

**2012 No. 000**

**EDUCATION, ENGLAND**

**The School Discipline (Pupil Exclusions and Reviews)  
(Maintained Schools) (England) Regulations 2012**

<i>Made</i>	- - - -	<i>March 2012</i>
<i>Laid before Parliament</i>		<i>April 2012</i>
<i>Coming into force</i>	- -	<i>1st September 2012</i>

The Secretary of State for Education, in exercise of the powers conferred by sections 51A(3), (5), (6), (7), (8), (9) and (10) of the Education Act 2002(a) and section 102 of the Education and Inspections Act 2006(b).

In accordance with section 8 of the Tribunals and Inquiries Act 1992(c), he has consulted with the Administrative Justice and Tribunals Council.

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the School Discipline (Pupil Exclusions and Reviews) (Maintained Schools) (England) Regulations 2012 and come into force on 1st September 2012.

(2) These Regulations apply only in relation to maintained schools England.

**Interpretation**

2.—(1) In these Regulations—

“SEN expert” means an individual with appropriate expertise and experience of special educational needs appointed by a local authority for the purpose of providing independent and impartial advice to a review panel on how special educational needs may be relevant for the review of a particular decision to exclude a pupil permanently from a maintained school;

“home local authority” means the local authority responsible for the area in which the pupil resides where this differs from the local authority that is responsible for maintaining the pupil’s school;

“review panel” means a review panel constituted in accordance with paragraph 2 of the Schedule to these Regulations;

“special educational needs” has the meaning given to that term under section 312 of the 1996 Act(d);

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(a) 2002 c.32, as amended by section 4 of the Education Act 2011 (2011 c.21).

(b) 2006 c.40.

(c) 1992 c.53, as amended by paragraph 30 of Schedule 8 to the Tribunals, Courts and Enforcement Act 2007 (c.15) and by paragraph 4 of Schedule 1 of the Education Act 2011 (2011 c.21).

(d) 1996 c.56.

“the 1996 Act” means the Education Act 1996;  
“the 2002 Act” means the Education Act 2002(a);  
“the 2010 Act” means the Equality Act 2010(b); and  
“the relevant person” means—

- (a) in relation to a pupil under the age of 18, a parent of his; and
- (b) in relation to a pupil who has attained that age, the pupil himself.

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

### **The power of a head teacher to exclude pupils**

3. A head teacher may not exercise his power under section 51A(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 : head teacher’s duty to inform relevant person, governing body and local authority**

4.—(1) Where the head teacher of a maintained school excludes any pupil for a fixed period, the head teacher must inform the relevant person of the following matters without delay—

- (a) the period of the exclusion and the reasons for it;
- (b) that the relevant person may make representations about the exclusion to the governing body of the school;
- (c) that the pupil may be involved in the process of making such representations and an explanation as to how the pupil may be so involved;
- (d) the means by which such representations may be made; and
- (e) where and to whom such representations should be sent.

(2) Paragraph (3) applies where the head teacher of a maintained school decides—

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

(3) Where this paragraph applies the head teacher must, without delay—

- (a) inform the relevant person, the local authority (and, in the case of a permanent exclusion, the home local authority) and the governing body of the period of the exclusion and the reasons for it; and—
- (b) give the relevant person notice in writing of the decision stating the following matters—
  - (i) the reasons for the decision;
  - (ii) that the relevant person may make representations about the decision to the governing body;
  - (iii) the means by which such representations may be made;
  - (iv) where and to whom such representations should be sent; and

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(a) 2002 c.32, as amended by section 4 of the Education Act 2011 (2011 c.21).  
(b) 2010 c.15.

- (v) that the relevant person may be represented (at his own expense) at the meeting of the governing body at which the exclusion is to be considered and that he may be accompanied to such meeting by a friend.
- (4) The head teacher must inform the local authority of—
- (a) any exclusions in the current school year to date which do not fall within paragraph (2); and
  - (b) in respect of each such exclusion, the period of the exclusion and the reasons for it.
- (5) The head teacher must provide the information in paragraph (4) once for each term with respect to the school, save that where in the school year of a school there are more than three terms such information must be provided three times during the school year on dates agreed between the local authority and the school.

