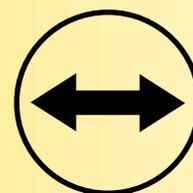


The Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007

**Consultation
Document**



**Social
Inclusion**

Date of Issue: 27 November 2006

Action Required: Responses by 19 January 2007



- Title of document:** The Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007
- Audience:** Teachers in charge of PRUs; local education authorities; teaching and other unions; church diocesan authorities; national and local bodies in Wales with an interest in education.
- Overview:** Schedule 1 of the Education Act 1996 provides for the adaptations and modifications of the application of enactments to pupil referral units. These Regulations will ensure that a number of statutory requirements will apply to pupil referral units as they do for maintained schools.
- Action required:** Responses to this consultation must be received by 19 January 2007. Responses should be made on the proforma and returned to the address below or electronically to **PETShare@wales.gsi.gov.uk**
- Further information:** Further information about this consultation can be obtained from:
Steph Hector
Tel no: 029 2080 1445
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- Hard copies:** This consultation document has not been produced in hard copy.
- Postal address:** Pupil Engagement Team
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The Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007

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Summary

This consultation invites views on draft regulations to be made under Schedule 1 of the Education Act 1996. The Regulations are intended to come into force on 26 April 2007.

Schedule 1 of the Education Act 1996 provides for adaptations and modifications of the application of enactments to pupil referral units. These new Regulations would ensure that many of the statutory requirements for maintained schools would also apply to PRUs.

The Regulations will be finalised taking into account the responses to this consultation.

Background

- 1.** The Education Act 1996 (Section 19) requires local education authorities to provide suitable education outside the school setting for learners of compulsory school age who might not otherwise receive education. Suitable education is defined as “efficient education suitable to the age, ability, aptitude and to any special educational needs”, the child or young person may have. The decision is made in consultation with parents, in line with the LEA’s own policies and the efficient use of resources.
- 2.** Young people are educated outside mainstream schools for a number of reasons. They may be ill or injured; have been excluded; have emotional and behavioural difficulties; be habitual non-attenders; or be pregnant or young mothers.
- 3.** Pupil Referral Units (PRUs) are one of an increasing range of out-of-school education provision used by LEAs. Although they may be diverse in terms of the number and type of pupils catered for, their length of stay, and nature of the curriculum, they are legally a type of school. As such the Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007 would ensure that many of the statutory requirements for maintained schools would also apply to PRUs.
- 4.** Schedule 1 of the Education Act 1996 provides for adaptations and modifications of the application of enactments to pupil referral units.

Summary of new statutory requirements

The application of enactments under the new regulations would ensure that the following statutory requirements apply to PRUs in the same way as they apply to maintained schools:

Paragraphs 1 and 2 of Schedule 1: PRUs would need to keep an up to date written statement on their policy on the provision of sex and relationships education (SRE) in relation to secondary school education at the unit (Section 404 of the Education Act 1996). A parent of a pupil at a PRU could request that he may be wholly or partly excused from receiving SRE at the unit.

Paragraph 3 of Schedule 1: The LEA would have the power to prohibit or restrict employment of children registered at a PRU if it appeared that the employment was prejudicial to his health or to render him unfit to obtain the full benefit of the educational provision (S559 of the Education Act 1996).

Paragraph 4 of Schedule 1: Where a PRU had been inspected by Estyn and found to require special measures or have serious weaknesses the Minister for Education and Lifelong Learning could direct the LEA to close the PRU (S19 of the School Standards and Framework Act 1998).

Paragraph 5 of Schedule 1: The Management Committee, or LEA where there is no management committee, would ensure that a PRU had a written statement to promote good behaviour and discipline, which should be reviewed from time to time. The teacher in charge of the unit would also have various obligations in relation to discipline, mirroring those which headteachers of mainstream maintained schools have. (S61 of the School Standards and Framework Act 1998).

Paragraph 6 of Schedule 1: The LEA would have the power to take action to prevent a breakdown of discipline in a PRU where the behaviour of pupils at the PRU or action taken by pupils or their parents severely prejudiced the education of any registered pupils.

Paragraph 7 of Schedule 1: The teacher in charge of a PRU may require pupils to attend premises outside the PRU to receive instruction/training in respect of the secular curriculum for the PRU (S29(3) of the Education Act 2002 (2)).

