

**2010 No. 853**

**EDUCATION, ENGLAND**

**The Complaints against Schools (England) Regulations 2010**

*Made* - - - - *18th March 2010*

*Laid before Parliament* *24th March 2010*

*Coming into force* - - *19th April 2010*

The Secretary of State for Children, Schools and Families makes the following regulations in exercise of powers conferred by sections 206(2)(b),(3)(b), and (6)(d) and 207(6) of the Apprenticeships, Skills, Children and Learning Act 2009(a)—

**Citation, commencement, and interpretation**

1.—(1) These Regulations may be cited as the Complaints against Schools (England) Regulations 2010 and come into force on 19th April 2010.

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

(3) In these Regulations—

“the 2009 Act” means the Apprenticeships, Skills, Children and Learning Act 2009;

“First Tier Tribunal” has the meaning given by section 3(1) of the Tribunals, Courts and Enforcement Act 2007(b);

“public examination” has the meaning given by section 462(4) of the Education Act 1996(c).

**Functions of the head teacher that may be the subject of a complaint**

2. The functions of the head teacher(d) under the following provisions are prescribed for the purposes of section 206(2)(b) of the 2009 Act—

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(a) 2009 c.22. See section 264 for the definitions of “prescribed” and “regulations”.

(b) 2007 c.15.

(c) 1996 c.56.

(d) See paragraph 2 of Schedule 1 to the Education Act 1996 (“EA 1996”) which provides that references in any enactment to the head teacher of a school shall be read, in relation to a pupil referral unit, as references to the teacher in charge of the unit (whether known as the head teacher or not). A pupil referral unit is a school established under section 19(2B) of the EA 1996. Section 249(1) of the 2009 Act (not in force at the time of making these regulations) changes the name of a school falling within section 19(2B) of the EA 1996 to “short stay school”. This comes into force on 1st September 2010.

- (a) sections 403(a)(sex education), 406(b)(forbidding political indoctrination), 407(c)(duty to secure balanced treatment of political issues) and 550AA(d)(head teacher authorising members of staff to search pupils for weapons) of the Education Act 1996;
- (b) sections 43(e) (provision of careers education in schools), 44(f)(duty to cooperate with careers adviser) and 45(g)(provision of careers information) of the Education Act 1997(h);
- (c) sections 69(i) (duty to secure provision of religious education), and 70 (requirements relating to collective worship) of the School Standards and Framework Act 1998;
- (d) sections 52(1) (exclusion of pupils) insofar as it relates to exclusions for a fixed period, 79(3)(j)(duty to implement general requirements in relation to curriculum), and 85(9)(k)(duty to have regard to guidance related to work related learning or entitlement areas) of the Education Act 2002(l);
- (e) sections 89 (determination of behaviour policy), 92(3)(b)(detention outside school sessions) and 104 (notice to parent relating to excluded pupil) of the Education and Inspections Act 2006(m);
- (f) regulation 3(1) of the Education (School Sessions and Charges and Remissions Policies)(Information)(England) Regulations 1999(n);
- (g) regulations 5, 7 and 8 of the Education (School Government)(Terms of Reference)(England) Regulations 2000(o);
- (h) the Education (National Curriculum)(Temporary Exceptions for Individual Pupils)(England) Regulations 2000(p);
- (i) regulations 3, 4, 7 and 7A of the Education (Pupil Exclusions and Appeals)(Maintained Schools)(England) Regulations 2002 (q) insofar as they relate to exclusions for a fixed period;
- (j) regulations 4, 5 and 6(8) of the Education (National Curriculum)(Key Stage 2 Assessment Arrangements)(England) Order 2003(r);
- (k) regulation 4 of the Education (National Curriculum)(Key Stage 3 Assessment Arrangements)(England) Order 2003(s);

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- (a) Section 403 was amended by paragraphs 57 and 102 of Schedule 30 to the School Standards and Framework Act 1998 (c.31.) (“SSFA 1998”); sections 148(1), (3), (4) and (5) of, and Schedule 11 to, the Learning and Skills Act 2000 (c.21.); and section 2 of and paragraphs 181 and 183 of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006 (c. 43.).
  - (b) Section 406 was amended by paragraph 104 of Schedule 30 to the SSFA 1998.
  - (c) Section 407 was amended by paragraph 105 of Schedule 30 to the SSFA 1998.
  - (d) Section 550AA is prospectively repealed by section 243 of the 2009 Act. Section 243 comes into force on 1<sup>st</sup> September 2010.
  - (e) Section 43 was amended by paragraph 217(a) and (c) of Schedule 30 and paragraph 217(b) of Schedule 31 to the SSFA 1998; paragraphs 1 and 71 of Schedule 9 to the Learning and Skills Act 2000; paragraph 8 of Schedule 7 to the Education Act 2002 (c.32.); and section 81(1) and (2)(b) and (2)(c) of the Education and Skills Act 2008 (c.25.) (“ESA 2008”).
  - (f) Section 44 was amended by paragraphs 1 and 72 of Schedule 9 to the Learning and Skills Act 2000.
  - (g) Section 45 was amended by section 81(1), (3)(a), (c) and (d) of ESA 2008.
  - (h) 1997. c.44.
  - (i) Section 69 was amended by section 251(1) and paragraph 104(1) and (2) of Schedule 21 to the Education Act 2002.
  - (j) Section 79 was amended by paragraph 6 of Schedule 1 and Part 1 of Schedule 3 to the Childcare Act 2006 (c.21.).
  - (k) Section 85 was substituted for England by the Education (Amendment of the Curriculum Requirements for Fourth Key Stage)(England) Order 2003, S.I. 2003/2946.
  - (l) 2002. c.32.
  - (m) 2006. c.40.
  - (n) S.I.1999/2255.
  - (o) S.I. 2000/2122.
  - (p) S.I. 2000/212 which continue to have effect by virtue of section 17(2) of the Interpretation Act 1978 (c.30.) as if made under section 93 of the Education Act 2002 which is amended by paragraph 13 of Schedule 1, and Part 1 of Schedule 3, to the Childcare Act 2006.
  - (q) S.I. 2002/3178 was amended by S.I. 2004/402 and S.I. 2006/2189.
  - (r) S.I. 2003/1038.
  - (s) S.I. 2003/1039.

