
STATUTORY INSTRUMENTS

2006 No. 2661

The Education (School Teacher Performance Management) (England) Regulations 2006

PART 2

Provisions Applying to Teachers Employed at Schools

Application of Part 2

6. Part 2 applies to the performance management and review of any teacher who is employed by—

- (a) a local education authority in a school; or
- (b) the governing body of a school.

Performance management policy

7.—(1) The governing body shall establish a written policy (“the performance management policy”) setting out how the performance of teachers at the school is to be managed and reviewed.

(2) The governing body shall formulate the performance management policy or direct the head teacher to formulate the policy.

(3) Where the head teacher formulates the policy, the governing body may modify it before adopting it or reject it.

(4) Where the governing body rejects the performance management policy formulated by the head teacher, it shall formulate the policy itself.

(5) The governing body shall review the performance management policy every school year.

(6) Following such review, the governing body shall, if it sees fit, revise the performance management policy.

(7) Before establishing or revising the performance management policy, the governing body or, if the governing body so directs, the head teacher shall—

- (a) consult all teachers at the school; and
- (b) seek to agree the policy or any revision to it with the recognised trade unions, having regard to the results of the consultation of all teachers.

(8) The governing body and the head teacher shall implement the performance management policy.

(9) The performance management policy shall—

- (a) state what results the policy is intended to achieve and how these will be measured;
- (b) show how the school’s arrangements for school teacher performance management link with those for school improvement, school self-evaluation and school development planning;

- (c) show how the school will seek to achieve consistency of treatment and fairness between those teachers with similar experience or levels of responsibility;
- (d) set out the timing of the cycle;
- (e) include a classroom observation protocol;
- (f) provide for performance management training to be made available as the need arises;
- (g) state the arrangements for monitoring and evaluating the policy; and
- (h) specify any ancillary or supplementary procedures necessary for the operation of performance management of teachers at the school in accordance with these Regulations.

Duty to ensure that teachers' performance is managed and reviewed

8.—(1) The governing body of the school shall ensure that the performance of teachers at the school is managed and reviewed in accordance with the performance management policy and this Part.

(2) Where a teacher is employed at more than one school, the governing body of each school shall comply with this regulation in relation to that teacher.

Appointment of external advisers in respect of head teachers

9.—(1) Subject to paragraph (2), the governing body shall appoint an external adviser for the purposes of providing it with advice and support in relation to the management and review of the performance of the head teacher.

(2) Where the local education authority has appointed a school improvement partner for that school, paragraph (1) shall not apply and the governing body shall use the school improvement partner for the purposes of providing it with advice and support in relation to the management and review of the performance of the head teacher.

Appointment of reviewers for head teachers

10.—(1) Subject to the following paragraphs of this regulation, the governing body of the school shall be the reviewer for the head teacher.

(2) The governing body may appoint two or three governors to perform the duties imposed upon the reviewer on behalf of the governing body.

(3) No governor who is a teacher or other member of staff at the school may be appointed as a reviewer for the head teacher.

(4) Where the governing body of a school which has a religious character appoints two or three governors pursuant to paragraph (2), at least one of them shall be a foundation governor of the school.

(5) Where, pursuant to paragraph (2), the governing body of a voluntary aided school appoints—

- (a) two governors, at least one of them shall be a foundation governor of the school; and
- (b) three governors, not less than two of them shall be foundation governors of the school.

(6) Where a head teacher is of the opinion that any of the governors appointed by the governing body under this regulation is unsuitable for professional reasons, he may submit a written request to the governing body for that governor to be replaced, stating those reasons.

(7) Where the governing body is persuaded that that governor is unsuitable, it shall terminate that appointment and appoint another governor in accordance with this regulation.

(8) Where the governing body is not persuaded that that governor is unsuitable, it shall—

- (a) notify the head teacher in writing of its decision, stating its reasons; and

(b) upon request, attach the head teacher's request and the notification of its rejection of that request to the statement for that cycle.

