

A consultation on revised statutory guidance and regulations for exclusions from schools and pupil referral units in England

Response Form

**The closing date for this
consultation is: 17 February
2012.**

Your comments must reach us by that date.

THIS FORM IS NOT INTERACTIVE. If you wish to respond electronically please use the online response facility available on the Department for Education e-consultation website (www.education.gov.uk/consultations).

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes, primarily the Freedom of Information Act 2000 and the Data Protection Act 1998.

If you want all, or any part, of your response to be treated as confidential, please explain why you consider it to be confidential.

If a request for disclosure of the information you have provided is received, your explanation about why you consider it to be confidential will be taken into account, but no assurance can be given that confidentiality can be maintained. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data (name and address and any other identifying material) in accordance with the Data Protection Act 1998, and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Please tick if you want us to keep your response confidential.

Reason for confidentiality:

Name

Organisation (if applicable)

Address:

If your enquiry is related to the policy content of the consultation, you can contact the Exclusion Team by

email: exclusion.consultation@education.gsi.gov.uk

Alternatively you can contact the PCU helpline on:

Telephone: 0370 000 2288

If you have a query relating to the consultation process you can contact the Consultation Unit on:

Telephone: 0370 000 2288

e-mail: consultation.unit@education.gsi.gov.uk

The Education Act 2011 established new arrangements by which a governing body's decision to uphold a permanent exclusion can be reviewed. In summary, independent appeal panels are being replaced by independent review panels, which will have different powers. Parents will also now be able to apply to the First-tier Tribunal (Special Educational Needs and Disability) to hear cases alleging disability discrimination. These arrangements will apply to all permanent exclusions from maintained schools, pupil referral units, Academy Schools and Alternative Provision Academies (including Free Schools) which take place from 1 September 2012.

These new arrangements have led to consequential changes in the duties and powers of those involved in the exclusion process. In order to improve the process some additional changes have been made to these duties and powers. Statutory guidance on exclusions has also been updated.

The provisions in the Education Act 2011 form part of the Government's wider reforms in relation to exclusion and alternative provision. These reforms include an increased focus on the use of early intervention for pupils displaying persistent disruptive behaviour, for example through the informed use of multi-agency assessments. We are also trialling a new system of exclusion in a number of local authorities over the next three years which will support schools to intervene earlier with pupils at risk of exclusion.

This consultation seeks comments on revised regulations and guidance. The draft regulations that accompany this consultation cover maintained schools. Regulations covering pupil referral units will mirror these regulations. Changes to regulations covering reintegration interviews, information about pupils and school finance, as well as consequential amendments to other regulations, will also be required to reflect the changes being made. Regulations in relation to Academies will be drafted following this consultation based upon the regulations for maintained schools.

The objective is to ensure that the revised guidance gives sufficiently clear information to people involved in the exclusion process. Revised guidance on the use of alternative provision is due to be released next year and the exclusion guidance will be updated as appropriate. Suggestions for brief inserts and/or revisions to this exclusion guidance are welcome. However, in line with the Department's aim to provide more effective guidance, it is not the intention to widen the scope of the document or lengthen it.

Whilst respondents are welcome to answer every question some questions apply directly to specific groups of people. Respondents may, therefore, wish to complete only those questions which are directly relevant to them. In order to make this easier the questions are grouped as follows.

Questions 1 to 16 are general questions for all respondents.

Question 17 is aimed at head teachers, Principals and teachers in charge of pupil referral units (PRUs).

Question 18 is aimed at school governors and management committee members.

Questions 19 and 20 are aimed at local authority officials and Academy Trust members.

'Head teacher' in this consultation questionnaire applies equally to the Teacher in Charge at a Pupil Referral Unit and Principals of Academies. 'Governing Body' applies equally to a PRU Management Committee and 'Governor' to Member of a Management Committee. Apart from where specifically stated, the duties of a local authority to arrange an independent review panel also apply to Academy Trusts.

Please tick the box that best describes you as a respondent:

| | | |
|--|---|--|
| <input type="checkbox"/> Head Teacher/Principal/ Teacher in Charge | <input type="checkbox"/> Teacher/School Professional | <input type="checkbox"/> School Governor/Management Committee Member |
| <input type="checkbox"/> Parent | <input type="checkbox"/> Local Authority Official | <input type="checkbox"/> Pupil |
| <input type="checkbox"/> Voluntary/Community Organisation | <input type="checkbox"/> SEN Professional or Practitioner | <input type="checkbox"/> Other (please specify) |

Please Specify:

Please tick to indicate which phase of education you are involved with:

| | | | |
|----------------------------------|------------------------------------|-----------------------------------|---------------------------------------|
| <input type="checkbox"/> Primary | <input type="checkbox"/> Secondary | <input type="checkbox"/> Combined | <input type="checkbox"/> Not relevant |
|----------------------------------|------------------------------------|-----------------------------------|---------------------------------------|

