

ALTERNATIVE PROVISION

A GUIDE FOR LOCAL AUTHORITIES, HEAD TEACHERS AND GOVERNING BODIES OF SCHOOLS, PUPIL REFERRAL UNITS AND OTHER PROVIDERS OF ALTERNATIVE PROVISION

About this Guidance

This is advice from the Department for Education on statutory duties and powers concerning the use of alternative provision.

The first part of this document (paragraphs 1-23) explains the statutory powers and duties that apply in relation to alternative provision. The second part (paragraphs 24-43) contains statutory guidance to which the parties specified 'must have regard'. This means that they should be able to demonstrate that they had considered this statutory guidance, and where it is not followed have reasonable grounds for deciding not to follow it.

The statutory guidance will have effect from 1 January 2013.

This guidance replaces the following guidance documents on alternative provision and pupil referral units:

- *Commissioning Alternative Provision – Guidance for Local Authorities and Schools;*
- *The Constitution, Roles and Responsibilities of Management Committees;*
- *The Operation of Management Committees; and*
- *Guidance for Local Authorities and Schools: Pupil Referral Units and Alternative Provision.*

Where regulations are being made which alter a statutory duty or power, this document – where possible – reflects the proposed new position in italics. It should be noted that these regulations (in italics) are subject to the Parliamentary process. Where it is not yet possible to reflect the new position we have provided details of the current regulations, but include a note to say that these will be replaced by new regulations.

Review Date

The guidance is expected to be next reviewed in September 2013.

Definition

For the purposes of this guidance, the definition of alternative provision is as follows: education arranged by local authorities for pupils who, because of exclusion, illness or other reasons, would not otherwise receive suitable education; education arranged by schools for pupils on a fixed period exclusion; and pupils being directed by schools to off-site provision to improve

their behaviour.

Who is this guidance for?

- Local authorities – the teams responsible for alternative provision and pupil referral units;
- Maintained schools – governing bodies and head teachers;
- Pupil referral units – management committees and teachers in charge;
- Academies (including Free Schools) – not all duties are applicable to Academies, and this guidance will make clear which are applicable; and
- All providers of alternative provision, including AP Academies and AP Free Schools.

Main legislation covering the duties and powers relating to these issues

- Section 19 of the Education Act 1996, as amended by section 3A of the Children, Schools and Families Act 2010;
- Section 29A of the Education Act 2002;
- Sections 6A and 100 of the Education and Inspections Act 2006;
- Sections 1C and 4 of the Academies Act 2010 (as amended);
- The Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007¹;
- The Education (Pupil Referral Units) (Management Committees etc.) (England) Regulations 2007;
- The Education (Educational Provision for Improving Behaviour) Regulations 2010 (*to be revised shortly*);
- The Education (Short Stay Schools) (Closure) (England) Regulations 2010; and
- *The Pupil Referral Units (Miscellaneous Amendments) (England) Regulations 2012.*

Key Points

- Local authorities are responsible for arranging suitable education for permanently excluded pupils, and for other pupils who – because of illness or other reasons – would not receive suitable education without such arrangements being made.
- Governing bodies of schools are responsible for arranging suitable full-time education from the sixth day of a fixed period exclusion.
- Schools may also direct pupils off-site for education, to help improve

¹ As amended by the Education (Pupil Referral Units) (Application of Enactments) (England) (Amendment) Regulations 2012, which came into force on 31 May 2012 and which apply the Academies Act 2010, with modifications, to pupil referral units.

their behaviour.

- Statutory guidance sets out the Government's expectations of local authorities and maintained schools who commission alternative provision and pupil referral units. The Government expects those who are not legally required to have regard to the statutory guidance to still use it as a guide to good practice.
- Information or guidance about pupil referral unit staffing, budgets, and any further regulations will be added to this document in due course.