### **Functions of the governing body in relation to excluded pupils**

**5.—**(1) Paragraphs (2) to (6) apply where the governing body of a maintained school is informed under regulation 4(3)(a) of—

- (a) the permanent exclusion of a pupil;
- (b) the exclusion of any pupil where, as a result of the exclusion, that pupil would—
  - (i) be excluded from the school for a total of more than fifteen school days in any one term; or
  - (ii) lose an opportunity to take a public examination; or
- (c) the exclusion of any pupil where—
  - (i) the pupil would as a result of the exclusion be excluded from the school for a total of more than five school days in any one term; and
  - (ii) the relevant person expresses a wish to make representations for the purposes of regulation 4(3)(b).

(2) The governing body must decide whether or not the pupil should be reinstated and, where it considers that the pupil should be reinstated, the governing body must in addition consider whether he should be reinstated immediately or by a particular date.

(3) In order to decide whether or not a pupil should be reinstated under paragraph (2) a governing body must in any such case—

- (a) consider the pupil's circumstances, including the circumstances in which the pupil was excluded;
  - (b) consider any representations about the exclusion made to the governing body by—
    - (i) the relevant person in pursuance of regulation 4(3)(b); or
    - (ii) the local authority;
  - (c) take reasonable steps to arrange the meeting at which the exclusion is to be considered for such time and date as each of the following, namely—
    - (i) the head teacher;
    - (ii) the relevant person (and, where requested by the relevant person, a representative or friend of the relevant person); and
    - (iii) an officer nominated by the local authority, is able to attend such meeting;
  - (d) allow each of the persons described in sub-paragraph (c) to attend such meeting of the governing body and to make oral representations about the exclusion; and
  - (e) consider any oral representations so made.
- (4) If the governing body decides that the pupil should be reinstated, it must without delay—
- (a) give the appropriate direction to the head teacher; and

- (b) inform the relevant person and the local authority (and, if applicable, the home local authority) of its decision and the reasons for it in writing.
- (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 decides to uphold an exclusion it must without delay—
- (a) inform the relevant person, the head teacher and the local authority (and, if applicable, the home local authority) of its decision and the reasons for it in writing; 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 stating the following matters—
    - (i) that the exclusion is permanent;
    - (ii) that the relevant person may ask the local authority—
      - (aa) to arrange for the decision of the governing body to be reviewed by a review panel; and
      - (bb) to appoint a SEN expert to attend such review irrespective of whether or not the school recognises that the pupil has special educational needs;
    - (iii) the role of a SEN expert in respect of a review;
    - (iv) the means by which a request for a review should be made and what such request must contain;
    - (v) where and to whom a request for a review should be sent and the date by which it should be received at such place or by such person;
    - (vi) where and to whom a request that a SEN expert be appointed to attend the review should be sent and the date by which it should be received at such place or by such person;
    - (vii) that the relevant person may, at his own expense, appoint his own expert or other such individual to make written or oral representations at the review; and
    - (viii) that the relevant person may also issue a claim under the 2010 Act where he believes that unlawful discrimination has occurred; and the time within which any such claim should be made.
- (7) Subject to paragraph (9), the governing body must take each of the steps referred to in paragraphs (2) and (3)—
- (a) not later than fifteen school days in the case of—
    - (i) a permanent exclusion;
    - (ii) an exclusion for a fixed period which would cause the pupil's total number of days of exclusion to exceed fifteen school days in one term; or
    - (iii) the exclusion of any pupil where, as a result of the exclusion, that pupil would lose an opportunity to take a public examination; or
  - (b) not later than fifty school days in the case of an exclusion for a fixed period where the pupil would, as a result of the exclusion, be excluded from the school for a total of more than five school days but not more than fifteen school days in any one term and the relevant person has made representations in pursuance of regulation 4(3)(b),
- after the date on which it was informed of the matters in regulation 4(3)(a).
- (8) Where—
- (a) a pupil has been excluded in circumstances where paragraphs (2) to (6) do not apply; and
  - (b) the governing body receives representations made in pursuance of regulation 4(1)(b) from the relevant person about such exclusion,
- the governing body must consider those representations.
- (9) Where a pupil has been excluded in circumstances in which he would, as a result of the exclusion, lose an opportunity to take a public examination, the governing body must (so far as it is reasonably practicable for it to do so) take the steps referred to in paragraphs (2) and (3) before

