
WELSH STATUTORY INSTRUMENTS

2003 No. 287 (W.39)

EDUCATION, WALES

The Education (Pupil Referral Units) (Appeals Against Permanent Exclusion) (Wales) Regulations 2003

Made - - - - - *12th February 2003*

Coming into force - - - - - *18th February 2003*

In exercise of the powers conferred on the Secretary of State by paragraph 3 of Schedule 1 to the Education Act 1996⁽¹⁾ and now vested in the National Assembly for Wales⁽²⁾, and in exercise of the powers conferred on the National Assembly for Wales by sections 52(7) and (8) and 210(7) of the Education Act 2002⁽³⁾, and after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992⁽⁴⁾, the National Assembly for Wales hereby makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations are called the Education (Pupil Referral Units) (Appeals Against Permanent Exclusion) (Wales) Regulations 2003 and shall come into force on 18th February 2003.

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

Interpretation provisions

2. In these Regulations—

“the 1996 Act” (“*Deddf 1996*”) means the Education Act 1996;

“the 1998 Act” (“*Deddf 1998*”) means the School Standards and Framework Act 1998⁽⁵⁾;

“the 2002 Act” (“*Deddf 2002*”) means the Education Act 2002;

“relevant decision” (“*penderfyniad perthnasol*”) means any decision made after 31st August 1994 by the teacher in charge of a pupil referral unit to exclude a pupil permanently (which includes a decision that any exclusion of a pupil for a fixed period should be made permanent),

(1) 1996 c. 56. For the meaning of “regulations” see section 579.

(2) See the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.1999/672).

(3) 2002 c. 32; see section 212(1) for the meaning of “regulations”.

(4) 1992 c. 53; paragraph 15(b) of Schedule 1 is prospectively substituted by paragraph 22 of Schedule 21 to the Education Act 2002.

(5) 1998 c. 31.

pursuant to paragraph 7 of Schedule 1 to the 1996 Act or paragraph 7 of Schedule 18 to the Education Act 1993(6);

“relevant person” (“*person perthnasol*”) means—

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

Appeal against permanent exclusion from a pupil referral unit

3.—(1) This regulation prescribes for the purposes of section 52(7) of the 2002 Act the person who may appeal to an appeal panel against a decision to permanently exclude a pupil from a pupil referral unit.

(2) The person prescribed is the relevant person in relation to any pupil who is the subject of a relevant decision.

Action to be taken by the teacher in charge of a pupil referral unit

4.—(1) Subject to paragraph (2), where the teacher in charge of a pupil referral unit excludes any pupil permanently on or after the day on which these Regulations come into force, the teacher in charge must forthwith—

- (a) 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 day on which an appeal may be made.
- (b) inform the local education authority that the pupil is being permanently excluded and the reasons for it.

(2) This regulation is not to apply to any relevant decision made before the day on which these Regulations come into force.

Arrangements for appeals against permanent exclusion of pupils

5.—(1) Subject to paragraph (2), a local education authority must make arrangements in accordance with these Regulations for enabling a relevant person to appeal against any relevant decision.

(2) No appeal may be made in relation to any relevant decision to which regulation 4(2) applies unless notice in writing setting out the grounds of appeal is given by the relevant person to the local education authority no later than 30 school days after the day on which these Regulations come into force.

Application of existing legislation

6.—(1) Subject to paragraph (2), Schedule 18 to the 1998 Act is to apply with the modifications prescribed in the Schedule to these Regulations in relation to any appeal against a relevant decision pursuant to arrangements made under regulation 5.

(2) In relation to any relevant decision made before the day on which these Regulations come into force, paragraph 1(1) of Schedule 18 to the 1998 Act as modified by these Regulations is not to apply.

Decision of appeal panel to be binding

7. The decision of an appeal panel on an appeal pursuant to arrangements made under regulation 5 is to be binding on the relevant person, the teacher in charge and the local education authority.

