STATUTORY INSTRUMENTS

2006 No. 2661

EDUCATION, ENGLAND

The Education (School Teacher Performance Management) (England) Regulations 2006

Made - - - -	*4th October 2006*
Laid before Parliament	*9th October 2006*
Coming into force - -	*1st September 2007*

The Secretary of State for Education and Skills makes the following Regulations in exercise of the powers conferred by sections 21, 131 and 210 of the Education Act 2002(**a**).

In accordance with section 131(6) of that Act he has consulted with such associations of local education authorities, bodies representing the interests of governing bodies and bodies representing the interests of teachers, as appeared to him to be appropriate.

PART 1

General

1.—(1) These Regulations may be cited as the Education (School Teacher Performance Management) (England) Regulations 2006 and shall come into force on 1st September 2007.

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

Interpretation

2. In these Regulations—

"the Act" means the Education Act 2002;

"authority", in relation to a teacher to whom Part 3 applies, means the local education authority by which he is employed;

"appeal", in relation to a teacher to whom Part 2 applies, means raise a grievance in accordance with the procedure established by the governing body of the school for dealing with such matters and, in relation to a teacher to whom Part 3 applies, means raise a grievance in accordance with the procedure laid down by the authority for dealing with such matters;

"capability procedures" means the procedures established by the governing body pursuant to regulation 7 of the School Staffing (England) Regulations 2003(**b**);

"classroom" in relation to "classroom observation" means any type of setting where teaching and learning takes place;

(**a**) 2002 c.32.
(**b**) S.I. 2003/1963.

"cycle" means the performance management and review cycle referred to in regulations 12 and 26;

"day" means any day in the school year on which a teacher is required to be available for work;

"the Document" means the document referred to in any order made under section 122 of the Act for the time being in force;

"nursery school" means a nursery school maintained by a local education authority;

"pay progression criteria" means the criteria referred to in the Document for determining whether a teacher is eligible for a pay award of one or more scale or spine points;

"performance criteria" means the criteria against which the reviewee's performance will be judged in relation to the matters referred to in regulations 13(1)(a) to (c) or 27(1)(a) to (c), as the case may be;

"plan" means the plan for managing and reviewing the reviewee's performance referred to in regulations 14(1) and 28(1);

"qualified teacher" means a person who satisfies requirements specified in regulations made under section 132 of the Act:

"school" means a community, voluntary, foundation, community special or foundation special school or a nursery school;

"school development planning" means the process of putting in place a plan which specifies the actions needed to bring about school improvement as part of the school improvement process;

"school improvement" means the processes put in place by the governing body of the school to improve standards at the school;

"school improvement partner" means any person appointed by the local education authority for the purposes of providing advice to the governing body and head teacher of the school with a view to improving standards at the school and who is for the time being accredited for those purposes by the Secretary of State or by a person authorised by the Secretary of State to accredit persons for those purposes;

"School Improvement Plan" means the strategic plan setting out the objectives to improve the school's provision and performance;

"school self-evaluation" means the arrangements put in place by the governing body of the school to evaluate the quality of school provision as part of the school improvement process;

"school which has a religious character" means a foundation or voluntary school designated as a school having such a character under section 69(3) of the School Standards and Framework Act 1998(**a**);

"statement" means the planning and review statement referred to in regulations 14(1) and 28(1);

"teacher" means a school teacher as defined in section 122 of the Act;

"unattached teacher" means—

(a) a teacher not attached to a particular school;

(b) a teacher employed otherwise than at a school; or

(c) a teacher at a pupil referral unit (including a teacher in charge of a unit).

Time limits

3. Failure on the part of any person to discharge any duty within a time limit specified in these Regulations shall not relieve him of that duty.

(**a**) 1998 c.31.

Revocations and transitional provision

4.—(1) Subject to paragraph (2), the Education (School Teacher Appraisal) (England) Regulations 2001(**a**) ("the 2001 Regulations") are revoked.

(2) The 2001 Regulations shall apply in relation to the appraisal of the performance of teachers during any part of the school year 2006-2007.

(3) Any appraisal statement produced and retained under the 2001 Regulations since 1st September 2003 shall be retained for a minimum period of 6 years from the date on which the appraisal cycle to which it relates ended and relevant information from those statements may be taken into account in taking decisions and advising those responsible for taking decisions about the use of any discretion in relation to pay.

(4) Regulation 9 of the Education (School Government) (Terms of Reference) (England) Regulations 2000(**b**) is revoked.

Application

5.—(1) Subject to paragraph (2), these Regulations apply in relation to any teacher employed for one term or more.

(2) These Regulations shall not apply to the performance of—

(a) any teacher who is undergoing but who has not satisfactorily completed an induction period in accordance with the Education (Induction Arrangements for School Teachers) (Consolidation) (England) Regulations 2001(**c**);

(b) any teacher whilst he is the subject of capability procedures.