the date on which the pupil is due to take the examination and in any event no later than is required by paragraph (7).

(10) The governing body will not be relieved of the duty to take any step referred to in paragraph (3) because it has not been taken within the period specified in paragraphs (7) or (9).

(11) The notice in writing referred to in paragraph (6)(b)—

- (a) may be given either—
  - (i) by delivering it to the relevant person’s last known address; or
  - (ii) by properly addressing, pre-paying and sending by first class post to the relevant person’s last known address a letter containing the notice; and
- (b) will be taken to have been given—
  - (i) where first class post is used, on the second working day after the date of posting; or
  - (ii) where the notice is delivered, on the date of delivery,

unless in either case the contrary is shown.

(12) In paragraph (11)(b)(i) “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(a).

### **Review of permanent exclusion of a pupil**

**6.—**(1) The Schedule to these Regulations has effect in relation to the making and hearing of reviews pursuant to arrangements made under sub-paragraph (2).

(2) Subject to paragraph (4), if a relevant person requests a review in pursuance of regulation 5(6)(b)(ii)(aa) a local authority must make arrangements for the review of any decision of the governing body not to reinstate a pupil who has been permanently excluded from a school maintained by the local authority.

(3) Subject to paragraph (4) the local authority must—

- (a) appoint a SEN expert to attend a review if the relevant person has requested it in pursuance of regulation 5(6)(b)(ii)(bb); and
- (b) bear the costs of the SEN expert appointed for the purposes of such review.

(4) A local authority will not be required to take the steps in paragraphs (2) and (3) where the relevant person has not requested a review or the appointment of a SEN expert within the time limit specified in the Schedule to these Regulations.

(5) In making any decision on a review pursuant to arrangements made under paragraph (2) a review panel must have regard both to the interests and circumstances of the excluded pupil and to the interests of other pupils and persons working at the school (including persons working at the school voluntarily).

(6) In respect of a review, a review panel may—

- (a) uphold the governing body’s decision;
- (b) recommend that the governing body reconsiders its decision; or
- (c) where it considers that the governing body’s decision was flawed when considered in the light of the principles applicable on an application for judicial review, quash the governing body’s decision and direct the governing body to reconsider such decision.

(7) Upon determining a review a review panel may also direct the governing body to place a note on the pupil’s record.

(8) A review panel may direct the local authority to make a financial adjustment to a school’s budget share for the funding period in the sum of £4,000 where a governing body maintains its

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(a) 1971 c.80.

decision not to reinstate the pupil following a decision by the review panel to quash the governing body's original decision.

(9) A review panel's decision on a review pursuant to arrangements made under paragraph (2) will be binding on the relevant person, the governing body, the head teacher and the local authority.

### **Reconsideration by governing body following a review**

7.—(1) Where a review panel—

- (a) recommends that the governing body reconsiders a decision; or
- (b) quashes the governing body's decision and directs the governing body to reconsider it,

the governing body must reconvene within ten school days of notification of the review panel's decision in order to carry out such reconsideration.

(2) Where a governing body has reconsidered an exclusion decision it must inform the relevant person, the head teacher and the local authority (and, if applicable, the home local authority) of its reconsidered decision and the reasons for it without delay.

(3) A governing body must comply with any direction from the review panel with respect to placing a note on the pupil's record.

