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 relevant person notifies the local education authority that he does not intend to appeal.
- (e) where the relevant person is both a pupil of compulsory school age who is aged 11 or above on the day before the beginning of the school year in which that pupil is excluded and a parent of his, a notice in writing given by the parent to the local education authority which states that he does not intend to appeal will be treated as final whether or not the pupil has given such notice in writing.”.

Revocation

11.—(1) Subject to paragraph (2) the Education (Lay Members of Appeal Committees) Regulations 1994(8) (to the extent that they have not already been revoked), the Education (Exclusions from School) (Prescribed Periods) Regulations 1999(9) and the Education (Exclusions from School) (Prescribed Periods) (Amendment) (Wales) Regulations 2000(10) are hereby revoked.

(7) S.I. 1995/2089 as amended by S.I. 2001/1109 (W.53).

(8) S.I. 1994/1303.

(9) S.I. 1999/1868.

(10) S.I. 2000/3026 (W.194).

(2) The regulations revoked by paragraph (1) are to continue to have effect in relation to any exclusion to which sections 64 to 68 of, and Schedule 18 to, the School Standards and Framework Act 1998⁽¹¹⁾ applies by virtue of regulation 7 of the Education Act 2002 (Transitional Provisions) (No.2) (Wales) Regulations 2003⁽¹²⁾ (pupils excluded before 9th January 2004).

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998⁽¹³⁾.

9th December 2003

D. Elis-Thomas
The Presiding Officer of the National Assembly

⁽¹¹⁾ 1998 c. 31.

⁽¹²⁾ S.I. 2003/2959 (W.277).

⁽¹³⁾ 1998 c. 38.

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 is to 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 by hand, on the date of delivery,

unless in either case the contrary is shown.

(3) Subject to sub-paragraph (4), any notice in writing given by the relevant person to the local education authority which states that he or she does not intend to appeal against a decision not to reinstate the pupil is final.

(4) Where the relevant person is both a pupil of compulsory school age who was aged 11 or above on the day before the beginning of the school year in which that pupil is excluded and a parent of his or hers, a notice in writing given under sub-paragraph (3) by a parent will be treated as final whether or not the pupil has given such notice in writing.

Constitution of appeal panels

2.—(1) An appeal pursuant to arrangements made by a local education authority under regulation 7(1) is to be to an appeal panel constituted in accordance with this paragraph.

(2) An appeal panel is to consist of three or five members appointed by the local education authority from —

- (a) persons who are eligible to be lay members;
- (b) persons who are currently working in education or education management; and
- (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.

(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 4 a person is eligible to be a lay member if he or she is a person without personal experience in the management of any school or the provision of education in any school (disregarding any such experience as a governor or in any other voluntary capacity).

(5) Sufficient persons may be appointed by the local education authority under this paragraph to enable two or more appeal panels to sit at the same time.

(6) No person may be a member of an appeal panel if he or she is disqualified by virtue of sub-paragraph (7).

(7) The following persons are disqualified for membership of an appeal panel —

- (a) any member of the local education authority or of the governing body of the school in question;
- (b) the head teacher of, or any teacher at, the school in question or any person who has held any such position within the previous five years;
- (c) any person employed by the local education authority other than as a head teacher or a teacher;
- (d) any person who has, or at any time has had, any connection with —
 - (i) the local education authority or the school, or with any person within paragraph (b) or (c), or
 - (ii) the pupil in question or the incident leading to his or her exclusion, of a kind which might reasonably be taken to raise doubts about his or her ability to act impartially.

(8) A person employed by the local education authority as a head teacher or a teacher is not to 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 must be chaired by the person appointed as a lay member.

Allowances for members

3.—(1) For the purpose of the payment of financial loss allowance under section 173(4) of the Local Government Act 1972(**14**) that provision is to 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 is to be read as a reference to attendance at a meeting of an appeal panel.

(2) Section 174(1) of that Act is to 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 is to be read as a reference to payments at rates determined by the local education authority.

Duty to advertise for lay members

4.—(1) Any local education authority who are required to make arrangements under regulation 7(1) must, 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 must be published before the end of the three year period starting when the last advertisement was issued under the Education (Lay Members of Appeal Committees)

(14) 1972 c. 70.