(9) A reviewee may request that any governor appointed under paragraph (2) be replaced once in any cycle.

(10) Where the governing body decides at any time that any of the governors appointed under this regulation is no longer suitable for professional reasons, or is no longer able to perform his duties for any reason, it shall terminate the appointment of that governor and appoint one in accordance with this regulation.

Appointment of reviewers for other teachers

11.—(1) Subject to the following paragraphs of this regulation, the head teacher shall be the reviewer for all other teachers at the school.

(2) In the case where the head teacher is not the teacher's line manager, the head teacher may delegate the duties imposed upon the reviewer, in their entirety, to the teacher's line manager.

(3) Where the teacher has more than one line manager, the head teacher may delegate the reviewer's duties, in their entirety, to the line manager whom he considers would be best placed to manage and review the teacher's performance.

(4) Where it becomes apparent that the teacher to whom the head teacher has delegated the reviewer's duties will be absent for the majority of the cycle, the head teacher may perform those duties himself or delegate those duties, in their entirety, to another teacher for the duration of that absence.

(5) Where a teacher is of the opinion that the person to whom the head teacher has delegated the reviewer's duties is unsuitable for professional reasons, he may submit a written request to the head teacher for that reviewer to be replaced, stating those reasons.

(6) Where the head teacher is persuaded that the teacher to whom he has delegated the reviewer's duties is unsuitable, he may perform those duties himself or delegate them, in their entirety, to another teacher.

(7) Where the head teacher is not persuaded that the teacher to whom he has delegated the reviewer's duties is unsuitable, he shall—

(a) notify the teacher in writing of his decision, stating his reasons; and

(b) upon request, attach the teacher's request and the notification of his rejection of that request to the statement for that cycle.

(8) A reviewee may request that a person to whom the head teacher has delegated the reviewer's duties be replaced once in any cycle.

(9) Where the head teacher decides at any time that the person to whom he has delegated the reviewer's duties is no longer suitable for professional reasons, or is no longer able to perform those duties for any reason, he may perform those duties himself or delegate them, in their entirety, to another teacher.

(10) Where, pursuant to this regulation, the head teacher delegates the reviewer's duties to a teacher who is not the teacher's line manager, the teacher to whom he delegates those duties must have an equivalent or higher status in the staffing structure than the teacher's line manager.

Performance management and review cycle

12.—(1) Subject to the following paragraphs of this regulation, the performance of every teacher at the school shall be managed and reviewed on an annual basis ("the performance management and review cycle").

(2) The governing body shall determine the timing of the performance management and review cycle for the head teacher and the head teacher shall determine the timing of the performance management and review cycle for the other teachers at the school.

(3) Where a teacher is employed at the school on a fixed term contract of less than one year, his performance shall be managed throughout the life of the contract and reviewed at the end of the contract.

(4) Where a teacher is employed at the school part-way through a cycle, the head teacher or, in the case where the teacher is the head teacher, the governing body shall determine the length of the first cycle for that teacher, with a view to bringing his cycle into line with the cycle for other teachers at the school as soon as possible.

(5) Where a teacher transfers to a new post within the school, whether on a temporary or permanent basis, part-way through his cycle, the head teacher or, in the case where the teacher is to be the head teacher, the governing body shall determine whether the cycle shall begin again and, if so, whether to change the reviewer or reviewers, as the case may be.

(6) A change of reviewer or the appointment of a new external adviser or school improvement partner shall not cause the reviewee's cycle to begin again.

Planning meetings

13.—(1) At the beginning of each cycle, the reviewer or, in the case where the reviewee is the head teacher, all the reviewers and the external adviser or school improvement partner, as the case may be, shall arrange a meeting with the reviewee (“the planning meeting”) to consider and determine—

- (a) the reviewee's objectives;
- (b) the arrangements for observing the reviewee's performance in the classroom, where appropriate;
- (c) any other evidence which will be taken into account in judging the reviewee's performance;
- (d) the performance criteria;
- (e) the support that will be provided to the reviewee to help him to meet the performance criteria;
- (f) the timescales for the achievement of the objectives and within which support will be provided, where these differ from the length of the cycle of the reviewee; and
- (g) the reviewee's training and development needs and the actions which will be taken to address them.