### **Exclusions of pupils : guidance**

8.—(1) This regulation applies to any functions of—

- (a) a head teacher;
- (b) a governing body;
- (c) a local authority;
- (d) a review panel; and
- (e) a SEN expert,

under section 51(A) of the 2002 Act or these Regulations.

(2) In discharging any such function, such person or body must have regard to any guidance given from time to time by the Secretary of State.

### **Exclusions : standard of proof**

9. Where it falls to—

- (a) a head teacher, in exercise of the power conferred by section 51A(1) of the 2002 Act;
- (b) a governing body, in exercise of functions for the purposes of regulations 5 and 7; or
- (c) a review panel, in exercise of functions for the purposes of regulation 6,

to establish any fact, any question as to whether that fact is established will be decided on a balance of probabilities.

### **Information**

10. A local authority must forward to the Secretary of State at his request any information it has received from a head teacher under paragraphs (3)(a), (4) or (5) of regulation 4.

### **Revocation and transitional provisions**

11.—(1) Subject to paragraph (7), the following provisions are revoked.

(2) The Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002(a).

(3) Regulations 4, 6, 7, 8 and 9 of the Education (Pupil Exclusions) (Miscellaneous Amendments) (England) Regulations 2004(b).

(4) Regulations 2, 3, 5 and 6(1) of the Education (Pupil Exclusions and Appeals) (Miscellaneous Amendments) (England) Regulations 2006(c).

(5) The Education (Reintegration Interview) (England) Regulations 2007(d).

(6) Regulation 10 of the Education (Provision of Full-Time Education for Excluded Pupils) (England) Regulations 2007(e).

(7) Where a pupil is excluded from a maintained school before 1st September 2012, the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, as amended from time to time, will continue to have effect in relation to that exclusion.

Date

*Name*  
Minister of State for Schools  
Department for Education

## SCHEDULE 1

Regulation 6

### Constitution and Procedure of Review Panels

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

1.—(1) Subject to sub-paragraph (2) the relevant person must give notice in writing of his request for a review and, if wanted, his request that a SEN expert be appointed to attend such review, to the local authority responsible for maintaining the school within fifteen school days of the day on which he is given notice in writing of the governing body's decision under regulation 5(6)(b).

(2) Where the relevant person makes a claim under the 2010 Act alleging that the exclusion amounts to unlawful discrimination, the period within which the relevant person must give notice for the purposes of sub-paragraph (1) will commence from the date on which such unlawful discrimination claim is finally determined.

(3) For the purposes of sub-paragraph (2), "finally determined" means the exhaustion of all rights of appeal or review of a first instance decision.

(4) Within fifteen school days of the date on which it is given notice in writing of the relevant person's request for a review the local authority must arrange for—

- (a) the review panel to meet to review the exclusion; and
- (b) if requested by the relevant person, for a SEN expert to attend the review.

(5) For the purpose of calculating the period referred to in sub-paragraphs (1) and (2), the notice will be calculated to have been given by the relevant person by application of regulation 5(11)(b).

(6) Any notice in writing given by the relevant person to the local authority which states that he does not intend to review a decision not to reinstate the pupil will be final.

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(a) S.I.2002/3178, as amended by S.I. 2004/402, S.I. 2006/2189 and S.I.2007/1870.  
(b) S.I.2004/402.  
(c) S.I.2006/2189.  
(d) S.I.2007/1868.  
(e) S.I.2007/1870.

## Constitution of review panels

2.—(1) A review pursuant to arrangements made by a local authority under regulation 6(2) must be to a review panel constituted in accordance with this paragraph.

(2) A review panel must consist of three or five members appointed by the local authority from—

- (a) persons who are eligible to be lay members;
- (b) persons who are, or have been within the previous five years—
  - (i) head teachers of maintained schools;
  - (ii) teachers in charge of pupil referral units; or
  - (iii) principals of Academies or alternative provision Academies; and
- (c) persons who are or have been—
  - (i) governors of maintained schools;
  - (ii) members of pupil referral unit management committees;
  - (iii) governors of Academies or alternative provision Academies, provided they have served in such capacity for at least twelve consecutive months within the last five years and have not been teachers or head teachers (or teachers in charge of pupil referral units or principals of Academies or alternative provision Academies) during the last five years.

