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.