
STATUTORY INSTRUMENTS

2006 No. 2661

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

PART 3

Provisions Applying to Unattached Teachers

Application of Part 3

22. Part 3 applies to the performance management and review of any unattached teacher.

Performance management policy

23.—(1) The authority shall establish a written policy (“the performance management policy”) setting out how the performance of their unattached teachers is to be managed and reviewed.

(2) The authority shall review the performance management policy every school year.

(3) Following such review, the authority shall, if they see fit, revise the performance management policy.

(4) Before establishing or revising the performance management policy, the authority shall—

(a) consult all their unattached teachers; 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 unattached teachers.

(5) The authority shall implement the performance management policy.

(6) 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 authority will seek to achieve consistency of treatment and fairness between those teachers with similar experience or levels of responsibility;

(c) set out the timing of the review cycle;

(d) include a classroom observation protocol;

(e) provide for performance management training to be made available as the need arises;

(f) state the arrangements for monitoring and evaluating the policy; and

(g) specify any ancillary or supplementary procedures necessary for the operation of performance management of unattached teachers in accordance with these Regulations.

Duty to ensure that teachers’ performance is managed and reviewed

24.—(1) The authority shall ensure that the performance of unattached teachers is managed and reviewed in accordance with the performance management policy and this Part.

(2) Where an unattached teacher is employed by more than one authority, each authority shall comply with this regulation in relation to that teacher.

Appointment of reviewers for teachers

25.—(1) Subject to the following paragraphs of this regulation, the authority shall be the reviewer for every unattached teacher.

(2) The authority 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 authority may delegate the reviewer’s duties, in their entirety, to the line manager whom they consider would be best placed to manage and review the teacher’s performance.

(4) Where it becomes apparent that the person to whom the authority have delegated the reviewer’s duties will be absent for the majority of the cycle, the authority may perform those duties themselves or delegate those duties, in their entirety, to another person for the duration of that absence.

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

(6) Where the authority are persuaded that the person to whom they have delegated the reviewer’s duties is unsuitable, they may perform those duties themselves or delegate them, in their entirety, to another person.

(7) Where the authority are not persuaded that the person to whom they have delegated the reviewer’s duties is unsuitable, they shall—

- (a) notify the teacher in writing of their decision, stating their reasons; and
- (b) upon request, attach the teacher’s request and the notification of their rejection of that request to the statement for that cycle.

(8) A reviewee may request that a person to whom the authority have delegated the reviewer’s duties be replaced once in any cycle.

(9) Where the authority decide at any time that a person to whom they have delegated the reviewer’s duties is no longer suitable for professional reasons, or is no longer able to carry out those duties for any reason, they may perform those duties themselves or delegate them, in their entirety, to another person.

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

Performance management and review cycle

26.—(1) Subject to the following paragraphs of this regulation, the performance of every unattached teacher shall be managed and reviewed on an annual basis (“the performance management and review cycle”).

(2) The authority shall determine the timing of the performance management and review cycle for their unattached teachers.

(3) Where an unattached teacher is employed 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 by an authority part-way through a cycle, the authority shall determine the length of the first cycle for that teacher.

(5) Where a teacher transfers to a new post within the authority, whether on a temporary or permanent basis, part-way through his cycle, the authority shall determine whether the cycle shall begin again and, if so, whether to change the reviewer.

(6) A change of reviewer shall not cause the reviewee's cycle to begin again.

Planning meetings

27.—(1) At the beginning of each cycle, the reviewer 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) timescales for the achievement of 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 objectives which the authority may have for unattached teachers generally or any relevant whole-school or team objectives specified in the School Improvement Plan for any school in which the teacher will be working;
- (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 the pupils he teaches.

(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

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

- (a) prepare a planning and review statement in respect of the reviewee, in which he shall record the plan for managing and reviewing the reviewee's performance, comprising the matters referred to in regulation 27(1)(a) to (f) and, in a separate annex to the statement, ("the Training and Development Annex") the matters referred to in regulation 27(1)(g); and
 - (b) pass the draft statement to the reviewee, who may add his comments.
- (2) Within 10 days of the planning meeting—
- (a) the reviewer shall 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 reviewer is not the authority, pass the signed statement to the authority;
 - (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 that teacher.
- (3) Subject to the outcome of any appeal, the contents of the statement 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 following completion of the previous cycle.

Moderation of plans

29.—(1) Where the authority delegates the reviewer's duties to another person, they may review the contents of the plan recorded in the statement within 10 days of it being passed to them pursuant to regulation 28(2)(c).

- (2) Where, pursuant to paragraph (1), the authority are of the opinion that any such plan—
- (a) is inconsistent with the plans recorded in the statements of other teachers of similar experience or who have similar responsibilities employed by that authority; or
 - (b) does not comply with any relevant requirement in these Regulations,
- they shall instruct the reviewer to prepare a new plan and statement.

- (3) Within 10 days of receiving an instruction pursuant to paragraph (2), the reviewer shall—
- (a) consult the reviewee;
 - (b) prepare a new plan, record it in a new statement and sign the new statement;
 - (c) make it available to the reviewee, who may add his comments;
 - (d) pass the signed statement to the authority;
 - (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.
- (4) The time limit specified in paragraph (3) may be extended if the reviewer or reviewee is absent from work during that time.

Revision of plans

- 30.**—(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 reviewer is not the authority, pass the signed revised statement to the authority;
 - (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 that teacher.

(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

31.—(1) Classroom observation shall be conducted in accordance with the classroom observation protocol referred to in regulation 23(6)(d).

- (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 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 32.

(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 30.

(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

32.—(1) At or near the end of each cycle, the reviewer shall arrange a meeting with the reviewee ("a review meeting") 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 reviewer is not the authority, pass the signed statement to the authority; 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 following completion of the cycle to which it relates.

Appeals

33. 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 28(2)(d), 29(3)(e), 30(2)(d) and 32(4)(d).

Use and retention of statements

34.—(1) The authority 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) The authority shall have regard to the results of the review recorded in the reviewee's statement pursuant to regulation 32 when exercising any discretion in relation to his pay.

(3) 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.

(4) Where a reviewee pursues an appeal in relation to the contents of his statement, the authority shall provide anyone hearing that appeal with access to that statement.

(5) Where a reviewee transfers from one authority to another authority 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 new authority, upon receipt of a written request from the reviewee.

(6) Where a reviewee becomes employed by another authority in a school or the 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 new authority or governing body, as the case may be, upon receipt of a written request from the reviewee.

(7) Where a reviewee employed by an authority in a school or the governing body of a school becomes an unattached teacher part-way through his cycle, the authority or governing body, as the case may be, 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.