STATUTORY INSTRUMENTS

1989 No. 1181

EDUCATION, ENGLAND AND WALES

The Education (National Curriculum) (Temporary Exceptions for Individual Pupils) Regulations 1989

Made - - - -	*10th July 1989*
Laid before Parliament	*11th July 1989*
Coming into force	*1st August 1989*

The Secretary of State for Education and Science, as respects England, and the Secretary of State for Wales, as respects Wales, in exercise of the powers conferred on the Secretary of State by sections 19(1), (2), (3), (5) and (7) and 232(5) of the Education Reform Act 1988(a), and after consulting with those persons with whom consultation appeared to them to be desirable, hereby make the following Regulations:

Citation, commencement and interpretation

1. These Regulations may be cited as the Education (National Curriculum) (Temporary Exceptions for Individual Pupils) Regulations 1989 and shall come into force on 1st August 1989.

2. In these Regulations –

"the 1981 Act" means the Education Act 1981(b);

"the 1988 Act" means the Education Reform Act 1988;

"general direction" and "special direction" mean directions given in the circumstances specified in regulation 3(1)(b)(i) or (ii) respectively, and "direction", where used without qualification, means either a general or a special direction or both as the context may require;

"maintained school" has the meaning given to it by section 25(1) of the 1988 Act;

"operative date" means the date on which a direction comes into force, and "operative period" means the period specified in the direction during which it is to have effect; and

references to a head teacher include references to his predecessor in office.

Cases and circumstances in which directions may be given

3.—(1) Subject to paragraph (2), where the head teacher of a maintained school is of the opinion in the case of any registered pupil at the school –

(a) that it is not for the time being appropriate to offer him the National Curriculum as it would otherwise apply to him; and

(a) 1988 c.40. For matters to be prescribed, *see* section 235(7) of this Act and section 114(1) of the Education Act 1944 (c.31), and for the transfer of functions to the Secretary of State *see* S.I. 1964/490, 1970/1536 and 1978/274.
(b) 1981 c.60.

(b) either that –

(i) the circumstances that give rise to that opinion are likely to change significantly so that, within six months from the operative date, the pupil will be able to follow the National Curriculum as it would otherwise apply to him; or

(ii) those circumstances are indicative of a need for the pupil to be assessed under section 5 of the 1981 Act with a view to the making or amending of a statement of special educational needs in respect of him;

he may give a direction of the kind referred to in regulation 4.

(2) A head teacher shall not give a direction in circumstances to which paragraph (1)(b)(ii) applies unless he has first consulted the local education authority.

General and special directions

4.—(1) Subject to paragraphs (2) to (4) below, a direction may direct as respects any registered pupil that the provisions of the National Curriculum –

(a) shall not apply; or

(b) shall apply with such modifications as may be specified in the direction;

from such operative date and for such operative period as may be so specified.

(2) No operative date which is less than one month after the date on which the direction is given may be so specified unless the head teacher is satisfied that it is essential in the interests of the pupil or for other educational reasons that the direction should come into force earlier.

(3) Subject to paragraph (4), the maximum operative period that may be specified in a direction shall be –

(a) in the case of a general direction either –

(i) a fixed period not exceeding six months; or

(ii) a period determinable when the head teacher is satisfied that the circumstances giving rise to the direction no longer apply; and

(b) in the case of a special direction either –

(i) a period ending when a statement of special educational needs is made in respect of the pupil under section 7 of the 1981 Act or, as the case may be, where such an existing statement is amended under paragraph 6 of Schedule 1 to that Act; or

(ii) a period ending not later than one month after the local education authority give notice to the head teacher that they have determined not to make or, as the case may be, to amend, such a statement in respect of the pupil.

(4) In no case shall the operative period of a direction exceed six months, and in the case of any direction falling within paragraph (3)(a)(ii) or (3)(b) above, the direction shall cease to have effect six months from its operative date if it has not already done so but without prejudice to the making of a further direction under regulations 9 to 11.