(2) The matters referred to in paragraph (1) shall be determined having regard to—

- (a) the reviewee's job description;
- (b) any relevant pay progression criteria;
- (c) any relevant whole-school or team objectives specified in the School Improvement Plan;
- (d) what can be reasonably expected of any teacher in that position given the desirability of the reviewee being able to achieve a satisfactory balance between the time required to discharge his professional duties and the time required to pursue his personal interests outside work;
- (e) the reviewee's professional aspirations; and
- (f) the relevant professional standards.

(3) The reviewee's objectives shall be such that, if they are achieved, they will contribute to improving the progress of pupils at the school.

(4) Only persons who have a direct professional knowledge of the reviewee may provide evidence for the purposes of paragraph (1)(c).

(5) Where a joint determination cannot be made in relation to any of the matters referred to in paragraph (1), the reviewer shall make the determination.

Recording of plans

14.—(1) Within 5 days of the planning meeting, the reviewer shall—

(a) prepare a planning and review statement in respect of the reviewee in draft, in which he shall record the plan for managing and reviewing the reviewee’s performance, comprising the matters referred to in regulation 13(1)(a) to (f) and, in a separate annex to the statement, (“the Training and Development Annex”), the matters referred to in regulation 13(1)(g); and

(b) pass the draft statement to the reviewee, who may add his comments.

(2) Within 10 days of the planning meeting, the reviewer shall—

(a) prepare and sign a final version of the plan in the statement;

(b) make the statement available to the reviewee, who may add his comments;

(c) where the reviewee is a teacher and the reviewer is not the head teacher, pass the signed statement to the head teacher or where the reviewee is the head teacher and the review is conducted by individual governors, pass the signed statement to the governing body;

(d) provide a copy of the statement to the reviewee; and

(e) provide a copy of the Training and Development Annex to the person responsible for planning the training and development of teachers at the school.

(3) Subject to the outcome of any appeal, the contents of the plan shall be deemed to reflect the results of the planning meeting.

(4) The time limit specified in paragraphs (1) and (2) may be extended if the reviewer or the reviewee is absent from work during those times.

(5) The plan shall be recorded in the statement by 31st October or, where the reviewee is the head teacher, by 31st December, following completion of the previous cycle.

Quality assurance and moderation of plans

15.—(1) Where individual governors perform the reviewer’s duties on its behalf, the governing body may review the contents of the plan recorded in the head teacher’s statement within 10 days of it being passed to it pursuant to regulation 14(2)(c).

(2) Where, pursuant to paragraph (1), the governing body is of the opinion that the plan—

(a) is inconsistent with the school’s improvement priorities; or

(b) does not comply with the performance management policy or any relevant requirement in these Regulations,

it shall instruct the reviewers to prepare a new plan and statement.

(3) Where the head teacher delegates the reviewer’s duties to another teacher he may review the contents of the plan recorded in the statement within 10 days of it being passed to him pursuant to regulation 14(2)(c).

(4) Where, pursuant to paragraph (3), the head teacher is of the opinion that any such plan—

(a) is inconsistent with the plans recorded in the statements of other teachers at the school who have similar experience or similar responsibilities; or

- (b) does not comply with the performance management policy or any relevant requirement in these Regulations,

he shall instruct the reviewer to prepare a new plan and statement.

(5) Within 10 days of receiving an instruction pursuant to paragraph (2) or paragraph (4), the reviewer shall—

- (a) consult the reviewee;
- (b) prepare a new plan, record it in a new statement and sign the statement;
- (c) make the statement available to the reviewee, who may add his comments;
- (d) pass the signed statement to the head teacher, or the governing body, as the case may be;
- (e) provide a copy of the statement to the reviewee; and
- (f) provide a copy of the Training and Development Annex to the person responsible for planning the training and development of teachers at the school.

