

A consultation on revised statutory guidance and regulations for exclusions from schools and pupil referral units in England

Summary Report

Launch Date 16 December 2011
Respond by 17 February 2012

A consultation on revised statutory guidance and regulations for exclusions from schools and pupil referral units in England

The purpose of this consultation is to gather views on the Department's revised exclusion guidance document and regulations relating to exclusion. This includes proposals for how regulations will be applied to Academies, including Free Schools. The guidance is aimed at head teachers, governing bodies, local authorities, independent review panel members, clerks and special educational needs experts. However, in addition, we would welcome responses from parents, pupils, voluntary/community organisations and representative organisations of the above groups.

In both the guidance and this consultation 'head teacher' applies equally to the teachers in charge at a pupil referral unit (PRU) and Principals of Academies. 'Governing body' applies equally to a PRU management committee and 'governor' to member of a management committee. Apart from where specifically stated, the duties of a local authority to arrange an independent review panel also apply to Academy Trusts.

We welcome suggestions for brief inserts and/or revisions to the new guidance. However, our aim is to increase the effectiveness of the guidance by ensuring that it is concise and directly relevant to the exclusion process. It is not the intention to widen the scope of the document or lengthen it considerably. New guidance on the use of alternative provision will be released next year and the exclusion guidance will be updated to cross-refer where appropriate.

The consultation will last nine weeks. This is to enable the Department to publish the finalised regulations and guidance in sufficient time for the new exclusion process to begin in September 2012.

Contact Details – If your enquiry is related to the policy content of the consultation, you can contact the Exclusion Team by email: exclusion.consultation@education.gsi.gov.uk or alternatively you can contact the PCU helpline on:

Telephone: 0370 000 2288

If you have a query relating to the consultation process you can contact the Consultation Unit on:

Telephone: 0370 000 2288
e-mail: consultation.unit@education.gsi.gov.uk

1. Executive Summary

This revised exclusion guidance reflects the new provisions as enacted by section 4 (not yet in force) of the Education Act 2011. These provisions will change the process by which the decision of a governing body to uphold a permanent exclusion can be challenged. The current system of independent appeal panels will be replaced by independent review panels which will have different powers and increased access to expertise on special educational needs. Parents will also be able to apply to the First-tier Tribunal (Special Educational Needs and Disability) to hear cases alleging disability discrimination. This is in addition to their current right to apply to a County Court to hear other cases of discrimination under the Equality Act 2010.

In revising this guidance we have tried to make it clearer by: identifying who each section applies to; clarifying the separation between legislative duties / powers and statutory guidance; and only providing statutory guidance where it is necessary to ensure a duty or power is exercised effectively.

The regulations that accompany this consultation will apply to maintained schools. Regulations covering pupil referral units will mirror these regulations. The consultation seeks views on the application of regulations to Academies. It is the intention, however, to create regulations for Academies that mirror those for maintained schools.

The final version of the guidance, incorporating comments from this consultation will be published in summer 2012. New regulations will be laid at the start of April 2012 to commence from September 2012.

2. Background and Context

Evidence shows us that poor behaviour can severely impact upon both pupils and teachers. Our reforms to the exclusion review process are intended to ensure a fair and effective system of exclusion which takes account of the impact that persistent or significant poor behaviour can have on the education or welfare of all members of the school. These reforms are one part of our wider policy to support schools to promote good behaviour so that all children can receive a good education. We believe that this is vital to support schools to promote good behaviour if we are to ensure that all pupils are able to achieve their full potential, regardless of their circumstances.

Independent review panels provide for a quick, fair and accessible process for reviewing exclusion decisions, in a way that takes account of the rights of the wider school community. Unlike appeal panels, review panels will not be able to direct a school to reinstate a pupil. However, where a panel considers that the decision of the governing body to uphold the exclusion is flawed (in light of the principles applicable in a judicial review) it can quash the decision and require the governing body to reconsider the case. Where a governing body is directed to reconsider their decision but does not reinstate the pupil, the school will be expected to pay an additional financial contribution towards the costs of providing an alternative education for that pupil. It is likely that most governing bodies will offer to reinstate a pupil if directed to reconsider the decision by a panel. The important point of principle is that it is the school that is best placed to make that decision, taking into account the wider impact of

reinstatement on other pupils at the school.

Exclusion is an issue that disproportionately affects some of the most vulnerable pupils in society. In addition to pupils with special educational needs (SEN) and disabilities, this includes pupils receiving free school meals and pupils from certain ethnic groups. Under the new system, parents will be able to request the presence of a SEN expert at the panel to advise the panel on how special educational needs could be relevant to the exclusion. Parents will have this right, irrespective of whether a school recognises that a child has SEN. Under this new system parents will also have the right to ask the First-tier Tribunal (Special Educational Needs and Disability) to look at claims alleging disability discrimination in relation to an exclusion. Our revised exclusions guidance has been drafted to set out how schools' duties under the Equality Act 2010 apply to the exclusions process. It also includes statutory guidance on how schools should ensure that all pupils are treated fairly, particularly those pupils who are most vulnerable to exclusion.