Paragraph 8 of Schedule 1: The teacher in charge of the PRU would provide the LEA with reports in connection with the discharge of his functions as the teacher in charge (Section 30(4) of the Education Act 2002).

Paragraph 9 of Schedule 1: The LEA would determine the dates when the PRU terms and holidays were to begin and end. The Management Committee (where there was one) and the LEA would determine the times of the PRU sessions (S32 of the Education Act 2002).

Paragraph 10 of Schedule 1: The curriculum of a PRU should comprise a basic curriculum which includes the provision of SRE for all registered pupils who are provided with secondary education (S101(1)(d) of the Education Act 2002).

Paragraph 12 of Schedule 1: Where a pupil attends a PRU, the LEA may pay expenses to allow a pupil to take advantage of educational facilities available to him and allow him to take part in any school activity, depending on the means of the pupils parents, to relieve financial hardship.

Paragraph 13 of Schedule 1: PRUs are currently inspected under Section 10 of the School Inspection Act 1996. That Act has been replaced by the inspection provisions of the Education Act 2005. These Regulations apply those provisions of the 2005 Act to PRUs in order that Estyn inspectors have the right to inspect PRUs. The Education (School Inspection)(Wales) Regulations 2006 are also applied in relation to PRUs (see Parts 1 and 2 of the 2006 Regulations). The new Regulations have drawn together existing requirements for school inspection including:

- intervals for inspection
- notification of inspection
- meeting with parents
- timescales within which inspection reports and action plans must be prepared
- the period within which a local authority must prepare a statement
- permitted fees for the provision of an inspection report, summary and action plan.

Paragraphs 14 and 15 of Schedule 1 apply the Staffing of Maintained Schools (Wales) Regulations 2006 to PRUs:

- There is an LEA duty to ensure that there is a staff suitable and sufficient in numbers for the purpose of securing the provision of education appropriate to the ages, abilities, aptitudes and needs of the pupils at the PRU.
- There is a duty on the LEA to ensure that there is an acting teacher in charge whenever there is a vacancy in the post of teacher in charge of a PRU.
- The LEA can delegate functions to the teacher in charge for the appointment of teachers and support staff.
- The regulation of conduct and discipline in relation to staff of the PRU and procedures for staff to seek redress of grievances relating to their employment is under the control of the LEA.

This includes the obligation to appoint an independent investigator to investigate allegations that involve issues of child protection.

- It is the responsibility of the LEA to appoint the acting teacher in charge, teacher in charge or other staff. When appointing other staff the LEA must seek the advice of the teacher in charge of the unit before making any appointment.
- Both the LEA and teacher in charge of a unit have the power to suspend any person employed or engaged otherwise than under a contract of employment, to work at the school. A suspension can only be ended by the LEA.

The Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations are intended to come into force on 26 April 2007. A copy of the draft Regulations is at Annex A.

NATIONAL ASSEMBLY FOR WALES

S T A T U T O R Y I N S T R U M E N T S

2007 No. (W.)

EDUCATION, WALES

**The Education (Pupil Referral
Units) (Application of Enactments)
(Wales) Regulations 2007**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 19 of the Education Act 1996 (“the Act”) requires local education 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 education authority which is specially organised to provide education for such children is known as a pupil referral unit.

Schedule 1 to the Act provides for regulations to apply enactments to pupil referral units.

These Regulations apply various education enactments to pupil referral units in Wales. They take account of education legislation enacted since regulations were last made applying enactments to pupil referral units in Wales. Those earlier regulations are revoked by regulation 2 of these Regulations.

2007 No. (W.)

EDUCATION, WALES

**The Education (Pupil Referral
Units) (Application of Enactments)
(Wales) Regulations 2007**

Made 2007

Coming into force 23 April 2007

In the exercise of its powers under section 569(4) and (5) of, and paragraph 3 of Schedule 1 to, the Education Act 1996⁽¹⁾, the National Assembly for Wales hereby makes the following Regulations:

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007 and they come into force on 23 April 2007.

(2) These Regulations apply in relation to units in Wales.

(3) In these Regulations “units” means pupil referral units.

Revocation

2. The Education (Pupil Referral Units) (Application of Enactments) Regulations 1994⁽²⁾ and the Education (Pupil Referral Units) (Application of Enactments) (Amendment) Regulations 1996⁽³⁾ are revoked.