PART 2

Provisions Applying to Teachers Employed at Schools

Application of Part 2

6. Part 2 applies to the performance management and review of any teacher who is employed by—

(a) a local education authority in a school; or

(b) the governing body of a school.

Performance management policy

7.—(1) The governing body shall establish a written policy ("the performance management policy") setting out how the performance of teachers at the school is to be managed and reviewed.

(2) The governing body shall formulate the performance management policy or direct the head teacher to formulate the policy.

(3) Where the head teacher formulates the policy, the governing body may modify it before adopting it or reject it.

(4) Where the governing body rejects the performance management policy formulated by the head teacher, it shall formulate the policy itself.

(5) The governing body shall review the performance management policy every school year.

(6) Following such review, the governing body shall, if it sees fit, revise the performance management policy.

(**a**) S.I. No. 2855/2001.
(**b**) S.I. 2000/2122.
(**c**) S.I. 2001/2897.

(7) Before establishing or revising the performance management policy, the governing body or, if the governing body so directs, the head teacher shall—

(a) consult all teachers at the school; and

(b) seek to agree the policy or any revision to it with the recognised trade unions, having regard to the results of the consultation of all teachers.

(8) The governing body and the head teacher shall implement the performance management policy.

(9) The performance management policy shall—

(a) state what results the policy is intended to achieve and how these will be measured;

(b) show how the school's arrangements for school teacher performance management link with those for school improvement, school self-evaluation and school development planning;

(c) show how the school will seek to achieve consistency of treatment and fairness between those teachers with similar experience or levels of responsibility;

(d) set out the timing of the cycle;

(e) include a classroom observation protocol;

(f) provide for performance management training to be made available as the need arises;

(g) state the arrangements for monitoring and evaluating the policy; and

(h) specify any ancillary or supplementary procedures necessary for the operation of performance management of teachers at the school in accordance with these Regulations.

Duty to ensure that teachers' performance is managed and reviewed

8.—(1) The governing body of the school shall ensure that the performance of teachers at the school is managed and reviewed in accordance with the performance management policy and this Part.

(2) Where a teacher is employed at more than one school, the governing body of each school shall comply with this regulation in relation to that teacher.

Appointment of external advisers in respect of head teachers

9.—(1) Subject to paragraph (2), the governing body shall appoint an external adviser for the purposes of providing it with advice and support in relation to the management and review of the performance of the head teacher.

(2) Where the local education authority has appointed a school improvement partner for that school, paragraph (1) shall not apply and the governing body shall use the school improvement partner for the purposes of providing it with advice and support in relation to the management and review of the performance of the head teacher.

Appointment of reviewers for head teachers

10.—(1) Subject to the following paragraphs of this regulation, the governing body of the school shall be the reviewer for the head teacher.

(2) The governing body may appoint two or three governors to perform the duties imposed upon the reviewer on behalf of the governing body.

(3) No governor who is a teacher or other member of staff at the school may be appointed as a reviewer for the head teacher.

(4) Where the governing body of a school which has a religious character appoints two or three governors pursuant to paragraph (2), at least one of them shall be a foundation governor of the school.

(5) Where, pursuant to paragraph (2), the governing body of a voluntary aided school appoints—

(a) two governors, at least one of them shall be a foundation governor of the school; and

(b) three governors, not less than two of them shall be foundation governors of the school.

(6) Where a head teacher is of the opinion that any of the governors appointed by the governing body under this regulation is unsuitable for professional reasons, he may submit a written request to the governing body for that governor to be replaced, stating those reasons.

(7) Where the governing body is persuaded that that governor is unsuitable, it shall terminate that appointment and appoint another governor in accordance with this regulation.

(8) Where the governing body is not persuaded that that governor is unsuitable, it shall—

(a) notify the head teacher in writing of its decision, stating its reasons; and

(b) upon request, attach the head teacher's request and the notification of its rejection of that request to the statement for that cycle.

(9) A reviewee may request that any governor appointed under paragraph (2) be replaced once in any cycle.

(10) Where the governing body decides at any time that any of the governors appointed under this regulation is no longer suitable for professional reasons, or is no longer able to perform his duties for any reason, it shall terminate the appointment of that governor and appoint one in accordance with this regulation.

Appointment of reviewers for other teachers

11.—(1) Subject to the following paragraphs of this regulation, the head teacher shall be the reviewer for all other teachers at the school.

(2) In the case where the head teacher is not the teacher's line manager, the head teacher may delegate the duties imposed upon the reviewer, in their entirety, to the teacher's line manager.

(3) Where the teacher has more than one line manager, the head teacher may delegate the reviewer's duties, in their entirety, to the line manager whom he considers would be best placed to manage and review the teacher's performance.

(4) Where it becomes apparent that the teacher to whom the head teacher has delegated the reviewer's duties will be absent for the majority of the cycle, the head teacher may perform those duties himself or delegate those duties, in their entirety, to another teacher for the duration of that absence.