(6) The time limit specified in paragraph (5) may be extended if the reviewer or reviewee is absent from work during that time.

Revision of plans

16.—(1) Where, during the course of any cycle—

- (a) the reviewee’s circumstances or responsibilities change;
- (b) evidence emerges which gives rise to concern about the reviewee’s performance but which does not justify the application of capability procedures; or
- (c) the reviewee is absent for such a period of time that some of the entries in the plan recorded in the statement are no longer appropriate,

the reviewer or the reviewee may request a meeting (a “revision meeting”) and that meeting shall be held within 10 days.

(2) Within 10 days of the revision meeting, the reviewer shall—

- (a) record any changes in the plan agreed at the meeting in the form of an addendum to the original statement or, where there is no agreement, any changes he thinks ought to be made to the plan and sign the addendum;
- (b) make the revised statement available to the reviewee, who may add his comments to the addendum;
- (c) where the reviewee is a teacher and the reviewer is not the head teacher, pass the signed revised statement to the head teacher or, where the reviewee is the head teacher and the review is conducted by individual governors, pass the signed statement to the governing body;
- (d) provide a copy of the revised statement to the reviewee; and
- (e) where the addendum relates to the training and development of the reviewee, provide a copy of the addendum to the person responsible for planning the training and development of teachers at the school.

(3) Subject to the outcome of any appeal, the contents of the addendum shall be deemed to reflect the results of the revision meeting.

(4) The time limit specified in paragraphs (1) and (2) may be extended if the reviewer or reviewee is absent from work during that time.

(5) The statement shall not be revised unless a revision meeting has been held pursuant to paragraph (1).

Classroom observation

17.—(1) Classroom observation shall be conducted in accordance with the classroom observation protocol referred to in regulation 7(9)(e).

(2) The arrangements for classroom observation recorded in the reviewee’s statement shall—

- (a) specify the primary purpose of each observation to be undertaken; and
- (b) subject to paragraph (3), specify any particular aspects of the reviewee’s teaching performance that will be assessed during each observation.

(3) Nothing in paragraph (2)(b) shall prevent any other aspect of the reviewee’s teaching performance observed during any classroom observation arranged for the purposes of these Regulations from being assessed and taken into account when the teacher’s performance is reviewed in accordance with regulation 18.

(4) Subject to paragraph (5), the total period of classroom observation arranged for any teacher under this Part shall not exceed 3 hours per cycle and shall be determined having regard to the individual circumstances of the teacher.

(5) Where evidence emerges which gives rise to concern about the reviewee’s teaching performance, classroom observations may be arranged in addition to those referred to in paragraph (4).

(6) Where it is considered appropriate to arrange additional classroom observations pursuant to paragraph (5) the reviewer shall ensure that a revision meeting is held and that details of any such observation are inserted into an addendum to the statement pursuant to regulation 16.

(7) Where a teacher’s performance in the classroom is observed for the purposes of these Regulations, the reviewer shall ensure that the teacher receives a written report on his findings within 5 days of the observation, to which he may add his comments.

(8) Classroom observation must be conducted by a qualified teacher.

Review of teacher’s performance

18.—(1) At or near the end of each cycle the reviewer or, in the case where the reviewee is the head teacher, all the reviewers and the external adviser or school improvement partner, as the case may be, shall meet with the reviewee to—

- (a) review his performance throughout that cycle against the performance criteria specified in the statement; and
- (b) where the reviewee is eligible for pay progression under the Document, determine the recommendation on pay progression, having regard to the results of the review referred to in sub-paragraph (a).

(2) The review meeting shall be combined with the planning meeting for the next cycle, wherever practicable.