STATUTORY DUTIES AND POWERS

The provision of suitable education to those who would not otherwise receive it

1. Local authorities are responsible for arranging suitable full-time² education for permanently excluded pupils, and for other pupils who – because of illness or other reasons – would not receive suitable education without such provision³. This applies to all children of compulsory school age resident in the local authority area, whether or not they are on the roll of a school, and whatever type of school they attend. Full-time education for excluded pupils must begin no later than the sixth day of the exclusion. The Secretary of State has the power to make statutory guidance about these duties⁴, and local authorities must have regard to it. The current statutory guidance can be found at paragraph 24 onwards.
2. While there is no statutory requirement as to when suitable full-time education should begin for pupils placed in alternative provision for reasons other than exclusion, local authorities should ensure that such pupils are placed as quickly as possible.
3. Any school that is established and maintained by a local authority to enable it to discharge the above duty is known as a pupil referral unit⁵. There is no requirement on local authorities to have or to establish a pupil referral unit, and they may discharge their duties by other means. However, only a local authority can establish a pupil referral unit. Others can establish AP Academies or AP Free Schools.
4. Local authorities have a power (not a duty) to arrange education provision, where not already available, for pupils aged 16-18⁶.
5. Governing bodies and proprietors of maintained schools and Academies are under a duty to arrange for the provision of suitable full-time education from the sixth day of fixed period exclusion⁷.
6. While ‘full-time’ is not defined in law, pupils in alternative provision should receive the same amount of education as they would receive in a maintained school. Full-time can be made up of two or more part-time provisions.
7. The local authority’s duty to provide a suitable education also applies where a pupil is registered at a school (maintained, Academy, Free School or independent) but cannot attend school because of illness. Guidance on the education of children with medical needs will be published shortly.

² Unless the pupil’s health means that full-time education would not be in his or her best interests.

³ Section 19(1) of the Education Act 1996, as amended by section 3 of the Children, Schools and Families Act 2010.

⁴ Section 19(4A) as amended by section 47 of the Education Act 1997.

⁵ Section 19(2) of the Education Act 1996.

⁶ Section 19(4) of the Education Act 1996.

⁷ Section 100 of the Education and Inspections Act 2006.

Opening and closing of pupil referral units

8. *From September 2012 if a local authority thinks a new pupil referral unit needs to be established in their area they must seek proposals from potential providers for the establishment of an Academy (AP Academy or AP Free School)*⁸.
9. The Secretary of State has the power to direct a local authority to close a pupil referral unit which requires special measures or *significant improvement*⁹¹⁰. When this happens, the local authority must provide the Secretary of State with information about the arrangements it is making to ensure that pupils receive suitable education¹¹.
10. Regulations allow the Secretary of State to make an AP Academy Order in relation to a pupil referral unit which requires special measures or significant improvement¹².
11. *Regulations*¹³ will allow the Secretary of State to establish a management committee consisting of interim executive members (an Interim Executive Board (IEB)) in a pupil referral unit which requires special measures, or significant improvement, or in a pupil referral unit the Secretary of State is satisfied is underperforming. As well as being used to ensure that the day to day running of the institution is effectively managed when intervention occurs, IEBs can be used as an effective intervention strategy in their own right, for example IEBs can apply for AP Academy Orders. These regulations define an underperforming pupil referral unit as one where the Secretary of State is satisfied that any of the following apply:
 - a) *the standards of performance of pupils at the unit are unacceptably low, and are likely to remain so;*
 - b) *the quality of provision for pupils at the unit is unacceptably low;*
 - c) *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*

⁸ Section 6A of the Education and Inspections Act 2006, introduced by the Education Act 2011 will come into force in relation to pupil referral units on 1st September 2012.

⁹ As defined in section 44 of the Education Act 2005.

¹⁰ The Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007 as amended by *The Pupil Referral Units (Miscellaneous Amendments) (England) Regulations 2012 (intended to come into force on 1st September 2012)*.

¹¹ The Education (Short Stay Schools) (Closure) (England) Regulations 2010, SI 2010/1071 as amended by *The Pupil Referral Units (Miscellaneous Amendments) (England) Regulations 2012 (intended to come into force on 1st September 2012)*.

¹² The Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007 as amended by *The Education (Pupil Referral Units) (Application of Enactments) (England) (Amendment) Regulations 2012*.

¹³ The Education (Pupil Referral Units) (Management Committees etc.) (England) Regulations 2007 as amended by *The Pupil Referral Units (Miscellaneous Amendments) (England) Regulations 2012 (intended to come into force on 1st September 2012)*.

d) *the safety of pupils or staff of the unit is threatened (whether by a breakdown of discipline or otherwise).*

12. Local authorities must obtain the consent of the Secretary of State before closing a pupil referral unit which requires special measures, *significant improvement, where the Secretary of State has established an IEB, or where Ofsted has notified the pupil referral unit that an inspection is to take place*¹⁴.

