

2012 No. 1825

EDUCATION, ENGLAND

**The Pupil Referral Units (Miscellaneous Amendments)
(England) Regulations 2012**

Made - - - - *10th July 2012*

Laid before Parliament *13th July 2012*

Coming into force in accordance with regulation 1

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

PART 1

General

Citation and commencement

1.—(1) These Regulations may be cited as the Pupil Referral Units (Miscellaneous Amendments) (England) Regulations 2012 and, subject to paragraph (2), come into force on 1st September 2012.

(2) Regulation 2(12) comes into force on 1st September 2013.

PART 2

**Composition of management committee and constitution of the management
committee so as to consist of interim executive members**

**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.

(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 3A of Schedule 1 to the 1996 Act was inserted by section 249(3) of the Apprenticeships, Skills, Children and Learning Act 2009 (2009 c.22, “the 2009 Act”) and was amended by S.I.2010/1158 and section 51(4)(a) and (b) of the Education Act 2011 (2011 c.21, “the 2011 Act”). 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 S.I.2001/2237 and S.I.2010/1158, paragraph 184 of Schedule 30, and Schedule 31, to the School Standards and Framework Act 1998 (1998 c.31) and paragraph 9 of Schedule 13 to the 2011 Act.

(b) S.I.2007/2978.

- (2) Regulation 2 is renumbered as paragraph (1) of that regulation.
- (3) In regulation 2(1) as so renumbered—
- (a) after the definition of “committee” insert—

““eligible for intervention” means that—

 - (a) the circumstances set out in paragraphs (a) and (b) of—
 - (i) section 61 of the Education and Inspections Act 2006 (significant improvement required); or
 - (ii) section 62 of that Act (special measures required),
 apply in relation to the unit; or
 - (b) the Secretary of State is satisfied that—
 - (i) the standards of performance of pupils at the unit are unacceptably low, and are likely to remain so;
 - (ii) the quality of provision for pupils at the unit is unacceptably low;
 - (iii) there has been a serious breakdown in the way the unit is conducted which is prejudicing, or likely to prejudice, such standards of performance; or
 - (iv) the safety of pupils or staff of the unit is threatened (whether by a breakdown of discipline or otherwise);”;
 - (b) after the definition of “member” insert—

““school representative” means a person who is a governor or member of staff of a maintained school or an Academy school in the community served by the unit (or, as the case may be, the group of units);”.
- (4) After regulation 2(1), as so renumbered, insert—
- “(2) For the purpose of these Regulations—
- (a) the standards of performance of pupils at a unit are low if they are low by reference to any one or more of the following—
 - (i) the standards that the pupils might in all the circumstances reasonably be expected to attain;
 - (ii) where relevant, the standards previously attained by them;
 - (iii) the standards attained by pupils at comparable units or schools;
 - (b) the quality of provision for pupils at the unit is low if it is low by reference to any one or more of the following—
 - (i) the quality of provision that the pupils might in all the circumstances reasonably be expected to receive;
 - (ii) where relevant, the quality of provision previously provided by the unit;
 - (iii) the quality of provision at comparable units or schools.”.
- (5) In regulation 3, after “regulation 4” insert “and regulation 24”.
- (6) Regulation 4 is renumbered as paragraph (1) of that regulation.
- (7) In sub-paragraph (b) of regulation 4(1), as so renumbered, before “paragraph” insert “sub-”.
- (8) After regulation 4(1), as so renumbered, insert—
- “(2) Where—
- (a) the Secretary of State gives a notice under section 69 of the Education and Inspections Act 2006 (as that provision is applied to units with modifications by regulation 24(1));
 - (b) the unit is managed jointly with another unit or other units by a committee; and
 - (c) the other unit or units managed by that committee are not subject to the Secretary of State’s notice,

that committee is to continue managing the other unit or units and a new committee must be constituted, in accordance with the Secretary of State’s notice, to manage the unit which is subject to that notice.”.