(5) Where a teacher is of the opinion that the person to whom the head teacher has delegated the reviewer's duties is unsuitable for professional reasons, he may submit a written request to the head teacher for that reviewer to be replaced, stating those reasons.

(6) Where the head teacher is persuaded that the teacher to whom he has delegated the reviewer's duties is unsuitable, he may perform those duties himself or delegate them, in their entirety, to another teacher.

(7) Where the head teacher is not persuaded that the teacher to whom he has delegated the reviewer's duties is unsuitable, he shall—

(a) notify the teacher in writing of his decision, stating his reasons; and

(b) upon request, attach the teacher's request and the notification of his rejection of that request to the statement for that cycle.

(8) A reviewee may request that a person to whom the head teacher has delegated the reviewer's duties be replaced once in any cycle.

(9) Where the head teacher decides at any time that the person to whom he has delegated the reviewer's duties is no longer suitable for professional reasons, or is no longer able to perform those duties for any reason, he may perform those duties himself or delegate them, in their entirety, to another teacher.

(10) Where, pursuant to this regulation, the head teacher delegates the reviewer's duties to a teacher who is not the teacher's line manager, the teacher to whom he delegates those duties must have an equivalent or higher status in the staffing structure than the teacher's line manager.

Performance management and review cycle

12.—(1) Subject to the following paragraphs of this regulation, the performance of every teacher at the school shall be managed and reviewed on an annual basis ("the performance management and review cycle").

(2) The governing body shall determine the timing of the performance management and review cycle for the head teacher and the head teacher shall determine the timing of the performance management and review cycle for the other teachers at the school.

(3) Where a teacher is employed at the school on a fixed term contract of less than one year, his performance shall be managed throughout the life of the contract and reviewed at the end of the contract.

(4) Where a teacher is employed at the school part-way through a cycle, the head teacher or, in the case where the teacher is the head teacher, the governing body shall determine the length of the first cycle for that teacher, with a view to bringing his cycle into line with the cycle for other teachers at the school as soon as possible.

(5) Where a teacher transfers to a new post within the school, whether on a temporary or permanent basis, part-way through his cycle, the head teacher or, in the case where the teacher is to be the head teacher, the governing body shall determine whether the cycle shall begin again and, if so, whether to change the reviewer or reviewers, as the case may be.

(6) A change of reviewer or the appointment of a new external adviser or school improvement partner shall not cause the reviewee's cycle to begin again.

Planning meetings

13.—(1) At the beginning of each cycle, the reviewer or, in the case where the reviewee is the head teacher, all the reviewers and the external adviser or school improvement partner, as the case may be, shall arrange a meeting with the reviewee ("the planning meeting") to consider and determine—

(a) the reviewee's objectives;

(b) the arrangements for observing the reviewee's performance in the classroom, where appropriate;

(c) any other evidence which will be taken into account in judging the reviewee's performance;

(d) the performance criteria;

(e) the support that will be provided to the reviewee to help him to meet the performance criteria;

(f) the timescales for the achievement of the objectives and within which support will be provided, where these differ from the length of the cycle of the reviewee; and

(g) the reviewee's training and development needs and the actions which will be taken to address them.

(2) The matters referred to in paragraph (1) shall be determined having regard to—

(a) the reviewee's job description;

(b) any relevant pay progression criteria;

(c) any relevant whole-school or team objectives specified in the School Improvement Plan;

(d) what can be reasonably expected of any teacher in that position given the desirability of the reviewee being able to achieve a satisfactory balance between the time required to discharge his professional duties and the time required to pursue his personal interests outside work;

(e) the reviewee's professional aspirations; and

(f) the relevant professional standards.

(3) The reviewee's objectives shall be such that, if they are achieved, they will contribute to improving the progress of pupils at the school.

(4) Only persons who have a direct professional knowledge of the reviewee may provide evidence for the purposes of paragraph (1)(c).

(5) Where a joint determination cannot be made in relation to any of the matters referred to in paragraph (1), the reviewer shall make the determination.

Recording of plans

14.—(1) Within 5 days of the planning meeting, the reviewer shall—

(a) prepare a planning and review statement in respect of the reviewee in draft, in which he shall record the plan for managing and reviewing the reviewee's performance, comprising the matters referred to in regulation 13(1)(a) to (f) and, in a separate annex to the statement, ("the Training and Development Annex"), the matters referred to in regulation 13(1)(g); and

(b) pass the draft statement to the reviewee, who may add his comments.

(2) Within 10 days of the planning meeting, the reviewer shall—

(a) prepare and sign a final version of the plan in the statement;

(b) make the statement available to the reviewee, who may add his comments;

(c) where the reviewee is a teacher and the reviewer is not the head teacher, pass the signed statement to the head teacher or where the reviewee is the head teacher and the review is conducted by individual governors, pass the signed statement to the governing body;

(d) provide a copy of the statement to the reviewee; and

(e) provide a copy of the Training and Development Annex to the person responsible for planning the training and development of teachers at the school.