Please tick to indicate which type of school your answers relate to:

Maintained
School

Pupil Referral
Unit

Academy/Free
School

Other (Please
specify)

Please Specify:

Questions for all respondents

Application of these procedures to Academies

Under current arrangements Academies are required to mirror the exclusion process for maintained schools by virtue of their funding agreements. However, these arrangements would not allow the new system of exclusion to be applied in full or consistently across different Academies. It is the intention, therefore, to create regulations for Academies that would mirror those for maintained schools. These regulations would apply to Academy Schools, including Free Schools and Alternative Provision Academies / Free Schools. The significant differences between the regulations for maintained schools and Academies would be:

- Academies' governing bodies would not be required to allow a local authority officer to make representations when they are considering the reinstatement of a pupil, although a local authority officer may attend the meeting at the invitation of a parent;
- Academy Trusts (not the local authority) would be responsible for making arrangements for the review of any decision of the governing body not to reinstate a pupil who has been permanently excluded from the Academy;
- Academy Trusts would be responsible for appointing the Special Needs Expert where appropriate;
- Academy Trusts would not be required to allow a local authority officer to make representations at an independent review panel for which they were responsible, although a local authority officer may attend at the invitation of a parent;
- the regulations would place a duty on Academies to make a financial payment to the local authority equivalent to that of a maintained school, if directed to do so by an independent review panel.

The differences relating to local authority participation in an exclusion from an Academy reflect the current system of independent appeal panels. The regulations on financial penalties are required as a local authority cannot readjust the budget of an Academy.

1. Do you agree with the scope of the proposed regulations for Academies? If not, what further changes should be made so that the regulations are appropriate for Academies?

Yes

No

Not sure

Comments:

Early intervention for pupils at risk of exclusion

Where possible, it is important for schools to identify any underlying causes of disruptive behaviour and intervene to prevent problems escalating to the point of exclusion. Paragraphs 17 to 19 provide statutory guidance to head teachers on this issue.

2. Do you think that the guidance on early intervention is sufficiently clear? If not, how might it be improved?

Yes

No

Not sure

Comments:

Exclusion of pupils from groups with disproportionately high exclusion rates

There are a number of groups of pupils who are particularly vulnerable to exclusion. This includes pupils with special educational needs (SEN), pupils with disabilities, pupils from certain ethnic groups and looked after children. To

ensure that all pupils are treated fairly we have sought to clarify schools' legal duties in relation to these groups and to provide specific statutory guidance on exclusion.

Exclusion of pupils with a protected characteristic

Paragraphs 8 to 9 sets out how schools' duties under the Equality Act 2010 apply in relation to exclusions. This includes highlighting that it is unlawful for a governing body of a school to discriminate against, harass or victimise a pupil because of a protected characteristic, such as race or disability. Paragraph 20 provides statutory guidance to head teachers on addressing the needs of pupils from ethnic groups which have disproportionately high rates of exclusion.

3. Do you think the explanation of how the Equality Act 2010 applies in relation to exclusions and the statutory guidance on exclusion of pupils from ethnic groups vulnerable to exclusion is sufficiently clear? If not, how might it be improved?

Yes

No

Not sure

Comments:

Exclusion of pupils with special educational needs

The new system of exclusion has additional safeguards to protect pupils with special educational needs (SEN). This includes the right for parents to request that a SEN expert attends an independent review panel. The expert's role will be to provide impartial advice to the panel on how SEN could be relevant to the exclusion, for example, whether a school has complied with their legal duties in respect of SEN when excluding the pupil.

Parents will have the right to request a SEN expert, whether or not a school recognises that their child has SEN. The duty on the governing body to notify

parents of this right is set out in paragraph 68; the duties of the local authority to appoint a SEN expert, and associated statutory guidance, are set out in paragraphs 95 to 106; and statutory guidance to SEN experts on performing their role is set out in paragraphs 149 to 151.

4. Do you think the explanation of the legislation and the statutory guidance is sufficiently clear to enable the SEN expert to perform their role effectively? If not, how might it be improved?

Yes

No

Not sure

Comments:

Paragraph 102 sets out our expectation that the SEN expert will be a professional with suitable expertise and experience of the requirements on schools in relation to identifying and supporting special educational needs and disability. The guidance states that this could be an educational psychologist, a specialist SEN teacher or a behaviour support teacher.

5. Do you believe these examples are sufficient to enable the local authority to identify individuals that are suitable for the role? If not, please explain what other examples of expert would clearly meet the criteria of having the required expertise and experience of the SEN requirements on schools.

Yes

No

Not sure

Comments:

Exclusion of looked after children

Looked after children can be particularly vulnerable to exclusion. Paragraphs 21, 25 and 27 provide, or draw attention to, statutory guidance on minimising the impact of exclusion on these children.