(9) In regulation 12—

(a) in paragraph (1), for sub-paragraphs (a) and (b) substitute—

“(a) a school representative;

(b) a person who lives or works in the community served by the unit (or, as the case may be, the group of units); or

(c) a person who, in the opinion of the committee (or in the case of a community member appointed under regulation 5(b), the authority), is committed to the good government and success of the unit (or, as the case may be, the group of units).”;

(b) in paragraph (2)(b), after “authority” insert—

“or;

(c) an employee of the authority, except where that person is employed by the authority to work in a school maintained by that authority”.

(10) After regulation 23 insert—

“PART 8

Interim executive members

Power of Secretary of State to notify authority that committee is to consist of interim executive members

24.—(1) Section 69 of the Education and Inspections Act 2006 applies to units as it applies to maintained schools but as if for it there were substituted—

“**69.**—(1) If at any time a pupil referral unit is eligible for intervention the Secretary of State may give the local authority a notice in writing stating that, as from the date specified in the notice, the management committee of that unit is to be constituted in accordance with Schedule 6 (management committees consisting of interim executive members) as that Schedule is applied, with modifications, to pupil referral units.

(2) Before exercising the power conferred by paragraph (1), the Secretary of State must consult the local authority and the management committee.

(3) Paragraph (2) does not apply if an Academy order has effect in respect of the pupil referral unit.

(4) In this section, “eligible for intervention” has the meaning given in regulation 2 of the Education (Pupil Referral Units) (Management Committees etc) (England) Regulations 2007.”.

(2) Schedule 6 to the Education and Inspections Act 2006 applies to units as it applies to maintained schools but as if for it there were substituted Schedule 4 to these Regulations.”.

(11) In Schedule 1, after paragraph 14 insert—

“Appointment of community members

15. The committee (or the authority under regulation 5(b)) may only appoint as a community member a person who satisfies the requirements of regulation 12(1)(b) or (c) if it is not reasonably practicable first to appoint a school representative.”.

(12) In Schedule 2, after paragraph 2 insert—

“Community members

2A. A person is disqualified from holding or from continuing to hold office as a community member where that person would be disqualified from appointment under regulation 12(2).”.

(13) After Schedule 3 insert—

“SCHEDULE 4

Regulation 24(2)

Committees consisting of interim executive members

Interpretation of schedule

1.—(1) In this Schedule—

“the discontinuance date” means—

- (a) with respect to a direction made under section 68(1) of the Education and Inspections Act 2006 (as that provision is applied to units with modifications), the date specified in the direction;
- (b) where the authority determine to discontinue the unit, the date determined by the authority; or
- (c) with respect to an Academy order, the date on which the unit, or a school which replaces it, is to open as an alternative provision Academy;

“existing committee members”, in relation to a unit in respect of which a notice under section 69 of the Education and Inspections Act 2006 (as that provision is applied to units with modifications) has been given, means the committee members who hold office immediately before the committee becomes constituted in accordance with this Schedule;

“the interim period”, in relation to a unit in respect of which a notice under section 69 of the Education and Inspections Act 2006 (as that provision is applied to units with modifications) has been given, means the period during which the committee is constituted in accordance with this Schedule;

“a normally constituted committee” means a committee constituted in accordance with Parts 2 to 6 of these Regulations;

“the relevant notice” means a notice given by the Secretary of State under section 69 of the Education and Inspections Act 2006 (as that provision is applied to units with modifications).

(2) In this Schedule any reference to the discontinuance of a unit is a reference to the authority ceasing to maintain it.

Committee to consist of members appointed by Secretary of State

2.—(1) A committee constituted in accordance with this Schedule is to consist of members appointed by the Secretary of State.

(2) In the following provisions of this Schedule—

- (a) the committee as constituted in accordance with this Schedule is referred to as “the interim executive board”; and
- (b) the members of the committee as so constituted are referred to as “interim executive members”.

Effect of the relevant notice

3.—(1) On the date specified in the relevant notice, the existing committee members vacate office.

(2) Sub-paragraph (1) does not prevent the appointment of an existing committee member as an interim executive member.

(3) During the interim period, any reference in any provision contained in, or made under, the Education Acts^(a) to a member of the committee of a unit has effect, in relation to the unit, as a reference to an interim executive member.

Interim executive members

4.—(1) The number of interim executive members must not be less than two.

(2) The initial appointment of interim executive members must be made so as to take effect on the date specified in the relevant notice.