(3) Subject to the outcome of any appeal, the contents of the plan shall be deemed to reflect the results of the planning meeting.

(4) The time limit specified in paragraphs (1) and (2) may be extended if the reviewer or the reviewee is absent from work during those times.

(5) The plan shall be recorded in the statement by 31st October or, where the reviewee is the head teacher, by 31st December, following completion of the previous cycle.

Quality assurance and moderation of plans

15.—(1) Where individual governors perform the reviewer's duties on its behalf, the governing body may review the contents of the plan recorded in the head teacher's statement within 10 days of it being passed to it pursuant to regulation 14(2)(c).

(2) Where, pursuant to paragraph (1), the governing body is of the opinion that the plan—

(a) is inconsistent with the school's improvement priorities; or

(b) does not comply with the performance management policy or any relevant requirement in these Regulations,

it shall instruct the reviewers to prepare a new plan and statement.

(3) Where the head teacher delegates the reviewer's duties to another teacher he may review the contents of the plan recorded in the statement within 10 days of it being passed to him pursuant to regulation 14(2)(c).

(4) Where, pursuant to paragraph (3), the head teacher is of the opinion that any such plan—

(a) is inconsistent with the plans recorded in the statements of other teachers at the school who have similar experience or similar responsibilities; or

(b) does not comply with the performance management policy or any relevant requirement in these Regulations,

he shall instruct the reviewer to prepare a new plan and statement.

(5) Within 10 days of receiving an instruction pursuant to paragraph (2) or paragraph (4), the reviewer shall—

(a) consult the reviewee;

(b) prepare a new plan, record it in a new statement and sign the statement;

(c) make the statement available to the reviewee, who may add his comments;

(d) pass the signed statement to the head teacher, or the governing body, as the case may be;

(e) provide a copy of the statement to the reviewee; and

(f) provide a copy of the Training and Development Annex to the person responsible for planning the training and development of teachers at the school.

(6) The time limit specified in paragraph (5) may be extended if the reviewer or reviewee is absent from work during that time.

Revision of plans

16.—(1) Where, during the course of any cycle—

(a) the reviewee's circumstances or responsibilities change;

(b) evidence emerges which gives rise to concern about the reviewee's performance but which does not justify the application of capability procedures; or

(c) the reviewee is absent for such a period of time that some of the entries in the plan recorded in the statement are no longer appropriate,

the reviewer or the reviewee may request a meeting (a "revision meeting") and that meeting shall be held within 10 days.

(2) Within 10 days of the revision meeting, the reviewer shall—

(a) record any changes in the plan agreed at the meeting in the form of an addendum to the original statement or, where there is no agreement, any changes he thinks ought to be made to the plan and sign the addendum;

(b) make the revised statement available to the reviewee, who may add his comments to the addendum;

(c) where the reviewee is a teacher and the reviewer is not the head teacher, pass the signed revised statement to the head teacher or, where the reviewee is the head teacher and the review is conducted by individual governors, pass the signed statement to the governing body;

(d) provide a copy of the revised statement to the reviewee; and

(e) where the addendum relates to the training and development of the reviewee, provide a copy of the addendum to the person responsible for planning the training and development of teachers at the school.

(3) Subject to the outcome of any appeal, the contents of the addendum shall be deemed to reflect the results of the revision meeting.

(4) The time limit specified in paragraphs (1) and (2) may be extended if the reviewer or reviewee is absent from work during that time.

(5) The statement shall not be revised unless a revision meeting has been held pursuant to paragraph (1).

Classroom observation

17.—(1) Classroom observation shall be conducted in accordance with the classroom observation protocol referred to in regulation 7(9)(e).

(2) The arrangements for classroom observation recorded in the reviewee's statement shall—

(a) specify the primary purpose of each observation to be undertaken; and

(b) subject to paragraph (3), specify any particular aspects of the reviewee's teaching performance that will be assessed during each observation.

(3) Nothing in paragraph (2)(b) shall prevent any other aspect of the reviewee's teaching performance observed during any classroom observation arranged for the purposes of these Regulations from being assessed and taken into account when the teacher's performance is reviewed in accordance with regulation 18.

(4) Subject to paragraph (5), the total period of classroom observation arranged for any teacher under this Part shall not exceed 3 hours per cycle and shall be determined having regard to the individual circumstances of the teacher.

(5) Where evidence emerges which gives rise to concern about the reviewee's teaching performance, classroom observations may be arranged in addition to those referred to in paragraph (4).

(6) Where it is considered appropriate to arrange additional classroom observations pursuant to paragraph (5) the reviewer shall ensure that a revision meeting is held and that details of any such observation are inserted into an addendum to the statement pursuant to regulation 16.

(7) Where a teacher's performance in the classroom is observed for the purposes of these Regulations, the reviewer shall ensure that the teacher receives a written report on his findings within 5 days of the observation, to which he may add his comments.