⁽¹⁾ 1996 c. 56. The powers were conferred upon the Secretary of State: see the definition of “regulations” in section 579 of the 1996 Act. By virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), the powers are exercisable by the Assembly in relation to Wales.

⁽²⁾ S.I. 1994/2103.

⁽³⁾ S.I. 1996/2087.

Application and modification of enactments

3. The enactments mentioned in Schedule 1 to these Regulations apply in relation to units with the modifications prescribed in that Schedule.

Disapplication of enactments

4. The enactments mentioned in Schedule 2 to these Regulations do not apply in relation to units.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(1)

Date

Dafydd Elis Thomas

The Presiding Officer of the National Assembly

SCHEDULE 1

Regulation 3

ENACTMENTS APPLYING (WITH OR WITHOUT MODIFICATIONS) IN RELATION TO UNITS

PART 1

Primary Legislation

Education Act 1996

1. Section 404 of the Education Act 1996(2) applies in relation to the teacher in charge of a unit as it applies in relation to the governing body of a maintained school, but only in relation to pupils who are provided with secondary education at the unit.

2. Section 405 of that Act applies in relation to units as it applies in relation to maintained schools with the modification that the words “, except so far as such education is comprised in the National Curriculum,” are omitted.

3. Section 559 of that Act(3) applies in relation to a child who is a registered pupil at a unit as it applies in relation to a child who is a registered pupil at a community, foundation, voluntary or special school.

(1) 1998 c. 38.

(2) Section 404 was amended by paragraph 103 of Schedule 30, and Schedule 31 to, the School Standards and Framework Act 1998 (c. 31), and section 148(1) and (6) of the Learning and Skills Act 2000 (c. 21).

(3) Section 559 was amended by paragraph 171 of Schedule 30 to the School Standards and Framework Act 1998.

School Standards and Framework Act 1998

4.—(1) Section 19 of the School Standards and Framework Act 1998⁽¹⁾ applies in relation to units as it applies in relation to maintained schools in Wales with the following modifications.

(2) Subsection (1) applies if at any time the circumstances set out in section 15(6) of that Act apply in relation to a unit.

(3) In subsection (2) the reference to the governing body in paragraph (a) is omitted, and paragraphs (b) and (c) are omitted.

(4) In subsection (3) the reference to the governing body is omitted.

5. Section 61 of that Act applies in relation to units as it applies in relation to maintained schools in Wales (within the meaning of Part II of that Act) with the modification that for references to the governing body there are substituted references to the management committee of the unit or, in the case of a unit not having a management committee, the local education authority.

6. Subsections (1), (2) and (4) of section 62 of that Act apply in relation to units as they apply in relation to maintained schools (within the meaning of Part II of that Act) with the modifications that—

(a) the reference in subsection (2)(b) to the governing body is a reference to the teacher in charge of the unit, and

(b) the reference in subsection (4) to the governing body is omitted.

Education Act 2002

7. Section 29(3) of the Education Act 2002⁽²⁾ applies in relation to units as it applies in relation to maintained schools (within the meaning of Chapter 1 of Part 3 of that Act).

8. Section 30(4) of that Act applies in relation to units as it applies in relation to maintained schools (within the meaning of Chapter 1 of Part 3 of that Act) with the modification that the words “the governing body or (as the case may be)” and “the governing body or” are omitted.

9. Section 32 of that Act applies in relation to units as it applies in relation to schools mentioned in section 32(1) with the modification that in section

⁽¹⁾ 1998 c. 31. Section 19 was amended by section 149 of, and paragraphs 1 and 79 of the Learning and Skills Act 2000 (c. 21) and by section 45 of the Education Act 2005.

⁽²⁾ 2002 c. 32.

32(1)(b), in the case of a unit having a management committee, the local education authority together with the management committee shall determine the times of the school sessions.

10. Section 101(1)(d) of that Act applies in relation to units as it applies in relation to special schools.

Education Act 2005

11.—(1) Part 1 of the Education Act 2005(1) applies in relation to units as if they were maintained schools to which section 28 of that Act applies with the following modifications.

(2) Chapters 1 and 2, sections 36(3)(c), 39(9), 40, 48, 49 and 50 and paragraph 3(5)(c) of Schedule 4 are omitted.

(3) For section 38(3)(c), there is substituted “the local education authority”.

(4) For section 39(3)(b), there is substituted the “teacher in charge of the unit”.