(3) The Secretary of State may appoint further interim executive members at any time during the interim period.

5.—(1) Every appointment of an interim executive member must be made by an instrument in writing setting out the terms of the appointment.

(2) An interim executive member—

- (a) holds office in accordance with that person's terms of appointment and subject to paragraph 15; and
- (b) may at any time be removed from office by the Secretary of State for incapacity or misbehaviour.

(3) The terms of appointment of an interim executive member may provide for the appointment to be terminable by the Secretary of State by notice.

Duty of Secretary of State to inform other persons

6.—(1) The Secretary of State must give a copy of the relevant notice and of every instrument of appointment of an interim executive member to—

- (a) every interim executive member;
- (b) where different—
 - (i) each of the existing committee members;
 - (ii) the teacher in charge of the unit; and
- (c) the authority.

(2) A failure to comply with sub-paragraph (1) does not invalidate the relevant notice or the appointment of the interim executive member.

Power to specify duration of interim period

7. The Secretary of State may specify the duration of the interim period in the relevant notice.

Chair

8. The Secretary of State may nominate one of the interim executive members to chair the interim executive board.

(a) See section 578 of the 1996 Act for the definition of “the Education Acts”.

Remuneration and allowances

9. The Secretary of State may pay to any interim executive member such remuneration and allowances as the Secretary of State may determine.

Duty of interim executive board

10.—(1) During the interim period, the interim executive board must conduct the unit so as to secure, so far as it is practicable to do so, the provision of a sound basis for future improvement in the unit's conduct.

(2) Sub-paragraph (1) is without prejudice to the other duties of the interim executive board as the unit's committee.

Proceedings of interim executive board

11.—(1) The interim executive board may determine its own procedure.

(2) The interim executive board may make such arrangements as it thinks fit for the discharge of its functions by any other person.

Exclusion of certain regulations

12.—(1) Parts 2 to 6 of these Regulations do not apply in relation to the interim executive board.

(2) The instrument of government does not, insofar as it relates to the constitution of the committee, have effect in relation to the interim executive board.

Discontinuance of unit

13.—(1) At any time during the interim period, the interim executive board may make a report to the authority and to the Secretary of State recommending that the unit be discontinued, and stating the reasons for that recommendation.

(2) Where, during the interim period—

- (a) the Secretary of State gives a direction under section 68(1) of the Education and Inspections Act 2006 (as that provision is applied to units with modifications) in relation to the unit;
- (b) the authority determine to discontinue the unit; or
- (c) an Academy order is made with respect to the unit,

the interim period is to continue until the discontinuance date, even where it would otherwise end before that date.

Notice of resumption of management by normally constituted committee

14. Where—

- (a) the Secretary of State has not specified the duration of the interim period; and
- (b) paragraph 13(2) does not apply,

the Secretary of State may give notice to every interim executive member and to the authority specifying a date on which the committee is to become a normally constituted committee.

Time when interim executive members vacate office

15.—(1) The interim executive members vacate office—

- (a) in a case where paragraph 13(2) applies, on the discontinuance date;

- (b) in a case where paragraph 13(2) does not apply and the Secretary of State has specified the duration of the interim period, at the end of the specified period; or
- (c) on the date specified under paragraph 14.

(2) Sub-paragraph (1) does not prevent the termination of the appointment of an interim executive member at any earlier time under paragraph 5(2)(b) or in accordance with the terms of the appointment.

Establishment of normally constituted governing body

16. Where interim executive members are to vacate office on the date referred to in paragraph 15(1)(b) or (c), the authority must make arrangements providing for the constitution of the committee on and after that date.”.

PART 3

Secretary of State’s power to direct closure of a pupil referral unit in England requiring significant improvement

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

3. In paragraph 23(2) of Part 1 of Schedule 1 to the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007(a), before “62” insert “61 or”.

PART 4

Short Stay Schools

Amendments to the Education (Short Stay Schools) (Closure) (England) Regulations 2010

4.—(1) The Education (Short Stay Schools) (Closure) (England) Regulations 2010(b) are to be cited as the Education (Pupil Referral Units) (Closure) (England) Regulations 2010.