(8) Classroom observation must be conducted by a qualified teacher.

Review of teacher's performance

18.—(1) At or near the end of each cycle the reviewer or, in the case where the reviewee is the head teacher, all the reviewers and the external adviser or school improvement partner, as the case may be, shall meet with the reviewee to—

(a) review his performance throughout that cycle against the performance criteria specified in the statement; and

(b) where the reviewee is eligible for pay progression under the Document, determine the recommendation on pay progression, having regard to the results of the review referred to in sub-paragraph (a).

(2) The review meeting shall be combined with the planning meeting for the next cycle, wherever practicable.

(3) Within 5 days of the review meeting, the reviewer shall—

(a) record in draft in the statement—

(i) the results of the review; and

(ii) any recommendation on pay progression; and

(b) pass the draft statement to the reviewee.

(4) Within 10 days of the review meeting, the reviewer shall—

(a) prepare and sign a final version of the statement;

(b) make it available to the reviewee, who may add his comments;

(c) where the reviewee is a teacher and the reviewer is not the head teacher, pass the signed statement to the head teacher or, where the reviewee is the head teacher and the review is conducted by individual governors, pass the signed statement to the governing body; and

(d) provide a copy of the statement to the reviewee.

(5) Subject to the outcome of any appeal, the contents of the statement shall be deemed to reflect the results of the review meeting.

(6) The time limit specified in paragraphs (3) and (4) may be extended if the reviewer or the reviewee is absent from work during those times.

(7) The results of the review and any pay recommendation shall be recorded in the statement by 31st October or, where the reviewee is the head teacher, 31st December, following completion of the cycle to which it relates.

Appeals

19. The reviewee may appeal against any of the entries made by the reviewer in his statement, following receipt of a copy of it pursuant to regulations 14(2)(e), 15(3)(e), 16(2)(d) and 18(4)(e).

Use and retention of statements

20.—(1) The head teacher or, in the case where the reviewee is the head teacher, the governing body shall retain the reviewee's statement for a minimum period of 6 years from the date on which the cycle to which it relates ends.

(2) Where the reviewee is a teacher other than a head teacher, the governing body shall have regard to the results of the review recorded in the statement pursuant to regulation 18 when exercising any discretion in relation to his pay.

(3) The governing body shall be provided with access to the reviewee's statement for the purposes of paragraph (2), upon request.

(4) Where the reviewee is the head teacher, the governing body or, in the case where the school does not have a delegated budget, the local education authority shall have regard to the results of the review recorded in the statement pursuant to regulation 18 when exercising any discretion in relation to his pay.

(5) Where the school does not have a delegated budget, the local education authority shall be provided with access to the reviewee's statement for the purposes of paragraph (4), upon request.

(6) The reviewee's line manager or, where he has more than one, each of his line managers shall be provided with access to the reviewee's plan recorded in the statement, upon request, where this is necessary to enable him to discharge his line management responsibilities.

(7) Where a reviewee pursues an appeal in relation to the contents of his statement the head teacher or, where the reviewee is the head teacher, the governing body shall provide anyone hearing that appeal with access to that statement.

(8) Where a reviewee transfers from one school to another school part-way through his cycle, the head teacher or, where the reviewee is the head teacher, the governing body of the school shall transfer the reviewee's statement for that cycle, together with any evidence gathered concerning his performance during that cycle, to the head teacher or governing body of the new school, as the case may be, upon receipt of a written request from the reviewee.

(9) Where a reviewee employed by an authority in a school or a governing body of a school becomes an unattached teacher part-way through his cycle, the head teacher or, where the reviewee was the head teacher, the governing body shall transfer the reviewee's statement for that cycle, together with any evidence gathered concerning his performance during that cycle, to the new authority, upon receipt of a written request from the reviewee.

(10) Where a reviewee employed as an unattached teacher becomes employed as a teacher by an authority in a school or by a governing body of a school part-way through his cycle, the authority shall transfer the reviewee's statement for that cycle, together with any evidence gathered concerning his performance during that cycle, to the head teacher or, in the case where the unattached teacher is to become the head teacher of the school, the governing body of the school, upon receipt of a written request from the reviewee.

Head teacher's report

21.—(1) The head teacher shall provide the governing body with an annual written report about—

(a) the operation of the performance management policy;

(b) the effectiveness of the school's performance management procedures; and

(c) the teachers' training and development needs.

(2) The head teacher's report shall not contain any information which would enable any teacher at the school to be identified.

PART 3

Provisions Applying to Unattached Teachers

Application of Part 3

22. Part 3 applies to the performance management and review of any unattached teacher.

Performance management policy

23.—(1) The authority shall establish a written policy ("the performance management policy") setting out how the performance of their unattached teachers is to be managed and reviewed.

(2) The authority shall review the performance management policy every school year.

(3) Following such review, the authority shall, if they see fit, revise the performance management policy.