(3) Of the members of a review 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) a person is eligible to be a lay member if he is a person who has not worked in a school in a paid capacity (disregarding any such experience as a governor or in any other voluntary capacity); and
- (b) “a school” for the purposes of sub-paragraph (4)(a) has the meaning given to that term by section 4 of the 1996 Act.

(5) No person may be a member of a review panel if he is disqualified by virtue of sub-paragraph (6).

(6) The following persons are disqualified from membership of a review panel—

- (a) any member of the local authority or of the governing body of the school in question;
- (b) the head teacher of the school in question or any person who has held that position within the previous five years;
- (c) any person employed by the local authority or the governing body of the school in question other than someone employed as the head teacher of a different maintained school or the teacher in charge of a pupil referral unit;
- (d) any person who has, or at any time has had, any connection with—
  - (i) the local authority or the school, or with any person within sub-paragraph (c); or
  - (ii) the pupil in question or the incident leading to his exclusion, of a kind which might reasonably be taken to raise doubts about his ability to act impartially; or
- (e) any person who does not satisfy the training requirements of paragraph 4.



(7) A person employed by the local authority as a head teacher of a maintained school or a teacher in charge of a pupil referral unit must not be taken, by reason only of that employment, to have such a connection with the local authority as is described in sub-paragraph (6)(d).

(8) Where at any time after a review panel consisting of five members has begun to consider a review any of the members—

- (a) dies; or
- (b) 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 three and the requirements of sub-paragraph (3)(a) are satisfied.

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

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

(11) Where a review panel has started its review and for any reason it ceases to be constituted in accordance with the requirements of this paragraph then the review must cease and a new review panel must be constituted to conduct the review afresh.

(12) Review panel members must declare any potential conflict of interest, whether pursuant to paragraph (6)(d) or otherwise, to the local authority prior to the start of the review.

### **Clerks to review panels**

**3.—**(1) A local 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) No person may serve as a clerk to a review panel unless he satisfies the training requirements of paragraph 4.

(3) Where a clerk is appointed he must discharge the following functions—

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

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

- (a) the governing body's decision;
- (b) the relevant person's request for a review; and
- (c) documents which the governing body was required to have regard to when making its decision.

(5) Where no clerk is appointed or present the review panel must exercise the functions of a clerk.

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

**4.**—(1) A person will have satisfied the training requirements referred to in paragraph 2(6)(e) or 3(2) if he has within the last two years received sufficient information and instruction for him 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 duties of a review panel under the 2010 Act;
- (e) the effect of section 6 of the Human Rights Act 1998<sup>(a)</sup> (acts of public authorities unlawful if not compatible with certain human rights) 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) A local authority that is required to make arrangements under regulation 6(2) must—

- (a) provide the training, information and instruction referred to in sub-paragraph (1) as necessary and without cost to the persons trained; and
- (b) 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) during the two years prior to the review.

### **Allowances for members**

**5.**—(1) For the purpose of the payment of financial loss allowance under section 173(4) of the Local Government Act 1972<sup>(b)</sup>, that provision will apply to any member of a review panel constituted in accordance with paragraph 2 and in that section as it so applies the reference to an approved duty will be read as a reference to attendance at a meeting of a review panel.

(2) Section 174(1) of that Act will apply in relation to a review 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 will be read as a reference to payments at rates determined by the local authority.

### **Indemnity**

**6.** A local authority required to make arrangements under regulation 6(2) must indemnify the members of a review 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**

**7.** In the following provisions of this Schedule “review” means a review under regulation 6(2) and “the closing date for reviews” means the fifteenth school day after the day on which notice of the request for a review is notified to the local authority.

**8.** A request for a review—

- (a) must be by notice in writing setting out the grounds on which it is made; and
- (b) must be given to the local authority within the time limit specified in paragraph 1(1) of this Schedule.