(2) In the Education (Pupil Referral Units) (Closure) (England) Regulations 2010, as renamed—

(a) for “short stay school” or “short stay schools”, wherever the words occur, substitute “unit” or “units” respectively;

(b) in regulation 1(3) after “Education and Inspections Act 2006” insert—

“(as applied to units with modifications by paragraph 23 of part 1 of Schedule 1 to the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007);

“unit” means a pupil referral unit”;

(c) In regulation 7(1)—

(i) omit “either of”; and

(ii) for “the school” substitute “the unit”; and

(d) for regulation 7(2) substitute—

“(2) The circumstances are—

(a) that the circumstances set out in paragraphs (a) and (b) of—

(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) and by S.I.2012/1201.

(b) S.I.2010/1071, which was amended by S.I.2010/1172 and S.I.2010/1920.

- (i) section 61 of the Education and Inspections Act 2006 (significant improvement required); or
- (ii) section 62 of that Act (special measures required),
apply in relation to the unit;
- (b) that the Chief Inspector has notified the unit that an inspection of the unit is to take place under section 5 or 8 of the Education Act 2005; or
- (c) that the Secretary of State has given the local authority a notice under section 69 of the Education and Inspections Act 2006 (as that provision is applied to units with modifications by regulation 24(1) of the Education (Pupil Referral Units) (Management Committees etc) (England) Regulations 2007 (power of Secretary of State to notify authority that committee is to consist of interim executive members)).”.

Revocation of the Education (Short Stay Schools) (Closure) (England) (Amendment) Regulations 2010

5. The Education (Short Stay Schools) (Closure) (England) (Amendment) Regulations 2010(a) are revoked.

10th July 2012

Nick Gibb
Minister of State
Department for Education

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 19 of the Education Act 1996 (“the 1996 Act”) requires local authorities 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 the 1996 Act). Schedule 1 to the 1996 Act provides that enactments which apply to maintained schools can be applied with, or without, modification to units by regulations.

Part 2 amends the Education (Pupil Referral Units) (Management Committees etc) (England) Regulations 2007 (“the Management Committee Regulations”). This Part applies to units, with modifications, section 69 of, and Schedule 6 to, the Education and Inspections Act 2006. The amendments provide that where a unit in England is “eligible for intervention” (as defined by an amendment to the Management Committee Regulations) the Secretary of State may notify the local authority which maintains it that the management committee is to consist of interim executive members, appointed by the Secretary of State. Regulation 2(13) inserts Schedule 4 (Committees consisting of interim executive members) into the Management Committee Regulations, which sets out how the committee will operate in these circumstances.

Part 2 also makes provision for changes in relation to community members where the management committee is constituted under Parts 2 to 6 of the Management Committee Regulations. Regulation 2(9) creates a new category of community member (“a school representative”). With the exception of individuals employed by a local authority to work in a school which the local authority maintains, local authority employees may not be appointed as community members (regulation 2(9)(b)). The management committee can only appoint other categories of community member if it is not reasonably practicable first to appoint a school representative (regulation

(a) S.I.2010/1920, which provided for S.I.2010/1071 to have effect with modifications until the coming into force of section 249(1) of the 2009 Act. Section 249(1) of the 2009 Act was repealed by section 51(1) and (2)(a) of the 2011 Act.

2(11)). Under regulation 2(12), from 1st September 2013, individuals who are not eligible for appointment as a community member (under regulation 12(2) of the Management Committee Regulations (as amended)) are disqualified from holding or continuing to hold office as community members.

Part 3 of these Regulations amends paragraph 23 of Part 1 of Schedule 1 to the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, which applies section 68 of the Education and Inspections Act 2006 to units with modifications. This enables the Secretary of State to direct closure of a unit in certain circumstances.

Part 4 amends the Education (Short Stay Schools) (Closure) (England) Regulations 2010 to extend the circumstances where a local authority in England must obtain the Secretary of State's consent before closing a unit. This Part also revokes the Education (Short Stay Schools) (Closure) (England) (Amendment) Regulations 2010.

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

2012 No. 1825

EDUCATION, ENGLAND

The Pupil Referral Units (Miscellaneous Amendments)
(England) Regulations 2012

£5.75

E3935 07/2012 123935T 19585

ISBN 978-0-11-152697-2



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