

2012 No. 3158

EDUCATION, ENGLAND

**The Pupil Referral Units (Miscellaneous Amendments) (No.2)
(England) Regulations 2012**

<i>Made</i>	- - - -	<i>19th December 2012</i>
<i>Laid before Parliament</i>		<i>28th December 2012</i>
<i>Coming into force</i>	- -	<i>1st April 2013</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 569(4) of, and paragraphs 3, 6(2), 15(1)(b), 15(2)(d), 15(2)(e) and 15(2)(h) of Schedule 1 to, the Education Act 1996(a).

Citation and commencement

1. These Regulations may be cited as the Pupil Referral Units (Miscellaneous Amendments) (No.2) (England) Regulations 2012 and come into force on 1st April 2013.

Amendments to the Education (Pupil Referral Units) (Management Committees etc) (England) Regulations 2007

2.—(1) The Education (Pupil Referral Units) (Management Committees etc) (England) Regulations 2007(b) are amended as follows.

(2) In regulation 22—

(a) for sub-paragraph (2)(b) substitute—

“(b) with respect to teachers employed by the authority to work at the unit, the authority’s functions under the Education (School Teachers’ Appraisal) (England) Regulations 2012(c);”

(b) after paragraph (2) insert—

“(2A) The powers that are requisite for the discharge of the function of conducting the unit include, in particular, the powers conferred by paragraph 3 of Schedule 1 to the Education Act 2002 (powers of governing body).”;

(a) 1996 c.56 (“the 1996 Act”). See section 579(1) of the 1996 Act for the definition of “regulations”. Section 569(4) of the 1996 Act was amended by the Education (Wales) Measure 2009 (2009 no.5). Paragraph 3 of Schedule 1 to the 1996 Act was amended by S.I.2010/1158. Paragraph 6 of Schedule 1 to the 1996 Act was amended by section 140(1) of, and paragraph 184 of Schedule 30 to, the School Standards and Framework Act 1998 (1998 c.31); S.I.2002/2953; S.I.2002/3184; S.I.2008/2840; sections 223(1)(c) and 266 of, and Part 7 of Schedule 16 to, the Apprenticeships, Skills, Children and Learning Act 2009 (2009 c.22); S.I.2010/1158; and section 45(2)(d) of the Education Act 2011 (2011 c.21). Paragraph 15 of Schedule 1 to the 1996 Act was inserted by section 48 of the Education Act 1997 (1997 c.44) and was amended by section 140(1) and (3) of, and paragraph 184 of Schedule 30 to, and Schedule 31 to, the School Standards and Framework Act 1998; S.I.2001/2237; S.I.2002/808; S.I.2010/1158; and section 54(1) of, and paragraph 9 of Schedule 13 to, the Education Act 2011.

(b) S.I.2007/2978, which was amended by S.I.2012/1825. There are other amendments but none are relevant to this instrument.

(c) S.I.2012/115, which was amended by S.I.2012/431 and S.I.2012/2055.

- (c) in paragraph (3)—
 - (i) for sub-paragraph (b) substitute—
 - “(b) any power to acquire and dispose of land.”; and
 - (ii) omit sub-paragraph (c).
- (3) Omit regulation 23.
- (4) In Schedule 3—
 - (a) in paragraph 2(b) omit “education”;
 - (b) after paragraph 2(b) insert—
 - “(c) sub-paragraph (d) does not apply to units”;
 - (c) in paragraph 5, omit sub-paragraphs (a), (b), (d) and (e);
 - (d) for paragraph 11(a) substitute—
 - “(a) omit “regulation 3(2) of the Religious Character of Schools (Designation Procedure) Regulations 1998 and regulation 6 of the Education (School Government) (Terms of Reference) (England) Regulations 2000,””;
 - (e) in paragraph 14—
 - (i) in sub-paragraph (a), for “The authority” substitute “The committee”;
 - (ii) in sub-paragraph (b), omit “for “governing body” substitute “authority” and”.

Amendments to the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007

3.—(1) Schedule 1 to the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007(a) is amended as follows.