(5) In section 43 and in Schedule 4, in relation to a unit, “appropriate authority” means the local education authority.

PART 2

Subordinate Legislation

The Local Education Authority (Payment of School Expenses) Regulations 1999

12. Regulation 2 of the Local Education Authority (Payment of School Expenses) Regulations 1999(2) applies in relation to a pupil attending a unit as it applies in relation to a child attending a community, foundation, voluntary or special school.

The Education (School Inspection) (Wales) Regulations 2006

13.—(1) Parts 1 and 2 of the Education (School Inspection) (Wales) Regulations 2006(3) apply in relation to units as if they were maintained schools to which section 28 of the Education Act 2005 applies, with the following modifications.

(1) 2005 c. 18.

(2) S.I. 1999/1727.

(3) S.I. 2006/1714 (W. 176).

(2) For the definition of “appropriate authority” in regulation 4(1), there is substituted “the local education authority”.

(3) In regulation 7(1), sub-paragraphs (a) to (d) are omitted.

(4) Regulation 7(1)(f) applies to units as it applies to secondary schools.

The Staffing of Maintained Schools (Wales) Regulations 2006

14.—(1) Part 1 of the Staffing of Maintained Schools (Wales) Regulations 2006(1) applies in relation to units as it applies in relation to schools referred to in regulation 3 with the following modifications.

(2) The duty under regulation 4(1) is a duty of the local education authority.

(3) In regulation 5—

(a) in paragraph (1), “15, 26 and 27” are omitted;

(b) in paragraph (2), sub-paragraphs (b) and (c) are omitted; and

(c) paragraph (3) is omitted.

(4) Regulation 6 is omitted.

(5) In regulation 7, paragraphs (4)(a) and 5 are omitted.

15.—(1) Part 2 of those Regulations applies in relation to units as it applies in relation to schools referred to in regulation 9 with the following modifications.

(2) For regulation 10, there is substituted—

“(a) The local education authority must ensure that whenever there is a vacancy in the post of teacher in charge of the unit a person is appointed as acting teacher in charge in order to carry out the functions of the teacher in charge under any enactment.

(b) In determining whether a person is suitable for appointment as a teacher in charge, or an acting teacher in charge, of a unit, the local education authority must have regard to any guidance given from time to time by the National Assembly.”.

(3) Regulation 11 is omitted.

(4) For regulation 12, there is substituted—

“(a) In appointing a person to a post, or engaging a person otherwise to work, at a unit, the local education authority must have

(1) S.I. 2006/873 (W. 81), as amended by

regard to any guidance given from time to time by the National Assembly.

(b) This regulation applies in relation to support staff posts and the work of support staff as it applies in relation to teaching posts and the work of teachers”.

(5) Regulation 13 is omitted.

(6) For regulation 14, there is substituted—

“In so far as it is reasonably practicable to do so, the local education authority must seek the advice of the teacher in charge of the unit, and must consider any advice given, before making any appointment or entering into any engagement under regulation 12.”.

(7) Regulations 15 and 17 to 19 are omitted.

(8) For regulation 16, there is substituted—

“(1) Both the local education authority and the teacher in charge of a unit have power to suspend any person employed, or engaged otherwise than under a contract of employment, to work at the school where, in the opinion of the authority or (as the case may be) the teacher in charge, suspension is required.

(2) A person who exercises the power to suspend must immediately inform the other person with the power to suspend under paragraph (1).

(3) A suspension under this regulation may be ended only by the local education authority and, when a suspension is ended, the authority must immediately inform the head teacher.

(4) In this regulation “suspend” means suspend without loss of emoluments.”.

SCHEDULE 2

Regulation 4

ENACTMENTS DISAPPLIED IN RELATION TO
UNITS

Primary Legislation

School Standards and Framework Act 1998

1. Sections 86(1) and 94(2) of the School Standards and Framework Act 1998 do not apply in relation to units.

Subordinate Legislation

Education (School Day and School Year) (Wales) Regulations 2003

2. The Education (School Day and School Year) (Wales) Regulations 2003(3) do not apply in relation to units.

(1) Section 86 was amended by section 47(1) of, paragraph 3 of Schedule 4, and Schedule 22 Part 3 to, the Education Act 2002.

(2) Section 94 was amended by section 50 of, and paragraph 8 of Schedule 4 to, the Education Act 2002.

(3) S.I. 2003/3231.