(3) Within 5 days of the review meeting, the reviewer shall—

- (a) record in draft in the statement—
 - (i) the results of the review; and
 - (ii) any recommendation on pay progression; and
- (b) pass the draft statement to the reviewee.

(4) Within 10 days of the review meeting, the reviewer shall—

- (a) prepare and sign a final version of the statement;
- (b) make it available to the reviewee, who may add his comments;

- (c) where the reviewee is a teacher and the reviewer is not the head teacher, pass the signed statement to the head teacher or, where the reviewee is the head teacher and the review is conducted by individual governors, pass the signed statement to the governing body; and
 - (d) provide a copy of the statement to the reviewee.
- (5) Subject to the outcome of any appeal, the contents of the statement shall be deemed to reflect the results of the review meeting.
- (6) The time limit specified in paragraphs (3) and (4) may be extended if the reviewer or the reviewee is absent from work during those times.
- (7) The results of the review and any pay recommendation shall be recorded in the statement by 31st October or, where the reviewee is the head teacher, 31st December, following completion of the cycle to which it relates.

Appeals

19. The reviewee may appeal against any of the entries made by the reviewer in his statement, following receipt of a copy of it pursuant to regulations 14(2)(d), 15(5)(e), 16(2)(d) and 18(4)(d).

Use and retention of statements

- 20.**—(1) The head teacher or, in the case where the reviewee is the head teacher, the governing body shall retain the reviewee's statement for a minimum period of 6 years from the date on which the cycle to which it relates ends.
- (2) Where the reviewee is a teacher other than a head teacher, the governing body shall have regard to the results of the review recorded in the statement pursuant to regulation 18 when exercising any discretion in relation to his pay.
- (3) The governing body shall be provided with access to the reviewee's statement for the purposes of paragraph (2), upon request.
- (4) Where the reviewee is the head teacher, the governing body or, in the case where the school does not have a delegated budget, the local education authority shall have regard to the results of the review recorded in the statement pursuant to regulation 18 when exercising any discretion in relation to his pay.
- (5) Where the school does not have a delegated budget, the local education authority shall be provided with access to the reviewee's statement for the purposes of paragraph (4), upon request.
- (6) The reviewee's line manager or, where he has more than one, each of his line managers shall be provided with access to the reviewee's plan recorded in the statement, upon request, where this is necessary to enable him to discharge his line management responsibilities.
- (7) Where a reviewee pursues an appeal in relation to the contents of his statement the head teacher or, where the reviewee is the head teacher, the governing body shall provide anyone hearing that appeal with access to that statement.
- (8) Where a reviewee transfers from one school to another school part-way through his cycle, the head teacher or, where the reviewee is the head teacher, the governing body of the school shall transfer the reviewee's statement for that cycle, together with any evidence gathered concerning his performance during that cycle, to the head teacher or governing body of the new school, as the case may be, upon receipt of a written request from the reviewee.
- (9) Where a reviewee employed by an authority in a school or a governing body of a school becomes an unattached teacher part-way through his cycle, the head teacher or, where the reviewee was the head teacher, the governing body shall transfer the reviewee's statement for that cycle, together with any evidence gathered concerning his performance during that cycle, to the new authority, upon receipt of a written request from the reviewee.

(10) Where a reviewee employed as an unattached teacher becomes employed as a teacher by an authority in a school or by a governing body of a school part-way through his cycle, the authority shall transfer the reviewee's statement for that cycle, together with any evidence gathered concerning his performance during that cycle, to the head teacher or, in the case where the unattached teacher is to become the head teacher of the school, the governing body of the school, upon receipt of a written request from the reviewee.

Head teacher's report

21.—(1) The head teacher shall provide the governing body with an annual written report about—

- (a) the operation of the performance management policy;
- (b) the effectiveness of the school's performance management procedures; and
- (c) the teachers' training and development needs.

(2) The head teacher's report shall not contain any information which would enable any teacher at the school to be identified.