6. Do you think the statutory guidance in relation to the exclusion of looked after children is sufficiently clear? If not, how might it be improved?

Yes

No

Not sure

Comments:

Informing parents about an exclusion

There are some significant changes to the exclusion process about which parents need to be aware. This includes the right of a parent to request that a SEN expert attend an independent review panel and the option for parents to

ask the First-tier Tribunal to hear cases of permanent exclusion in which disability discrimination is alleged.

Following an exclusion head teachers are currently required to provide parents with information about the exclusion ‘without delay’ (paragraph 29 of the guidance). Head teachers are also required to provide parents with information about any alternative provision that has been arranged for their child and notify them that they must ensure that their child is not found in a public place for the first five days of an exclusion without good reason¹. Currently, there are different requirements for when this extra information must be provided. Whilst, in practice, the information is often provided at the same time, these differences in the requirements are unhelpfully complicated. The Government, therefore, proposes to change the relevant regulations so that head teachers are required to provide all information relating to an exclusion without delay and, in the case of information about alternative provision arrangements, at least 48 hours before the provision is due to start (paragraphs 32 to 34 of the guidance).

7. Do you agree with this approach to simplify the requirements on when information relating to an exclusion should be provided?

Yes

No

Not sure

Comments:

The overall duties on head teachers, governing bodies and independent review panels to keep parents informed at each stage of the exclusion process, and associated statutory guidance, are provided in paragraphs: 29 to 40 (for head teachers); 68 to 72, 173 and 176 (for governing bodies); and 154 to 158 (for independent review panels). In addition, the Department for Education is funding the Coram Children’s Legal Centre to provide free and impartial advice to parents in relation to exclusions.

¹ Under sections 103 and 104 of the Education and Inspections Act 2006 and Regulations 6 and 7 of the Education (Provision of Full-Time Education for Excluded Pupils) (England) Regulations 2007.

8. Do you think the explanation of the legislation and the statutory guidance is sufficiently clear to ensure that parents will be properly informed about the exclusion process? If not, how might it be improved?

Yes

No

Not sure

Comments:

Pupils' participation in the exclusion process

We believe that it is important that pupils should be encouraged and supported to participate throughout the exclusion process. Whilst there is not currently an intention to legislate to give pupils the right to challenge their own exclusion, we propose to place a requirement on head teachers to set out how the excluded pupil may be involved in the governing body's consideration of an exclusion (paragraph 29). We have also revised the statutory guidance to place an increased emphasis on supporting pupil participation (paragraphs 14, 15, 16, 54, 115 and 116).

9. Do you think that the guidance on supporting pupil participation is sufficiently clear? If not, how might it be improved?

Yes

No

Not sure

Comments:

Governing bodies' consideration of an exclusion decision

Currently, where a governing body is required to meet to reconsider an exclusion they are not able to do so until six school days after they have been notified by the head teacher that the exclusion has taken place. We feel that this is unnecessarily restrictive, especially where there is a risk of a pupil missing an external exam. It is, therefore, proposed to remove this restriction, whilst making clear that governing bodies will still be expected to try and arrange the meeting for a time that all parties, including parents, are able to attend (paragraphs 46 to 52 of the guidance).

10. Do you agree with the proposal to allow governing bodies to meet in order to consider reinstatement earlier than six school days after being notified?

Yes

No

Not sure

Comments:

The use of fixed period exclusion

There is currently a limit of 45 days of fixed term exclusion per year for any pupil (paragraph 1 of the guidance). Where a pupil is subject to repeated fixed period exclusions it is important that a school considers whether this is providing an effective sanction for their behaviour. Schools might, for example, consider whether it would be more appropriate to use their power under section 29A of the Education Act 2002 which allows them to refer a pupil off-site for educational provision to improve their behaviour (the Department intends to issue guidance on the use of this power next year).

11. What should the limit on the number of school days of fixed period exclusion in a school year be under the new system?

Higher Lower The same Not sure

Comments:

Reintegration interviews

Currently, a head teacher must arrange a reintegration interview with parents for any fixed period exclusion of a primary-aged pupil or for a fixed period exclusion of six or more school days of a secondary-aged pupil. It is important for schools to agree a strategy for managing the future behaviour of an excluded pupil (paragraph 38 of the guidance). However, the Government intends to remove the legal requirement for a reintegration interview as it creates an unnecessarily bureaucratic approach to reintegration for pupils, parents and schools.

12. Do you think the guidance on pupil reintegration following a fixed period exclusion is sufficiently clear? If not, how might it be improved?