Form and contents of directions

5. A direction shall be in writing, and shall include brief particulars of –

(a) those provisions of the National Curriculum which are to be modified or disapplied;

(b) the operative date of the direction and, if that date is less than one month after the date on which the direction is given, the reasons therefor;

(c) the operative period of the direction;

(d) the reasons for the direction, indicating whether it is general or special;

(e) the provision which it is intended should be made for the pupil's education during the operative period of the direction insofar as it differs from that which would otherwise apply to him;

(f) either –

(i) in the case of a general direction, the manner in which the head teacher proposes to secure the full implementation in relation to the pupil, after the end of the operative period, of the provisions of the National Curriculum; or

(ii) in the case of a special direction, his opinion that the pupil has or probably has special educational needs by virtue of which the local education authority would be required to determine the special educational provision that should be made for the pupil, and of his reasons therefor; and

(g) the right of the parent of the pupil to appeal to the governing body against the direction under section 19(7) of the 1988 Act.

Information

6.—(1) The head teacher shall –

(a) keep a copy of the direction at the school with any other records relating to the pupil; and

(b) send a copy of the direction as soon as possible, and in any event within three days from the date on which it was given, by first-class post to –

(i) the chairman of the governing body of the school;

(ii) in the case of a county, voluntary, or maintained special school, and, where the direction is a special direction, in the case of a grant-maintained school, the local education authority; and

(iii) at least one parent of the pupil as registered at the school, at the address so registered.

(2) In calculating the period of three days referred to in paragraph (1)(b) above, no account shall be taken of Saturdays, Sundays, public holidays or other days on which the school is closed.

(3) Where the head teacher has reason to believe that the parent to whom a copy of the direction is to be sent under paragraph (1)(b)(iii) may have difficulty in understanding the direction, he shall take such steps as he considers appropriate, whether by providing a translation of the direction or otherwise, to assist the parent.

Variation and revocation of directions

7.—(1) A head teacher may vary any direction given by him except so as to extend its operative period.

(2) Any such variation shall be by notice in writing, setting out those provisions of the direction which are to be varied and giving brief particulars of the variations and the reasons therefor.

(3) A variation to a direction shall not come into force until at least one month after the date on which notice of variation is given unless the head teacher is satisfied that it is essential in the interests of the pupil or for other educational reasons for it to be brought into force earlier.

(4) Regulation 6 shall apply to a variation of a direction as it applies to a direction.

8.—(1) A head teacher may revoke any direction given by him by a notice in writing giving brief particulars of –

(a) the reasons for the revocation;

(b) the date on which the revocation is to take effect; and

(c) a description of the manner in which he proposes to secure the full implementation in relation to the pupil of the provisions of the National Curriculum after the direction has ceased to have effect, unless those particulars are unchanged from those contained in the initial direction (if any) except in their timing.

(2) Regulation 6 shall apply to a notice revoking a direction as it applies to a direction.

Further directions

9.—(1) A head teacher who has given a general direction in respect of a pupil may, if he is still of the same opinion for which he gave the original direction, give a further such direction in respect of him for an operative period of not more than three months beginning –

(a) immediately after the end of the operative period of the first direction subject to the prior written consent of three members of the governing body being obtained; and

(b) immediately after the expiry of a further direction given under paragraph (a) subject to the prior written consent of three members of the governing body and, except in the case of a grant-maintained school, the local education authority, being obtained.

(2) Regulation 6 shall apply to a further direction, and shall apply to the governing body's (and, as the case may be, the local education authority's) consent as it applies to a direction.

10.—(1) Subject to paragraph (3), a head teacher who has given a special direction in respect of a pupil may, if he is still of the same opinion for which he gave the original direction, give a further such direction in respect of him –

(a) if a statement of special educational needs has not been made or, as the case may be, amended in respect of the pupil before the end of the operative period of the first direction and the local education authority have not given notice to the head teacher that they have determined not to make or amend such a statement;

(b) if the local education authority's decision not to determine the special educational provision that should be made for the pupil is subject to appeal under section 5(6) of the 1981 Act at the time that the operative period of the first special direction expires; or

(c) if a statement of special educational needs has been made in respect of the pupil but is subject to appeal under section 8 of the 1981 Act at the time that the operative period of the first special direction expires.

