EXPLANATORY MEMORANDUM TO

THE EDUCATION (PUPIL EXCLUSION AND APPEALS) (MISCELLANEOUS AMENDMENTS) (ENGLAND) REGULATIONS 2006

2006 No 2189

1. This explanatory memorandum has been prepared by the Department for Education and Skills and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Statutory Instrument amends the Education (Pupil Exclusion and Appeals) (Maintained Schools) (England) Regulations 2002 to require:

the head teacher of a school which has more than three terms per year to report exclusions which he is not already required to report under regulation 4(3) of those regulations (exclusions which are permanent, will result in the pupil missing a public examination, or take the total exclusions for that pupil to over five days in a term) broadly as often as head teachers of schools with three terms per year, who must report these exclusions at least every term;

all members of, and clerks to, appeal panels to have undergone suitable training;

head teachers appearing before independent appeal panel hearings to have a right of representation.

The regulations similarly amend the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 Currently regulation 4(5) of the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002 requires head teachers to inform their school's governing body and the local education authority every term of exclusions which he is not required to report under regulation 4(3). The exclusions to be reported under regulation 4(3) are those which are permanent, will result in the pupil missing a public examination, or take the total exclusions for that pupil to over five days in a term.. These must be notified to the governing body and LEA without delay. Some schools have moved to a school year consisting of more than three terms and therefore under current legislation they will have to inform the governing body and LEA more often than the minimum of three times a year. We are introducing an amendment to the exclusion regulations to ease the burden on such schools by requiring them, like schools with a three-

term year, to make these reports only three times a year. Head teachers and teachers in charge of pupil referral units will still be able to report these exclusions more frequently if they desire.

4.2 At present we recommend in guidance that members of exclusion appeal panels and clerks to the panels should have appropriate training. The guidance emphasises that chairs should be trained in the specific chairing skills the panels require. However, there is no statutory requirement that members and clerks should be trained. *Learning behaviour*, the report of the Practitioners' Group on Behaviour and Discipline (Steer Group), published in October 2005, stated that "most panel decisions are well argued but we are concerned that in some cases perverse decisions are reached. It is vitally important that all panel members have a thorough understanding of the law and guidance and are trained". Because they did not wish to put unnecessary obstacles in the way of recruiting panel members, the Practitioners' Group recommended that the training requirement should only extend to chairs and clerks. However the Council on Tribunals has recommended that the requirement should be extended to all panel members. This amendment to the exclusions regulations implements that recommendation.

4.3 Currently, the parent, governing body and local authority has a right of legal or other representation when appearing before a panel. The Steer Group recommended that head teachers should also have a right of representation when appearing before independent appeal panels. The Group was concerned at the increasing legalisation of appeal panel hearings with parties seeking legal representation. They recommended that head teachers should also have a right of representation. This amendment to the regulations gives effect to that recommendation.

5. Extent

This instrument applies to England.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 On the change to the reporting requirements, the Council on Tribunals was consulted and agreed with this change. The exclusions guidance is being revised to reflect this change and a range of stakeholders, including the head teachers' associations, the teachers' unions and the Advisory Centre for Education, were consulted. They had no objection to this change, which will reduce the burden on schools with a school year comprising more than three terms.

7.2 The requirement that panel members, and clerks to panels, should be trained fulfils a recommendation of the Steer Group that chairs and clerks should have undergone training and a further recommendation of the Council on Tribunals that all appeal panel members should be trained. Informal consultation on the revised guidance to accompany these regulations, with a range of stakeholders including

the head teachers' associations and the Local Government Association, did not give rise to any objections to this requirement.

7.3 It was considered by some respondents to consultation, including the Council on Tribunals, that the head teachers' right of representation, would mean that appeal panel hearings could be weighted very much in favour of head teachers and the school, rather than the parent and pupil. The Council on Tribunals reported that they had not come across many hearings where the parent was legally represented . They considered that if both the head teacher and the governing body had legal representation it could be overwhelming for some parents, who could get an impression that the hearing was weighted in favour of the school. However, on balance the Department considers that the need for equality of representation called for by the Steer Report ought to be implemented and that the presence of a representative of the head teacher will not impede the just review of appeals made to the panel. The Department will remind schools in guidance that the representative of the governing body may also represent the head teacher and that this practice is recommended where both are content to be represented by the same person.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is that the burden on schools with more than a three-term year will be reduced so that they are treated on a par with schools that have a three-term year; local authorities will have to provide training for independent appeal panel members and clerks to the panels, although most authorities will be carrying out this training already and so increased costs should be relatively insignificant; schools may incur additional legal costs if head teachers wish to exercise their right to representation by hiring lawyers.

9. Contact

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