(4) Before establishing or revising the performance management policy, the authority shall—

(a) consult all their unattached teachers; and

(b) seek to agree the policy or any revision to it with the recognised trade unions, having regard to the results of the consultation of all unattached teachers.

(5) The authority shall implement the performance management policy.

(6) The performance management policy shall—

(a) state what results the policy is intended to achieve and how these will be measured;

(b) show how the authority will seek to achieve consistency of treatment and fairness between those teachers with similar experience or levels of responsibility;

(c) set out the timing of the review cycle;

(d) include a classroom observation protocol;

(e) provide for performance management training to be made available as the need arises;

(f) state the arrangements for monitoring and evaluating the policy; and

(g) specify any ancillary or supplementary procedures necessary for the operation of performance management of unattached teachers in accordance with these Regulations.

Duty to ensure that teachers' performance is managed and reviewed

24.—(1) The authority shall ensure that the performance of unattached teachers is managed and reviewed in accordance with the performance management policy and this Part.

(2) Where an unattached teacher is employed by more than one authority, each authority shall comply with this regulation in relation to that teacher.

Appointment of reviewers for teachers

25.—(1) Subject to the following paragraphs of this regulation, the authority shall be the reviewer for every unattached teacher.

(2) The authority may delegate the duties imposed upon the reviewer, in their entirety, to the teacher's line manager.

(3) Where the teacher has more than one line manager, the authority may delegate the reviewer's duties, in their entirety, to the line manager whom they consider would be best placed to manage and review the teacher's performance.

(4) Where it becomes apparent that the person to whom the authority have delegated the reviewer's duties will be absent for the majority of the cycle, the authority may perform those duties themselves or delegate those duties, in their entirety, to another person for the duration of that absence.

(5) Where a teacher is of the opinion that the person to whom the authority have delegated the reviewer's duties is unsuitable, for professional reasons, he may submit a written request to the authority for that reviewer to be replaced, stating those reasons.

(6) Where the authority are persuaded that the person to whom they have delegated the reviewer's duties is unsuitable, they may perform those duties themselves or delegate them, in their entirety, to another person.

(7) Where the authority are not persuaded that the person to whom they have delegated the reviewer's duties is unsuitable, they shall—

(a) notify the teacher in writing of their decision, stating their reasons; and

(b) upon request, attach the teacher's request and the notification of their rejection of that request to the statement for that cycle.

(8) A reviewee may request that a person to whom the authority have delegated the reviewer's duties be replaced once in any cycle.

(9) Where the authority decide at any time that a person to whom they have delegated the reviewer's duties is no longer suitable for professional reasons, or is no longer able to carry out those duties for any reason, they may perform those duties themselves or delegate them, in their entirety, to another person.

(10) Where, pursuant to this regulation, the authority delegates the reviewer's duties to a person who is not the teacher's line manager, the person to whom they delegate those duties must have an equivalent or higher status in the authority's staffing structure than the teacher's line manager.

Performance management and review cycle

26.—(1) Subject to the following paragraphs of this regulation, the performance of every unattached teacher shall be managed and reviewed on an annual basis ("the performance management and review cycle").

(2) The authority shall determine the timing of the performance management and review cycle for their unattached teachers.

(3) Where an unattached teacher is employed on a fixed term contract of less than one year, his performance shall be managed throughout the life of the contract and reviewed at the end of the contract.

(4) Where a teacher is employed by an authority part-way through a cycle, the authority shall determine the length of the first cycle for that teacher.

(5) Where a teacher transfers to a new post within the authority, whether on a temporary or permanent basis, part-way through his cycle, the authority shall determine whether the cycle shall begin again and, if so, whether to change the reviewer.

(6) A change of reviewer shall not cause the reviewee's cycle to begin again.

Planning meetings

27.—(1) At the beginning of each cycle, the reviewer shall arrange a meeting with the reviewee ("the planning meeting") to consider and determine—

(a) the reviewee's objectives;

(b) the arrangements for observing the reviewee's performance in the classroom, where appropriate;

(c) any other evidence which will be taken into account in judging the reviewee's performance;

(d) the performance criteria;

(e) the support that will be provided to the reviewee to help him to meet the performance criteria;

(f) timescales for the achievement of objectives and within which support will be provided, where these differ from the length of the cycle of the reviewee; and

(g) the reviewee's training and development needs and the actions which will be taken to address them.

(2) The matters referred to in paragraph (1) shall be determined having regard to—

(a) the reviewee's job description;

(b) any relevant pay progression criteria;

(c) any relevant objectives which the authority may have for unattached teachers generally or any relevant whole-school or team objectives specified in the School Improvement Plan for any school in which the teacher will be working;

(d) what can be reasonably expected of any teacher in that position given the desirability of the reviewee being able to achieve a satisfactory balance between the time required to discharge his professional duties and the time required to pursue his personal interests outside work;

(e) the reviewee's professional aspirations; and

(f) the relevant professional standards.