(2) Any further special direction given under paragraph (1) shall be for an operative period beginning immediately after the expiry of the operative period of the first direction and shall be for an operative period ending not later than one month after the statement of special educational needs has been made or amended, or the appeal disposed of, as the case may be, and in any event that period shall not exceed six months.

(3) A further special direction may be given –

(a) once, while paragraph (1)(a) applies;

(b) once, while paragraph (1)(b) applies; and

(c) any number of times while paragraph (1)(c) applies.

(4) Regulation 6 shall apply to a further special direction.

11.—(1) A head teacher shall not give a further direction in respect of a pupil which is based on the same reasons as an earlier direction unless it falls within regulation 9 or 10, but may give a further direction based on different reasons if he obtains the prior written consent of –

(a) three members of the governing body; and

(b) except in the case of a grant-maintained school, the local education authority.

(2) Regulation 6 shall apply to a further direction and shall apply to the governing body's (and, as the case may be, the local education authority's) consent as it applies to a direction.

Parental requests

12.—(1) Subject to paragraphs (2) and (3), a parent of a registered pupil may at any time request the head teacher to give a direction (or a further direction), or to revoke or vary a direction currently in force.

(2) Such a request may be made orally or in writing and shall include the reasons for which it is made.

(3) The head teacher shall not be obliged to entertain a request to revoke or vary a direction currently in force more than once during each of –

(a) the operative period of that direction; and

(b) the operative period of any further direction or directions given under regulations 9 or 10.

13.—(1) The head teacher shall, within two weeks of receiving any such request as is referred to in regulation 12 give, vary or revoke the direction as the case may be or give notice of his decision to refuse to do so in the manner set out in paragraph (2).

(2) Where the head teacher's decision is to refuse to give, vary or revoke the direction, as the case may be, he shall give his reasons therefor, and details of the right of appeal provided by regulation 14, in writing to –

(a) the parent who has made the request;

(b) the governing body; and

(c) in the case of a school other than a grant-maintained school, the local education authority.

(3) Regulation 6(3) shall apply to the reasons and details referred to in paragraph (2) as it does to a direction.

14. If the head teacher –

(a) fails to give notice of his decision within two weeks; or

(b) refuses to give, vary or revoke the direction as the case may be

the parent may appeal to the governing body under section 19(7) of the 1988 Act.

Kenneth Baker
Secretary of State for Education and Science

7th July 1989

Peter Walker
Secretary of State for Wales

10th July 1989

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations enable head teachers of maintained schools (including grant-maintained schools) to direct that the provisions of the National Curriculum should not apply to a pupil, or should apply with modifications.

Regulation 3 provides that a direction may only be given in cases where the head teacher considers that it is not appropriate for the pupil to follow the National Curriculum and either that:

(i) circumstances are likely to change so that the pupil will be able within six months to follow the National Curriculum; or

(ii) that the pupil needs to be assessed by the local education authority ("the LEA") with a view to a statement of special educational needs being made or, if one already exists, amended.

Regulation 4 provides for the date on which a direction is to come into force and its duration. It may not come into force less than one month after it is given unless the head teacher feels that this is essential. In no case is the duration of a direction to exceed six months.

Regulation 5 prescribes the form and contents of directions, and regulation 6 provides for copies to be kept with the pupil's school records and to be sent to the chairman of the governing body of the school, the LEA (in most cases), and to a parent of the pupil. If the head teacher believes that the parent may have difficulty in understanding the direction, he must take steps to assist him by providing a translation of the direction or otherwise.

A direction may be varied (except so as to extend its operative period) or revoked by notice in writing setting out the prescribed particulars; the provisions of regulation 6 concerning copies apply to a notice of variation or revocation. (Regulations 7 and 8).

Further directions may be given in certain circumstances and subject, in some cases, to the consent of the LEA or the governing body, or both. (Regulations 9 to 11).

Parents of a pupil may request the head teacher to give a direction or to revoke or vary an existing one; the head teacher must give his decision within two weeks, with reasons if he refuses the request. (Regulations 12 and 13). The parent has a right of appeal to the governing body against a refusal. (Regulation 14).

£1.35 net

ISBN 0 11 097181 7

Printed in the United Kingdom for Her Majesty's Stationery Office

800 WO1187 C6 7/89 452 7102 O/N 46294