- (2) After paragraph 17 insert—
 - “**17A.** Section 35(7) of that Act applies in relation to units in order for Schedule 2 to that Act to have effect in relation to units—
 - (a) to the extent specified in paragraph 20A of this Schedule; and
 - (b) as if “, or section 66 of the Education and Inspections Act 2006” were omitted.
 - 17B.** Section 37(1) to (7B), (9), (11) and (12) of that Act (payments in respect of dismissal, etc) applies in relation to units as it applies in relation to maintained schools as if—
 - (a) wherever the words occur—
 - (i) for “governing body” there were substituted “management committee”;
 - (ii) for “maintained school” or, as the case may be, “school”, there were substituted “unit”;
 - (b) in subsection (7B)—
 - (i) for “are” there were substituted “is”; and
 - (ii) “on them by section 21(2) or” were omitted.”.
- (3) After paragraph 19 insert—
 - “**19A.** Section 175(2) and (4) of that Act (duties of local authorities and governing bodies in relation to welfare of children) applies in relation to units as it applies to maintained schools but as if for subsection (2) there were substituted—

(a) S.I.2007/2979, paragraph 1 of Schedule 3 of which was revoked by S.I.2008/3093. S.I.2007/2979 was also amended by S.I.2010/1074 (which was revoked by S.I.2010/1919), S.I.2012/1201 and S.I.2012/1825.

“(2) The management committee of a unit must make arrangements for ensuring that its function of conducting the unit delegated to it by the local authority is exercised with a view to safeguarding and promoting the welfare of pupils at the unit.”.

(4) For paragraph 20(a) substitute—

“20. Paragraph 3(1) to (6) and (8) of Schedule 1 to that Act applies to units as it applies to maintained schools as if—

- (a) in sub-paragraphs (1)(a), (3)(f) and (8), in each place where the word occurs, for “school” there were substituted “unit”;
- (b) in sub-paragraph (2)(a), after “maintained school” there were inserted “or the management committee of any other unit”;
- (c) in sub-paragraph (2A), for “maintained school in England (other than the governing body of a maintained nursery school)” there were substituted “unit”;
- (d) in sub-paragraph (2B), for the first reference to “maintained school” there were substituted “unit”.

(5) After paragraph 20 insert(b)—

“20A. Paragraphs 1 to 3 of Schedule 2 to that Act (effect on staffing of suspension of delegated budget) apply to units as they apply to maintained schools as if—

- (a) for “school”, in each place where the word occurs, there were substituted “unit”; and
- (b) in paragraph 3, for “governing body” there were substituted “management committee”.

(6) Omit paragraph 22(c).

(7) After paragraph 23E insert—

“23EA. Section 7(1) to (3) and (6) to (8) of that Act (transfer of school surpluses) applies in relation to units as it applies in relation to maintained schools as if—

- (a) wherever the words occur—
 - (i) for “governing body” there were substituted “management committee”;
 - (ii) for “school” there were substituted “unit”;
- (b) in subsections (1)(c) and (3), for “Academy” there were substituted “alternative provision Academy”; and
- (c) in subsection (6), “This subsection is subject to subsection (9).” were omitted.”.

(8) Omit paragraph 26(d).

(9) For paragraph 28 substitute—

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- (a) Schedule 1 to the Education Act 2002 sets out the powers of governing bodies of maintained schools. By virtue of paragraph 1 of Schedule 1 to the 1996 Act, references in any enactment (that applies, or is applied, to units) to the governing body of a school are to be read, in relation to a unit, as references to the local authority.
 - (b) S.I.2010/1074 inserted paragraph 20A into Schedule 1 of S.I.2007/2979; that paragraph was revoked by regulation 2(a) of S.I.2010/1919.
 - (c) Paragraph 22 of S.I.2007/2979 applies section 5 of the Education and Inspections Act 2006 (2006 c.40) to units with modifications. Section 5 of the Education and Inspections Act 2006 was repealed by section 33(1) of the Education Act 2011.
 - (d) Paragraph 26 of S.I.2007/2979 applies regulations 11, 15A and 18A of the School Staffing (England) Regulations 2003 (S.I.2003/1963) to units with modifications. S.I.2003/1963 was revoked by S.I.2009/2680.

“School Staffing (England) Regulations 2009

28.—(1) Regulations 3, 4, 6 to 9, 12 to 22, 41 and 43 of the School Staffing (England) Regulations 2009(a) apply in relation to units as they apply in relation to maintained schools with the following modifications.

(2) Wherever the words appear, as if—

- (a) except in regulations 7(2)(a) and 21(3), for “governing body” there were substituted “management committee”;
- (b) for “governor” and “governors” there were substituted “member” and “members” respectively;
- (c) except in the definition of “teacher” in regulation 3, regulations 8A, 12(6)(a), 18(3)(a), the second and third occurrences of “school” in regulation 21(3), and regulations 41 and 43, for “school” or, as the case may be, “maintained school”, there were substituted “unit”.