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(a) 1998 c.42.

(b) 1972 c.70.

**9.** A request that a SEN expert be appointed for a review may be made separately from a request for a review but it must be made in writing and it must be given to the local authority within the time limit specified in paragraph 1(1) of this Schedule.

**10.—**(1) The review panel must meet to consider a review on such date as the local authority may determine.

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

**11.—**(1) For the purpose of fixing the time (in accordance with paragraph 10) at which the review is to take place, the local 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) the relevant person;
- (b) if requested by the relevant person, the SEN expert; or
- (c) any other person who wishes, and would be entitled, to appear and make oral representations in accordance with paragraph 12.

(2) Where in accordance with sub-paragraph (1) the local authority has ascertained any such times in the case of any such person, they must, when fixing the time at which the review 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 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;
- (c) the governing body;
- (d) the local 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.

**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; 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 asked the local authority to appoint a SEN expert for the review within the time limit specified in paragraph 1(1) of this Schedule 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 his right to request an adjournment in pursuance of sub-paragraph (2).

**14.** Reviews must be heard in private except when the local authority directs otherwise; but if the review panel so directs, one member of the local authority may attend the review as an observer.

**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 such review agree.

**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 chairman of the review panel will have a second or casting vote.

**17.** Where a SEN expert is present the review panel must seek and consider his 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 notify its decision in writing to—

- (a) the relevant person;
- (b) the governing body;
- (c) the local authority (and, if applicable, the home local authority); and
- (d) the SEN expert.

(2) The notification specified in sub-paragraph (1) must include—

- (a) the review panel's decision, indicating whether the review panel is—
  - (i) upholding the governing body's decision;
  - (ii) recommending that the governing body reconsiders its decision; or
  - (iii) quashing the governing body's decision;
- (b) the reasons for the review panel's decision;
- (c) the timescale within which the governing body must undertake any reconsideration of the exclusion;
- (d) details of any financial adjustment, including notice that this may be applied automatically if the governing body does not offer to reinstate the pupil within the specified time; and
- (e) any information that must be recorded on the pupil's record to reflect the review panel's decision.

**20.** Subject to these Regulations, any other matters relating to the procedure on review will be determined by the local authority.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations prescribe limits on the powers of head teachers of maintained schools in England to exclude pupils from school under section 51A of the Education Act 2002, and the procedure which is to be followed by the head teacher, the school's governing body and the local authority following an exclusion from a maintained school.

Regulation 4 requires the head teacher to inform the parents (or the pupil if he is 18 or over) of details of an exclusion. The head teacher must also inform the local 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.

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 parent (or the pupil if he is 18 or over) wishes to make representations and the pupil would be excluded for more than five days in a

term, Regulation 5 requires the governing body to consider the circumstances, listen to any representations from the parent (or the pupil if he is 18 or over) or the local authority, and to decide whether the pupil should be reinstated or not.

Regulation 6 requires the local authority to make arrangements for the parent (or the pupil if he is 18 or over) to obtain a review of a decision of the governing body not to reinstate a pupil who has been permanently excluded. The review panel must have regard to both the interests of the excluded pupil and those of other pupils and persons working at the school. The review panel can (1) uphold the governing body's decision, (2) recommend that the governing body reconsiders its decision, (3) quash the decision and direct the governing body to reconsider it if that decision is considered to be flawed when considered in the light of the principles applicable on an application for judicial review. The review panel may also direct the governing body to place a note on the pupil's record. Where the review panel quashes the governing body's decision it may also direct the local authority to make a financial adjustment to the school's budget share for that funding period in the sum of £4,000 where, upon reconsideration, the governing body continues to uphold the permanent exclusion. The decision of the review panel is binding.

Regulation 8 requires head teachers, governing bodies, local authorities and review panels to have regard to guidance given by the Secretary of State.

The regulations make various consequential amendments, revocations and set out the applicable transitional provisions.

The Schedule prescribes the constitution and procedure for review panels.

These Regulations apply only in relation to maintained schools in England.