

APPENDIX 1

THE LEGISLATION

The power to exclude a pupil from a school and the circumstances under which a pupil may be excluded are set out in regulation 4 of the Schools General (Scotland) Regulations 1974, as amended. The power to exclude – and so legal responsibility for exclusion – rests with the education authority. It is, however, open to an authority to devolve the ability to exclude to school level. An exclusion resulting in the removal of a pupil's name from the register cannot be devolved to school level.

The only circumstances in which an education authority (or a school if operating under devolved responsibility) may exclude a pupil from school are where:

- 1. the authority is of the opinion that the parent of the pupil refuses or fails to comply, or to allow the pupil to comply, with the rules, regulations, or disciplinary requirements of the school; or***
- 2. the authority consider that to allow the pupil to continue his/her attendance at the school would be likely to be seriously detrimental to order and discipline in the school or the education well-being of the pupils there.***

The exclusion from school of a pupil other than in conformity with the terms of the Schools General (Scotland) Regulations has no statutory backing. This means any exclusion, which might be defined as “an informal exclusion”, or a “suspension” or sending a pupil home for a “cooling-off period” has no statutory backing and therefore no right of appeal. Such arrangements can lead to confusion and a lack of clarity of the school's and the pupil's position.

Authority advice on time-limited agreements with parent/carers on “time out of school” is contained in the covering letter accompanying this policy.

Failure to comply with the Regulations in such circumstances may render the authority open to legal challenge by the parents or to action by the Secretary of State under section 70 of the Education (Scotland) Act 1980.