Direction to reinstate a pupil

8. Where on an appeal pursuant to these Regulations an appeal panel determines that the pupil in question should not have been permanently excluded, the appeal panel must either—

- (a) direct that he or she is to be reinstated (either immediately or by a date specified in the direction); or
- (b) in cases where it would not be practical to give a direction requiring his or her reinstatement, determine that it would otherwise have been appropriate to give such a direction.

Regard to guidance

9. A teacher in charge of a pupil referral unit, a local education authority or an appeal panel discharging any function conferred by or under these Regulations and the 1998 Act (as modified by these Regulations) must have regard to guidance given by the National Assembly for Wales under the 2002 Act.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(7).

12th February 2003

D. Elis-Thomas
The Presiding Officer of the National Assembly

SCHEDULE

Regulation 6

Modification of Schedule 18 to the 1998 Act

1. For “section 67(1)”, in each place where it occurs, there is substituted “regulation 5 of the Education (Pupil Referral Units) (Appeals Against Permanent Exclusion) (Wales) Regulations 2003”.
2. For “section 66(6)(b)”, in each place where it occurs, there is substituted “regulation 4(1)(a) of the Education (Pupil Referral Units) (Appeals Against Permanent Exclusion) (Wales) Regulations 2003”.
3. In paragraph 1, for “not to reinstate”, in each place where it occurs, there is substituted “to permanently exclude”.
4. In paragraph 2(7)—
 - (a) in paragraph (a), for “governing body of the school” there is substituted “management committee (where one has been established) of the pupil referral unit”;
 - (b) in paragraph (b) “or the governing body” is omitted; and
 - (c) in paragraph (c), for “school”, in each place where it occurs, there is substituted “pupil referral unit”.
5. In paragraph 10(2)—
 - (a) in paragraph (a), for “head teacher”, there is substituted “teacher in charge”;
 - (b) in paragraph (b) “and the governing body” is omitted and after “written representations,” there is added “and”;
 - (c) in paragraph (c) “, and a governor nominated by the governing body,” and “, and” are omitted; and
 - (d) paragraph (d) is omitted.
6. In paragraph 14—
 - (a) “the governing body” is omitted; and
 - (b) for “head teacher” there is substituted “teacher in charge”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the relevant person (that is to say the parent of a pupil or, where the pupil is 18, the pupil himself or herself) who may appeal against a decision by a teacher in charge of a pupil referral unit to permanently exclude the pupil. This new right of appeal applies to any decision made by a teacher in charge of a pupil referral unit to permanently exclude a pupil on or after 1st September 1994.

Regulation 4 provides that where a pupil is permanently excluded after the coming into force of these Regulations, the teacher in charge must immediately inform both the relevant person and the local

education authority of the decision and the reason for it. In addition, the relevant person must be informed of his or her right to appeal against the decision and how to go about making such an appeal.

Regulation 5 places a duty on a local education authority to make arrangements enabling the relevant person to make an appeal. However, the relevant person must comply with the time limits for notifying the local education authority of his or her intention to appeal. In relation to a relevant decision made on or after the day on which these Regulations come into force, the time limit is 15 school days after the day on which the relevant person was given notice in writing under regulation 4(1). In relation to a relevant decision made before the day on which these Regulations come into force, the time limit is 30 school days after that day.

Regulation 6 applies Schedule 18 to the School Standards and Framework Act 1998, as modified by the Schedule to these Regulations, to any decision made in accordance with regulation 5.

Regulations 7 and 8 replicate the existing provisions in section 67(3) and (4) of the 1998 Act for pupil referral units, with the addition of a provision (in regulation 8(b)) for the appeal panel to make a determination that a reinstatement would have been appropriate in a case where otherwise it would not in fact be practical to give such a direction.

Regulation 9 requires a teacher in charge of a pupil referral unit, a local education authority or an appeal panel, in carrying out functions under these Regulations, to have regard to guidance given by the National Assembly for Wales.