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Regulations 1994(15) 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) must —
- (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 must consider any persons eligible to be so appointed who have applied to the authority in response to the most recent advertisement or series of advertisements placed in accordance with this paragraph indicating that they wish to be considered for such appointment.

Indemnity

5. Any local education authority required to make arrangements under regulation 7(1) must 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

6. 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.

7. An appeal must be by notice in writing setting out the grounds on which it is made.

8.—(1) The appeal panel must 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.

9.—(1) For the purpose of fixing the time (in accordance with paragraph 8) at which the hearing of an appeal is to take place, the local education authority must 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 10,

would be unable to attend.

(2) Where in accordance with sub-paragraph (1) the local education authority have ascertained any such times in the case of any such person, they must, 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.

10.—(1) The appeal panel must allow the relevant person and the excluded pupil where the pupil is not the relevant person to make written representations, to appear and make oral representations and to be represented at the hearing or accompanied by a friend.

(2) The panel must also allow —

- (a) the head teacher to make written representations, to be represented and to appear and make oral representations,
- (b) the local education authority to make written representations, to be represented and to appear and make oral representations, and
- (c) the governing body to make written representations, to be represented and to appear and make oral representations.

(3) The appeal panel may from time to time adjourn the hearing.

11. Appeals must be heard in private; but —

- (a) 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; and
- (b) one member of the Council on Tribunals may attend, as an observer, any meeting of an appeal panel at which an appeal is considered.

12. 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.

13. In the event of a disagreement between the members of an appeal panel, the appeal under consideration is to be decided by a simple majority of the votes cast and, in the case of an equality of votes, the chair of the panel is to have a second or casting vote.

14. The decision of an appeal panel and the grounds on which it is made must —

- (a) be communicated by the panel in writing to the relevant person, the local education authority, the governing body and the head teacher, and
- (b) be so communicated by the end of the second working day after the conclusion of the hearing of the appeal.

15.—(1) Subject to paragraphs 7 to 14, all matters relating to the procedure on appeals must be determined by the local education authority.

(2) The local education authority must, in setting any time limits in connection with appeals, have regard to the desirability of securing that appeals are disposed of without delay.

16. In paragraphs 1(2) and 14 “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(16).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe limits on the powers of head teachers to exclude pupils from maintained schools under section 52(1) of the Education Act 2002, and the procedure which is to be followed by the head teacher, the school governing body and the local education authority following an exclusion from a maintained school.

Regulation 2 introduces a new definition of “relevant person” for the purposes of these Regulations and also provides that any fixed period exclusion during the lunchtime period is to be counted as an exclusion for a quarter of a school day.

Regulation 3 provides that a head teacher cannot exclude a pupil for one or more fixed periods which together amount to more than 45 school days in any school year.

Regulation 4 requires the head teacher to inform the relevant person of details of an exclusion. The head teacher must also inform the local education authority and governing body if the exclusion is permanent, will result in the pupil missing a public examination, or takes the total exclusions for that pupil over five days in a term.

Regulation 5 makes provision as to the range of information that the governing body must provide to the local education authority and the range of information the local education authority must provide to the National Assembly for Wales at its request.

Where the exclusion is permanent, will result in the pupil missing a public examination, or takes the total exclusions for that pupil over 15 days in a term, or the relevant person wishes to make representations and the pupil would be excluded for more than five days in a term,

Regulation 6 requires the governing body to consider the circumstances, listen to any representations from the relevant person, the excluded pupil where the pupil is not the relevant person or the local education authority, and to decide whether the pupil should be reinstated or not.

Regulation 7 requires the local education authority to make arrangements for the relevant person to appeal against a decision of the governing body not to reinstate a pupil who has been permanently excluded. 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 that a direction would otherwise have been appropriate.

Regulation 8 requires head teachers, governing bodies, local education authorities and appeal panels to have regard to guidance given by the National Assembly for Wales.

Regulations 9 and 10 make various consequential amendments, including amendments to the Education (School Government) (Wales) Regulations 1999 (S.I.1999/2242), to ensure that references in these Regulations to the governing body of a maintained school are to be construed as references to their pupil discipline committee, and amendments to the Education (Amount to Follow Permanently Excluded Pupil) Regulations 1999 (S.I. 1999/495).

The Schedule prescribes the constitution and procedure for appeal panels.