(3) The reviewee's objectives shall be such that, if they are achieved, they will contribute to improving the progress of the pupils he teaches.

(4) Only persons who have a direct professional knowledge of the reviewee may provide evidence for the purposes of paragraph (1)(c).

(5) Where a joint determination cannot be made in relation to any of the matters referred to in paragraph (1), the reviewer shall make the determination.

Recording of plans

28.—(1) Within 5 days of the planning meeting, the reviewer shall—

(a) prepare a planning and review statement in respect of the reviewee, in which he shall record the plan for managing and reviewing the reviewee's performance, comprising the matters referred to in regulation 27(1)(a) to (f) and, in a separate annex to the statement, ("the Training and Development Annex") the matters referred to in regulation 27(1)(g); and

(b) pass the draft statement to the reviewee, who may add his comments.

(2) Within 10 days of the planning meeting—

(a) the reviewer shall prepare and sign a final version of the plan in the statement;

(b) make the statement available to the reviewee, who may add his comments;

(c) where the reviewer is not the authority, pass the signed statement to the authority;

(d) provide a copy of the statement to the reviewee; and

(e) provide a copy of the Training and Development Annex to the person responsible for planning the training and development of that teacher.

(3) Subject to the outcome of any appeal, the contents of the statement shall be deemed to reflect the results of the planning meeting.

(4) The time limit specified in paragraphs (1) and (2) may be extended if the reviewer or the reviewee is absent from work during those times.

(5) The plan shall be recorded in the statement by 31st October following completion of the previous cycle.

Moderation of plans

29.—(1) Where the authority delegates the reviewer's duties to another person, they may review the contents of the plan recorded in the statement within 10 days of it being passed to them pursuant to regulation 28(2)(c).

(2) Where, pursuant to paragraph (1), the authority are of the opinion that any such plan—

(a) is inconsistent with the plans recorded in the statements of other teachers of similar experience or who have similar responsibilities employed by that authority; or

(b) does not comply with any relevant requirement in these Regulations,

they shall instruct the reviewer to prepare a new plan and statement.

(3) Within 10 days of receiving an instruction pursuant to paragraph (2), the reviewer shall—

(a) consult the reviewee;

(b) prepare a new plan, record it in a new statement and sign the new statement;

(c) make it available to the reviewee, who may add his comments;

(d) pass the signed statement to the authority;

(e) provide a copy of the statement to the reviewee; and

(f) provide a copy of the Training and Development Annex to the person responsible for planning the training and development of teachers.

(4) The time limit specified in paragraph (3) may be extended if the reviewer or reviewee is absent from work during that time.

Revision of plans

30.—(1) Where, during the course of any cycle—

(a) the reviewee's circumstances or responsibilities change;

(b) evidence emerges which gives rise to concern about the reviewee's performance but which does not justify the application of capability procedures; or

(c) the reviewee is absent for such a period of time that some of the entries in the plan recorded in the statement are no longer appropriate,

the reviewer or the reviewee may request a meeting (a "revision meeting") and that meeting shall be held within 10 days.

(2) Within 10 days of the revision meeting, the reviewer shall—

(a) record any changes in the plan agreed at the meeting in the form of an addendum to the original statement or, where there is no agreement, any changes he thinks ought to be made to the plan and sign the addendum;

(b) make the revised statement available to the reviewee, who may add his comments to the addendum;

(c) where the reviewer is not the authority, pass the signed revised statement to the authority;

(d) provide a copy of the revised statement to the reviewee; and

(e) where the addendum relates to the training and development of the reviewee, provide a copy of the addendum to the person responsible for planning the training and development of that teacher.

(3) Subject to the outcome of any appeal, the contents of the addendum shall be deemed to reflect the results of the revision meeting.

(4) The time limit specified in paragraphs (1) and (2) may be extended if the reviewer or reviewee is absent from work during that time.

(5) The statement shall not be revised unless a revision meeting has been held pursuant to paragraph (1).

Classroom observation

31.—(1) Classroom observation shall be conducted in accordance with the classroom observation protocol referred to in regulation 23(6)(d).

(2) The arrangements for classroom observation recorded in the reviewee's statement shall—

(a) specify the primary purpose of each observation to be undertaken; and

(b) subject to paragraph (3), specify any particular aspects of the reviewee's teaching that will be assessed during each observation.

(3) Nothing in paragraph (2)(b) shall prevent any other aspect of the reviewee's teaching performance observed during any classroom observation arranged for the purposes of these Regulations from being assessed and taken into account when the teacher's performance is reviewed in accordance with regulation 32.

(4) Subject to paragraph (5), the total period of classroom observation arranged for any teacher under this Part shall not exceed 3 hours per cycle and shall be determined having regard to the individual circumstances of the teacher.

(5) Where evidence emerges which gives rise to concern about the reviewee's teaching performance, classroom observations may be arranged in addition to those referred to in paragraph (4).