Management of pupil referral units

13. Regulations require local authorities to establish management committees to run pupil referral units in their area and make provision for the constitution (including composition) and procedures of management committees¹⁵.

14. In terms of the composition of management committees, they must contain at least 7, but no more than 20 members. The structure is outlined in the table below. The regulations cited in paragraph 13 provide more information about who may be eligible in the different categories.

Parent members	At least one, but no more than one-fifth of the total committee.
Staff members	At least one, but no more than one-third of the total committee.
Local authority appointed members	At least one, but no more than one-third of the total committee.
Sponsor members	At least one, but no more than two.
Community members	Must outnumber all of the other members.

15. *Changes were made to the regulations in 2012¹⁶, both to the definition of 'community members' (to include a specific reference to representatives of schools; and to specify that local authority employees, other than persons employed by the local authority to work in a school maintained by the local authority, cannot be community members) and to state that when appointing a community member the management committee (or local authority when appointing its first members) should first seek to appoint a representative of a school.*

¹⁴ See regulation 7 of the Education (Short Stay Schools) (Closure) (England) Regulations 2010, as amended by *The Pupil Referral Units (Miscellaneous Amendments) (England) Regulations 2012 (intended to come into force on 1st September 2012).*

¹⁵ The Education (Pupil Referral Units) (Management Committees etc.) (England) Regulations 2007 as amended by *The Pupil Referral Units (Miscellaneous Amendments) (England) Regulations 2012 (intended to come into force on 1st September 2012).*

¹⁶ *The Pupil Referral Units (Miscellaneous Amendments) (England) Regulations 2012 (intended to come into force on 1st September 2012).*

16. *Increasing school representation on management committees will help ensure that the needs of pupils are better met, and help build continuity and raise standards in their educational attainment. This is therefore a priority for management committee membership. Where it is not possible to appoint a school representative and there is difficulty in finding people to appoint as community members, consideration should be given to appointing community members who are involved with the young people, who may typically be in alternative provision, in their area. This may include community groups, offending or drug support groups, and other alternative provision and pupil referral units. Local businesses, colleges and others who work with young people could also be considered. Where the local authority or management committee feel it would be valuable to retain the input from other local authority services (who previously sat on the committee as community members) it should be noted that representatives from these services can still attend management committee meetings to offer valuable insights, though they would not have voting rights.*
17. *Where a pupil referral unit requires special measures or significant improvement, or where a pupil referral unit is judged to be underperforming, the Secretary of State can replace members of the management committee with interim executive members.*

Power of schools to direct a pupil off-site for education to improve behaviour

18. Governing bodies of maintained schools have the power to direct a pupil off-site for education to improve his or her behaviour¹⁷. The Secretary of State has made regulations¹⁸, as is required by the related primary legislation¹⁹, concerning schools' use of this power.
19. Under the current regulations, parents must be notified in writing of any requirement that their child attend off-site provision. Notice must be sent as soon as practical and no later than two days before the off-site placement is due to begin. The notice letter must set out:
- the reasons for the referral to alternative provision;
 - the aims of the placement;
 - the period for which the pupil will be required to attend the placement;
 - the date and time the placement will start;
 - the address the pupil will need to attend and the name of the person to whom they must report on the first day; and
 - details of the session times i.e. the time the morning and

¹⁷ See section 29A of the Education Act 2002, introduced by the Education and Skills Act 2008.

¹⁸ The Education (Educational Provision for Improving Behaviour) Regulations 2010 (*due to be revised in autumn 2012, with revisions expected to come into force in January 2013*).

¹⁹ Section 29A of the Education Act 2002.

afternoon sessions start and end.

Once it begins, the placement must be reviewed at least every 30 days. The parents, the provider, the head teacher of the school and a representative of the governing body must be invited to attend the review meeting. A representative of the local authority must also be invited to attend if the pupil has a statement of special educational needs (SEN). The governing body must notify the parents, no later than six days after the date of the review meeting, of their decision as to whether the placement should continue.