Yes No Not sure

Comments:

The financial readjustment / payment

Where a governing body is directed to reconsider an exclusion decision by an independent review panel but chooses not to reinstate the pupil, the school will be expected to provide a fair contribution towards the potentially significant extra costs of alternative provision. This would be in addition to the funding that would normally follow an excluded pupil. The system of financial readjustment needs to be clearly understood and consistently applied. It is, therefore, proposed that a flat rate sum of £4,000 would be payable by all schools where the governing body has been directed to reconsider an exclusion but does not offer to reinstate the pupil, so long as that school has its own budget from which to make the payment (paragraphs 131 and 143 to 145 of the guidance).

13. Is a flat rate sum of £4,000 right? If your answer is no, please go to question 13b.

Yes

No

Not sure

13b. If you answered 'No' to question 13, please indicate whether you consider the amount should be higher, lower or varied. If you think it should be varied, please explain how you think the amount should be calculated so that it is clearly understood and consistently applied.

Higher

Lower

Varied

Comments:

The First-tier Tribunal

Parents can currently apply for the First-tier Tribunal (Special Educational Needs and Disability) to review fixed period exclusions where they believe that disability discrimination has taken place. Under the new system this right will be extended to allow parents to ask the Tribunal to review permanent exclusions. The Tribunal Procedure Committee is reviewing the Tribunal Procedure Rules to ensure they are suitable for hearing permanent exclusion cases.

Q14 and Q15 are asked on behalf of the Tribunal Procedure Committee

The Tribunal Procedure Committee considers that, where a case alleging disability discrimination in an exclusion is brought before the First-tier Tribunal (Special Educational Needs and Disability), the respondent (for example, the governing body of the school) should have 15 working days in which to provide a response.

14. Do you regard this 15 day requirement for responses as reasonable?

Yes

No

Not sure

Comments:

15. Do you think the Tribunal Procedure Rules need amending in any other respect in order to be suitable for permanent exclusion cases? If so please explain. (They can be seen at: http://www.justice.gov.uk/downloads/guidance/courts-and-tribunals/tribunals/general/consolidated_TPFT_HESCRules2008asat010411.pdf.)

Yes

No

Not sure

Comments:

Any other comments

16. Please let us have any other comments on the revised guidance or regulations, including any further suggestions for how they might be improved without significantly increasing their length.

Comments:

For head teachers/teachers in charge/Principals

17. Overall, do you think that the explanation of the legislation and statutory guidance is sufficiently clear to enable head teachers to fulfil their statutory duties? If not, how might it be improved?

Yes

No

Not sure

Comments:

For school governors/management committee members

18. Overall, do you think the explanation of the legislation and statutory guidance is sufficiently clear for governing bodies to fulfil their statutory duties? If not, how might it be improved?

Yes

No

Not sure

Comments:

Local authority officials / Academy Trust members

If a governing body is directed to reconsider an exclusion decision by an independent review panel and reinstatement is not the outcome, the school will be expected to make a payment to the local authority towards the additional costs of alternative provision. This payment would be in addition to the funding that would normally follow an excluded pupil (question 9 relates to the size of this payment). Paragraphs 160 to 168 of the guidance set out the local authority's role in ensuring that this payment is made. In the case of maintained schools, it is intended that the School Finance (England) Regulations will be amended to set out that, where directed, a local authority should include this additional sum when readjusting a school's budget following a permanent exclusion. It is intended that separate regulations will place duty on Academies to make an equivalent payment directly to the local authority.

19. Do you think the statutory guidance is sufficiently clear to enable local authorities to carry out this financial adjustment? If not, how might it be improved?

Yes

No

Not sure

Comments:

20. Overall, do you think the explanation of the legislation and statutory guidance is sufficiently clear for a local authority to fulfil their statutory duties? If not, how might it be improved?

Yes No Not sure

Comments:

Thank you for taking the time to let us have your views. We do not intend to acknowledge individual responses unless you place an 'X' in the box below.

Please acknowledge this reply

The Department for Education carries out research on many different topics and consultations. As your views are valuable to us, are you content to be contacted again from time to time, either for research or for the Department to send through consultation documents?

Yes No

All DfE public consultations are required to conform to the following criteria within the Government Code of Practice on Consultation:

Criterion 1: Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2: Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3: Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4: Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5: Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6: Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7: Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

If you have any comments on how DfE consultations are conducted, please contact Carole Edge, DfE Consultation Co-ordinator (Tel: 01928 738060 / email: carole.edge@education.gsi.gov.uk)

Thank you for taking time to respond to this consultation.

Completed questionnaires and other responses should be sent to the address shown below by 10 February 2012

Send by post to: Exclusion Consultation, Exclusion Team, Department for Education, Sanctuary Buildings, Great Smith Street, Westminster SW1P 3BT

Send by e-mail to: exclusion.consultation@education.gsi.gov.uk

You can download this booklet online at: <http://www.education.gov.uk/publications>

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