(6) Where it is considered appropriate to arrange additional classroom observations pursuant to paragraph (5), the reviewer shall ensure that a revision meeting is held and that details of any such observation are inserted into an addendum to the statement pursuant to regulation 30.

(7) Where a teacher's performance in the classroom is observed for the purposes of these Regulations, the reviewer shall ensure that the teacher receives a written report on his findings within 5 days of the observation, to which he may add his comments.

(8) Classroom observation must be conducted by a qualified teacher.

Review of teacher's performance

32.—(1) At or near the end of each cycle, the reviewer shall arrange a meeting with the reviewee ("a review meeting") to—

(a) review his performance throughout that cycle against the performance criteria specified in the statement; and

(b) where the reviewee is eligible for pay progression under the Document, determine the recommendation on pay progression, having regard to the results of the review referred to in sub-paragraph (a).

(2) The review meeting shall be combined with the planning meeting for the next cycle, wherever practicable.

(3) Within 5 days of the review meeting, the reviewer shall—

(a) record in draft in the statement—

(i) the results of the review; and

(ii) any recommendation on pay progression; and

(b) pass the draft statement to the reviewee.

(4) Within 10 days of the review meeting, the reviewer shall—

(a) prepare and sign a final version of the statement;

(b) make it available to the reviewee, who may add his comments;

(c) where the reviewer is not the authority, pass the signed statement to the authority; and

(d) provide a copy of the statement to the reviewee.

(5) Subject to the outcome of any appeal, the contents of the statement shall be deemed to reflect the results of the review meeting.

(6) The time limit specified in paragraphs (3) and (4) may be extended if the reviewer or the reviewee is absent from work during those times.

(7) The results of the review and any pay recommendation shall be recorded in the statement by 31st October following completion of the cycle to which it relates.

Appeals

33. The reviewee may appeal against any of the entries made by the reviewer in his statement, following receipt of a copy of it pursuant to regulations 28(2)(d), 29(3)(e), 30(2)(d) and 32(4)(d).

Use and retention of statements

34.—(1) The authority shall retain the reviewee's statement for a minimum period of 6 years from the date on which the cycle to which it relates ends.

(2) The authority shall have regard to the results of the review recorded in the reviewee's statement pursuant to regulation 32 when exercising any discretion in relation to his pay.

(3) The reviewee's line manager or, where he has more than one, each of his line managers shall be provided with access to the reviewee's plan recorded in the statement, upon request, where this is necessary to enable him to discharge his line management responsibilities.

(4) Where a reviewee pursues an appeal in relation to the contents of his statement, the authority shall provide anyone hearing that appeal with access to that statement.

(5) Where a reviewee transfers from one authority to another authority part-way through his cycle, the authority shall transfer the reviewee's statement for that cycle, together with any evidence gathered concerning his performance during that cycle, to the new authority, upon receipt of a written request from the reviewee.

(6) Where a reviewee becomes employed by another authority in a school or the governing body of a school part-way through his cycle, the authority shall transfer the reviewee's statement for that cycle, together with any evidence gathered concerning his performance during that cycle, to the new authority or governing body, as the case may be, upon receipt of a written request from the reviewee.

(7) Where a reviewee employed by an authority in a school or the governing body of a school becomes an unattached teacher part-way through his cycle, the authority or governing body, as the case may be, shall transfer the reviewee's statement for that cycle, together with any evidence gathered concerning his performance during that cycle, to the new authority, upon receipt of a written request from the reviewee.

Parmjit Dhanda
Parliamentary Under Secretary of State
Department for Education and Skills

4th October 2006

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace the Education (School Teacher Appraisal) (England) Regulations 2001.

They apply to teachers whose pay and conditions are determined by order of the Secretary of State under section 122 of the Act, who are employed for one term or more, other than those who are undergoing an induction period or who are the subject of capability procedures .

The regulations in Part 2 provide for the management and review of the performance of teachers employed at schools by governing bodies or local education authorities and the regulations in Part 3 provide for the management and review of the performance of teachers employed by local education authorities who are not attached to any particular school or are employed otherwise than at a school or are employed at pupil referral units, including teachers in charge of such units ("unattached teachers").

The principal provisions of these Regulations—

(a) require governing bodies in the case of teachers employed at schools and local education authorities ("authorities") in the case of unattached teachers to establish and implement a performance management policy for their teachers;

(b) provide for the appointment of reviewers and specify the procedure they must follow when preparing and revising teachers' plans and reviewing their performance in the light of those plans in the teachers' planning and review statements;

(c) allow head teachers and authorities to delegate their reviewer's duties, in their entirety, to the teacher's line manager and, where they do this, enable head teachers and authorities to moderate the plans drawn up by line managers;

(d) provide that teachers may appeal against any of the entries recorded in their statements; and

(e) allow governing bodies and authorities to have regard to the results of their teachers' reviews when exercising any discretion in relation to their pay.

STATUTORY INSTRUMENTS

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