(3) Regulation 3 has effect as if after the definition of “enhanced criminal record certificate” there were inserted—

““member” means a member of the management committee of a unit.”.

(4) Regulation 4 has effect as if—

- (a) in sub-paragraph (1)(a), for “5 to 8 and 9, 15(3) and (5) and 27(3) and (5)” there were substituted “6 to 8 and 9, 15(3) and (5)”; and
- (b) sub-paragraph (1)(b) were omitted.

(5) Regulation 7 has effect as if, in sub-paragraph (2)(a), for “exercisable by the governing body by or under EA 2002” there were substituted “delegated to the management committee by the authority”.

(6) Regulation 8A has effect as if for paragraph (1) there were substituted—

“(1) This regulation applies where a member of the teaching staff at a unit (School A) applies for a teaching post at another school (School B), where School B is a unit, a maintained school, an Academy school or an alternative provision Academy.”.

(7) Regulation 9 has effect as if—

- (a) for “With effect from 1st January 2010, the” there were substituted “The”; and
- (b) in sub-paragraph (b)(i), “or 27” were omitted.

(8) Regulations 41 and 43 have effect as if—

- (a) in each place where the words occur, for “community, voluntary controlled, community special or maintained nursery school” there were substituted “unit”; and
- (b) in regulation 41, for “4 to 9” there were substituted “4, 6 to 9”.

(9) Schedule 2 has effect as if—

- (a) in paragraph 1, for “regulations 12(7) and 24(7)” there were substituted “regulation 12(7)”; and
- (b) in paragraph 2(e), “or 24(4)” were omitted.”.

(10) For paragraph 29(b) substitute—

(a) S.I.2009/2680, which was amended by S.I.2010/1172, S.I.2012/979 and S.I.2012/1740.

(b) Paragraph 29 of S.I.2007/2979 applies regulation 10 of, and Schedule 5 to, the Education (School Performance Information) (England) Regulations 2007 (S.I.2007/2324) to units. Those provisions of S.I.2007/2324 were revoked by S.I.2008/1727.

“Academy Conversions (Transfer of School Surpluses) Regulations 2010

29. The Academy Conversions (Transfer of School Surpluses) Regulations 2010(**a**) apply in relation to units as they apply in relation to maintained schools.

Consistent Financial Reporting (England) Regulations 2012

30.—(1) Regulations 2, 3 and 5 of, and the Schedule to, the Consistent Financial Reporting (England) Regulations 2012(**b**) apply in relation to units as they apply in relation to maintained schools with the following modification.

(2) Regulation 2 has effect as if for paragraph (a) there were substituted—

“(a) a governing body means—

- (i) the governing body of any school which is maintained by a local authority other than a maintained nursery school;
- (ii) with respect to a pupil referral unit, the management committee of that unit”.

19th December 2012

Elizabeth Truss
Parliamentary Under Secretary of State
Department for Education

(a) S.I.2010/1938.
(b) S.I.2012/674.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 19 of the Education Act 1996 (“EA 1996”) requires local authorities (LAs) to make arrangements for the provision of suitable education at school or otherwise than at school for those children of compulsory school age who, by reason of illness, exclusion from school or otherwise may not for any period receive suitable education unless such arrangements are made for them. Any school established and maintained by a local authority which is specially organised to provide education for such children is known as a pupil referral unit (“a unit” – see section 19(2B) of EA 1996). Paragraph 3 of Schedule 1 to EA 1996 provides for adaptations and modifications of the application of enactments to units. Paragraph 15 of Schedule 1 to EA 1996 provides that regulations may make provision for the delegation of LA functions, or for the prohibition of delegation of LA functions, to units’ management committees (MCs).

Regulation 2 amends the Education (Pupil Referral Units) (Management Committees etc) (England) Regulations 2007 (“the MCR”). The amendments to regulation 22 of the MCR alter the functions which LAs must delegate, and are prohibited from delegating, to MCs. Schedule 3 to the MCR is amended in order to modify further the way that the School Governance (Procedures) (England) Regulations 2003 apply to units.

Regulation 3 amends the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007. These amendments further modify the application of enactments in relation to units. The main changes are: (i) amending the way that paragraph 3 of Schedule 1 to the Education Act 2002 (powers of governing bodies) applies to units; and (ii) applying the School Staffing (England) Regulations 2009 to units with modifications.

An impact assessment has not been produced for this instrument as no impact on businesses or civil society organisations is foreseen.

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STATUTORY INSTRUMENTS

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