- (l) regulations 6, 7 and 8 of the Education (Pupil Information)(England) Regulations 2005(a);
- (m) the Education (Reintegration Interview)(England)Regulations 2007(b);
- (n) regulations 4 and 5 of the Education (Pupil Exclusions and Appeals)(Pupil Referral Units) (England) Regulations 2008(c) insofar as they relate to exclusions for a fixed period; and
- (o) Part 9 of the School Teachers’ Pay and Conditions Document 2009 (d).

**Excluded complaints**

3. The rights of appeal provided for in the following provisions are prescribed for the purposes of section 206(3)(b) of the 2009 Act—

- (a) the Education (Pupil Exclusions and Appeals)(Maintained Schools)(England) Regulations 2002(e) and the Education (Pupil Exclusions and Appeals)(Pupil Referral Units) Regulations 2008(f); and
- (b) section 28I(1) of the Disability Discrimination Act 1995(g).

**Prescribed period within which former registered pupils may be deemed pupils**

4. The prescribed period for the purposes of section 206(6)(d) of the 2009 Act is 12 months.

**Circumstances in which a Local Commissioner may determine that a person is to be treated as a pupil**

5. For the purposes of section 207(6) of the 2009 Act, a Local Commissioner may determine that a person who has not been a registered pupil within the period prescribed in regulation 4 is to be treated as a pupil where that person—

- (a) returns to; or
- (b) enters

the school for the purpose of taking a public examination.

*Vernon Coaker*  
Minister of State

18th March 2010

Department for Children, Schools and Families

**EXPLANATORY NOTE**

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

These Regulations prescribe matters in relation to the arrangements for complaints established by Chapter 2 of Part 10 of the Apprenticeships, Skills, Children and Learning Act 2009 (“the 2009 Act”). The 2009 Act extends the jurisdiction of Local Commissioners (often known as “the Local Government Ombudsman”). The Local Commissioners can now consider complaints from a parent or pupil at a qualifying school, that they have sustained injustice in consequence of an act

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- (a) S.I. 2005/1437 was amended by S.I.2008/1747.
  - (b) S.I. 2007/1868.
  - (c) S.I. 2008/532.
  - (d) The Education (School Teachers’ Pay and Conditions) Order 2009 S.I 2009/2132.
  - (e) S.I. 2002/3178 as amended by S.I. 2004/402, S.I. 2006/2189, S.I. 2007/1870 and S.I. 2008/2683.
  - (f) S.I. 2008/532.
  - (g) 1995 c.50. Section 28I was inserted by section 18 of the Special Educational Needs and Disability Act 2001 (c.10).

of the governing body of the school or an exercise, or failure to exercise, prescribed functions of the head teacher of the school.

A qualifying school is a community, foundation, or voluntary school, community or foundation special school, a maintained nursery school or a pupil referral unit (to be known as a short stay school from 1st September 2010).

Regulation 2 prescribes the head teacher functions which can be the subject of a complaint to the Local Commissioner, for the purposes of section 206(2)(b). These include functions in relation to discipline and behaviour, fixed term exclusions, curriculum and careers education. References to a head teacher are to the teacher in charge, where the school is a pupil referral unit.

Section 206(3) of the 2009 Act provides that a complaint against a school does not include a complaint that relates to a decision about admission to a school or a matter in respect of which the complainant has or had a prescribed right of appeal. Regulation 3 excludes complaints where the complainant has a right of appeal to the Independent Appeals Panel regarding a permanent exclusion, or to the First Tier Tribunal regarding a disability discrimination claim or in relation to Special Educational Needs.

In general, where pupils or parents wish to make a complaint the pupil must be a “registered pupil” (i.e. on the roll of the school about which they want to make a complaint). The effect of regulation 4 is to permit a formerly registered pupil (or their parent) to make a complaint for up to 12 months after coming off the roll of the school.

Regulation 5 prescribes the circumstances in which a person who is not a registered pupil, and has not been in the 12 months prior to the complaint, may still make a complaint to the Service. The circumstances are they are returning to the school for the purpose of taking a public examination, or coming to the school to take a public examination, for example after having been home educated, or having been on the roll at a different institution.

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£4.00