20. *Revised off-site regulations will replace the above requirements and instead require the governing body to:*

- *ensure that parents (and the local authority where the pupil has a statement of special educational needs) are given clear information about the placement: why, when, where, and how it will be reviewed;*
- *keep the placement under review and involve parents in the review. The regulations will specify regular review but will not specify how often reviews must take place (that should be decided on a case-by-case basis), but they should be frequent enough to provide assurance that the off-site education is achieving its objectives and that the pupil is benefitting from it; and*
- *have regard to guidance from the Secretary of State on the use of this power – new statutory guidance on this issue can be found below at paragraph 37.*

21. This legislation does not apply to Academies. They can arrange off-site provision for similar purposes under their general powers, set out in the Academy Trust's Articles of Association. Though the regulations and guidance do not apply, they can provide Academies with an example of good practice.

AP Academies and AP Free Schools

22. Pupil referral units may now apply to convert to become AP Academies. Independent and voluntary providers may apply to become AP Free Schools^{20 21}.

23. Regulations²² apply the Academies Act 2010 to pupil referral units, with modifications where required. This allows the management committees of pupil referral units to apply for an AP Academy Order, and the Secretary of State to make an AP Academy Order in relation to a pupil referral unit which requires special measures or significant improvement.

²⁰ Section 53 of the Education Act 2011 created a new type of institution: the AP Academy (which includes Free Schools).

²¹ There is an annual application process for those wishing to establish AP Free Schools.

²² The Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007 as amended by the Education (Pupil Referral Units) (Application of Enactments) (England) (Amendment) Regulations 2012.

STATUTORY GUIDANCE

24. This part of the guidance is made under the Secretary of State's powers to make guidance to which local authorities and/or schools must have regard.²³
25. Even where a party is not bound to have regard to statutory guidance – for example Academies arranging off-site provision to improve behaviour – this guidance can provide an indication of good practice.

Good alternative provision

26. Good alternative provision should lead to good educational attainment for pupils. Provision will differ from pupil to pupil, but there are some common elements that alternative provision should aim to achieve, including:
- good academic attainment – particularly in English, maths and science – with appropriate accreditation and qualifications;
 - that the specific personal, social, and academic needs of pupils are properly identified and met;
 - improved pupil motivation and self-confidence, attendance, and engagement with education; and
 - clearly defined objectives, including the next steps following the placement such as reintegration into mainstream education, further education, training, or employment.

Planning for alternative provision

27. Commissioners should recognise a requirement for alternative provision as early as possible, and carry out a thorough assessment of the pupil's needs. Schools should look to have an increased focus on the early assessment and identification of a pupil's needs before his or her behaviour has deteriorated to the extent that exclusion is the only option.
28. All pupils must receive full-time provision in total, whether in one setting or more, unless a pupil's medical condition makes full-time provision inappropriate. A personalised plan for intervention should be prepared by the commissioner setting clear objectives for improvement and attainment, timeframes, arrangements for assessment and monitoring progress, and a baseline of the current position against which to measure progress. Plans should also be linked to other relevant information or activities such as 'Education, Health, and Care Plans' for children with SEN.
29. Commissioners should maintain a full record of all placements they make,

²³ Section 19(4A) of the Education Act 1996 relates to local authorities' conduct in discharging duties under section 19. Section 100(4) of the Education and Inspections Act 2006 relates to how schools arrange education for pupils on fixed period exclusions. Section 29A relates to maintained schools' use of off-site direction powers.

including a pupil's progress, achievements, and destination following the placement. This should also include the pupil's own assessment of their placement.

Commissioning good-quality alternative provision

30. Responsibility for alternative provision used rests with the commissioner. The nature of the intervention, its objectives and the timeline to achieve these objectives should be agreed and clearly defined. Progress against these objectives should be frequently monitored, appropriate reviews should be built in, and continuity into the next stage in the child's life should be considered. Where reintegration to the school is an objective, there should be agreement on how to assess when the pupil is ready to return, and the school should provide an appropriate package of support to assist their reintegration. These objectives and plans should be agreed with providers, set out in writing, and regularly monitored, including through frequent visits to the provider.
31. All relevant information should be shared with providers and other parties involved. This should be jargon free and include any information on special educational needs, literacy, safeguarding or other issues, as well as any information requested by the provider. Information must be provided in accordance with data protection principles but this should not discourage schools from providing information where they can do so.
32. Commissioners should maintain on-going contact with the provider and pupil, with clear procedures in place to exchange information, monitor progress and provide pastoral support. If a pupil is on the roll of their previous or current school they should remain so and encouraged to feel part of the school. Records should be kept on a pupil's progress in the provision, appropriate staff liaison arrangements should be in place, and appropriate mechanisms of challenge should be agreed.
33. Commissioners need the right information to be able to decide which provision is most appropriate for a pupil. Some local authorities or partnerships of schools have developed a local directory of 'approved' provision, which meets clearly defined standards (including registration where necessary, safeguarding, health and safety, quality of accommodation, quality of education etc.). These lists, where they exist, can provide a helpful starting point. However, prior to placement, commissioners should still assess whether the provision offers high quality education and is suitable for the pupil's individual needs.
34. Alternative provision should be good quality, registered where appropriate²⁴, and delivered by high quality staff with suitable training, experience and safeguarding checks. It should have clearly defined objectives relating to personal and academic attainment. Where an