Ultimately, the intention is to reduce the need for exclusion by supporting schools to manage poor behaviour and intervene earlier to address any underlying causes. In addition, the Government is committed to improving the quality of the provision that excluded pupils receive to ensure that exclusion from a school is not an exclusion from a good education.

3. The Proposals

Some of the key differences for those with functions under the current arrangements are set out below.

Head teachers

- The information that head teachers must provide to parents following an exclusion will change.
- The legal requirement for head teachers to arrange a reintegration interview with pupils returning from a fixed period exclusion will be replaced by statutory guidance.
- The statutory guidance to head teachers on exclusion will change.

Governing bodies

- The current time limits on when a governing body must meet to consider an exclusion decision will change.
- The information that governing bodies must provide to parents following a decision to uphold a permanent exclusion will change.
- The process by which a governing body's decision to uphold a permanent exclusion can be reviewed will change.
- The statutory guidance to governing bodies on exclusion will change.

Local authorities / Academy Trusts

- Some of the essential training requirements for independent review panel members will be different from those for independent appeal panels.
- Where requested by a parent, local authorities or Academy Trusts will need to appoint a special educational needs expert to attend an independent review panel.
- Local authorities will need to arrange for a school's budget to be readjusted if a governing body is directed to reconsider a permanent exclusion and does not subsequently offer to reinstate the pupil.

Individuals who have been an independent appeal panel member or clerk

- The basis on which review panels make a decision about an exclusion and the powers of the panel will be different from appeal panels.
- Individuals who have previously performed the role of an independent appeal panel member or clerk will require training in the new requirements and powers of independent review panels.

The guidance sets out how the new exclusion process will work. We would welcome responses to inform the final guidance and regulations. Questions 1 to 16 are for all respondents, Question 17 is for head teachers/teachers in charge/Principals, Question 18 is for school governors/management committee members and Questions 19 to 20 are for local authorities/Academy Trusts.

First-tier Tribunal (Special Educational Needs and Disability)

As indicated above, the new exclusion system will enable cases alleging disability discrimination to be taken to the First-tier Tribunal (Special Educational Needs and Disability), which is part of the Health, Education and Social Care Chamber.

The rules that govern the practice and procedure of that Chamber are the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008, as amended. These Rules are made by the Tribunal Procedure Committee (TPC) and can be viewed in their current form here: www.justice.gov.uk/downloads/guidance/courts-and-tribunals/tribunals/general/consolidated_TPFtT_HESCRules2008asat010411.pdf.

Through this consultation the TPC is seeking views on the amendments required to these rules to allow them to expedite permanent exclusion cases concerning disability discrimination (see questions 14 and 15). It is proposed to amend rule 21 so that the time limit for a school to provide a response in a disability discrimination case involving exclusion will be 15 working days (currently it is 30 working days). This will bring the timeframe closer in line with the arrangements made for cases in independent review panels.

Parents would continue to have six months in which to make claims to the First-tier Tribunal but can also apply to an independent review panel to look at the case within 15 school days. Where a parent indicates that they have also

applied to an independent review panel, the Tribunal route might not be progressed until the Tribunal was advised of the outcome of the panel and the parent indicated a wish for the Tribunal to progress the case.

It should be noted that the days from 25th December to 1st January inclusive and days in August are not counted when calculating the time for submitting a response (see rule 12(3)(b)) and that the time can also be extended (or shortened) under rule 5(3)(a).

The proposed amendment to the Rules would come into force in September 2012, at the same time as the other changes to the exclusion process set out in this consultation.

The TPC is keen to seek views on this proposal. It also wishes to hear views on whether the Rules need amending in any other respect in order to be suitable for these new cases.

While all responses should be sent to Department for Education, the responses on the Tribunal Procedure Rules will be forwarded to TPC and considered by them and then by the Lord Chancellor.

4. How to respond to the consultation

Consultation responses can be completed online at www.education.gov.uk/consultations

by emailing exclusion.consultation@education.gsi.gov.uk

or by downloading a response form which should be completed and sent to:
Exclusion Team - Consultation
Behaviour and Attendance in Schools Division
Sanctuary Buildings
Great Smith Street
London
SW1P 3BT

Additional copies

Additional copies are available electronically and can be downloaded from the Department for Education e-consultation website at:
www.education.gov.uk/consultations

Plans for making results public

We will attempt to incorporate your comments where possible. Please note that it will not always be possible to incorporate all comments. A summary of the results of the consultation and the Department's response will be published on the DfE e-consultation website in spring 2012.

Downloads

Equality Impact Assessment

Consultation Draft – Maintained Schools Exclusion Regulations

You can download this booklet online at: <http://www.education.gov.uk/publications>

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