²⁴An AP provider should be registered as an independent school if it meets the criteria for registration (five or more full-time pupils of compulsory school age, or one such pupil who is looked-after or has a statement of SEN). All AP Academies and AP Free Schools must be registered as independent schools whether or not they are full-time or part-time.

intervention is part-time or temporary, to help minimise disruption to a pupil's education, it should complement and keep up with the pupil's current curriculum, timetable and qualification route.

35. Provision should:

- have a clear purpose with a focus on education and achievement as well as meeting the pupil's needs, and rigorous assessment of progress;
- offer appropriate and challenging teaching in English, mathematics, and science – unless this is being provided elsewhere within a package of provision;
- be suited to the pupil's capabilities, give pupils the opportunity to take appropriate qualifications and involve suitably qualified staff who can help pupils make excellent progress; and
- have good arrangements for working with other relevant services such as social care, educational psychology, child and adolescent mental health services, youth offending teams and drug support services etc.

Referral and admissions policies for alternative provision

36. Schools and local authorities, working in consultation with management committees and the governing bodies of alternative provision Academies and AP Free Schools, should set an overall policy for referrals or admission to alternative provision. There should be clear criteria for referring and admitting pupils, including those who are dual registered. Pupils should be dual registered from the beginning of the first day of which the school has commissioned the alternative provision. For the purpose of the school census a pupil should be dual main registered at their school and dual subsidiary registered at the alternative provision.

Off-site direction by maintained schools

37. The governing body of a maintained school directing a pupil off-site for education to improve behaviour should have regard to all of the statutory guidance set out in this document. This covers objectives and timeframes with appropriate monitoring of progress and reviews. These should all be agreed and set out at the time a direction is made, and include arrangements for reviews – *including how often the placement will be reviewed (once regulations cease to specify this)*, when the first review will be and who should be involved in the reviews.

38. Where possible, parents should be engaged in the decision taken by the school to direct a pupil off-site. Once a pupil is directed off-site, information about reviews should be provided to the pupil's parents and to the local authority where it maintains a pupil's statement of SEN. This should include outcomes of the reviews and of the placement.

39. The focus should remain on ensuring that a child continues to receive an

excellent education whilst the needs which require intervention are being addressed. Therefore, the length of time a pupil spends in alternative provision (*once regulations cease to specify this*) will depend on what best supports the pupil's needs and potential educational attainment.

The end of a placement and reintegration

40. When the governing body of a school has secured alternative provision for a pupil on a fixed period exclusion, or has directed a pupil off-site to improve behaviour, it should have processes in place to reintegrate the pupil at the end of the placement when he or she returns to the school.
41. The governing body of a school should obtain from the provider a final report on the pupil's achievements during the placement including academic attainment and progress, attendance records and evidence of change in behaviour. The governing body should also seek the pupil's views on the success of the placement. Both may assist the school in deciding if and when to use that provider to support other pupils.
42. In light of this placement information, the governing body of a school should plan for the pupil's reintegration into the school as described in paragraph 30 of this guidance. This may include a discussion with the pupil's parents, and/or setting specific objectives (for example on attendance or behaviour).
43. If the placement does not end with reintegration into the school – for example, when a pupil reaches the end of Y11 while still in alternative provision – the school should work with the provider to ensure that the young person can move on into suitable education, or employment alongside part-time study or training. The school should collect and record information about the pupil's next destination as part of its planning for alternative provision intervention. Commissioners may wish to use information about pupils' destinations as one of the indicators of alternative provision quality.