

EXPLANATORY MEMORANDUM TO
THE EDUCATION (PUPIL REFERRAL UNITS) (MANAGEMENT
COMMITTEES ETC.) (ENGLAND) REGULATIONS 2007
2007 No. 2978

THE EDUCATION (PUPIL REFERRAL UNITS) (APPLICATION OF
ENACTMENTS) (ENGLAND) REGULATIONS 2007
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1. This explanatory memorandum has been prepared by the Department for Children, Schools and Families and is laid before Parliament by Command of Her Majesty.

2. **Description**

- 2.1 The Education (Pupil Referral Units) (Management Committees etc.) (England) Regulations 2007 make it mandatory for local authorities to establish management committees for their pupil referral units. These Regulations stipulate the way that management committees should be constituted, with four categories of member and the qualifications for each category, and functions they will exercise. They also apply the School Governance (Procedures) (England) Regulations 2003 in relation to pupil referral units as they apply in relation to maintained schools with some specified modifications.

The Regulations then require local education authorities to delegate certain functions relating to pupil referral units to management committees.

The Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007 provide for some enactments in relation to schools maintained by local education authorities to apply in relation to pupil referral units with or without modifications.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 None

4. **Legislative Background**

- 4.1 Paragraph 15 of Schedule 1 to the Education Act 1996 (inserted by section 48 of the Education Act 1997), provides for regulations to require the establishment of management committees for pupil referral units.

- 4.2 Such regulations may allow the establishment of joint committees to act as the management committee for two or more pupil referral units. The

Regulations may also: make provision as to the composition of a management committee, and in particular for requiring such a committee to include persons representing schools situated in the area from which the unit or units in question may be expected to draw pupils; paragraph 15 of Schedule 1 also includes provision that the regulations may enable a local authority or management committee to determine the committee's procedure and that of any sub-committee.

- 4.3 The Education (Pupil Referral Units) (Management Committees etc.) (England) Regulations 2007 is the first use of the powers in paragraph 15 of Schedule 1.
- 4.4 Paragraph 3 of Schedule 1 to the Education Act 1996 provides for regulations to provide for enactments relating to schools maintained by local education authorities (or schools including such schools) to apply to pupil referral units with such modifications as may be prescribed or not to apply in relation to such units.
- 4.5 The Education (Pupil Referral Units) (Application of Enactments) (England) Regulations revoke and re-enact with modifications the current regulations (SI 2005/2039) which apply enactments to pupil referral units and make other amendments to subordinate legislation relating to pupil referral units. The Regulations now have the effect of conferring some powers and duties directly on management committees.

5. Territorial Extent and Application

- 5.1 These Regulations apply to England only.

6. European Convention on Human Rights

- 6.1 The Minister of State for Schools has made the following statement:

In my view the provisions of the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007 are compatible with the Convention rights.

(As the Education (Pupil Referral Units) (Management Committees etc.)(England) Regulations 2007 is subject to negative resolution procedure and does not amend primary legislation, no statement is required.)

7. Policy background

- 7.1 Prior to the coming into force of these regulations, there was no statutory requirement for pupil referral units to have management committees. It was therefore entirely up to individual local authorities to decide whether to establish management committees for their pupil referral units, and to decide their size, constitution, and their role and responsibilities. This

can lead to inconsistencies and poor management.

- 7.2 Although the number of failing pupil referral units is small, compared to failing mainstream schools, the percentage rate is relatively high. As one of the main causes of failing pupil referral units is weak management, it is vital that this is addressed in order to ensure a fall in the number of failing pupil referral units.
- 7.3 A consultation was held from 20 December 2006 to 14 March 2007. The consultation sought the views of local authorities, members of existing management committees, staff and teachers in charge of pupil referral units, head teachers and governors of schools, and national organisations with an interest in pupil referral units. There were 63 responses to the consultation and overall the majority of responses were supportive of the proposed regulations and guidance; 83% found the draft regulations and guidance were helpful or very helpful. Common concerns were: there should be more representation from the wider community with which pupil referral units interact e.g. Primary Care Trust, Child and Adolescent Mental Health Service, Youth Offending Team, local police and drug advisory bodies; that there is a potential that functions devolved to management committees might prevent local authorities from fulfilling their statutory duty under section 19 of the Education Act 1996.
- 7.4 The categories of members of management committees reflect those in statutory governing bodies of maintained schools and the guidance to be issued with the regulations will advise that it is good practice for management committees to seek the views of external interested parties.
- 7.5 A further consultation, as well as a workshop with representatives of key stakeholder groups, was held during April and May to further determine the roles and responsibilities of management committees. The consensus was that management committees should fulfil a largely advisory role but with responsibility for certain functions. As a result, the two sets of regulations require local education authorities to delegate certain functions in relation to their pupil referral units to their management committees, and re-enact existing provisions in the SI 2005/2039 with changes to enable management committees to exercise other functions. In addition to functions that local authorities should delegate to or share with management committees, the accompanying guidance will recommend that local authorities involve management committees to act as advisors in the exercise of most functions relating to pupil referral units.

8. Impact

- 8.1 A Regulatory Impact Assessment has been prepared for these instruments. There will be some set up costs for the first year of statutory management committees; designing and printing ballot forms for election of members, disseminating information and ballot forms to relevant parties, counting ballots etc. There may also be extra administrative costs

for running management committee meetings etc. But we expect these costs to be low. No objections to these costs were raised in the consultation; and in our discussions with local authorities and other key stakeholders the issue of costs in establishing and servicing management committees was not raised as an issue.

- 8.2 The set up cost and cost of running management committees are not necessarily an additional financial burden for many local authorities. Local authorities whose pupil referral units have management committees already meet similar levels of costs to support and service their management committees.

9. Contact

- 9.1 Maleck Boodoo in the School Standards Group in DCSF (tel 0207-273 5608 or email maleck.boodoo@dcsf.gsi.gov.uk) can answer any queries regarding the instrument.

Final Regulatory Impact Assessment for the Pupil Referral Unit Management Committees Regulations

Title of Proposal

1.1 The Education (Pupil Referral Units) (Management Committees etc.) (England) Regulations 2007; and

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

2. Purpose and intended effect

Objective

2.1 The Government's aim is to strengthen and improve pupil referral unit leadership and management and allow local schools to bring the quality of their leadership to pupil referral units, thereby reducing the number of failing units and improving outcomes for their pupils. The proposed regulations will provide for this by:

- making it mandatory for local authorities to establish management committees for their pupil referral units; and
- setting out the roles and responsibilities of management committees and defining their procedures and membership;

2.2 The regulations apply only to pupil referral units in England.

Background

2.3 Pupil referral units are a type of school established and run by local authorities for pupils who cannot attend mainstream schools. This may be because of exclusion or other reasons such as ill health, bullying and school phobia, or pregnancy. There are currently around 450 registered pupil referral units in 146 of the 150 LAs catering for around 25,000 pupils.

2.4 Like other schools, pupil referral units are inspected by Ofsted. The Ofsted report 2005/06 showed that the overall effectiveness of the majority of units (9 in 10), is satisfactory or better. However, one in eight (of 183 inspected) were judged to be inadequate overall and leadership and management in one in ten units was found to be inadequate.

2.5 Currently, there is no statutory requirement for pupil referral units to have management committees. It is therefore entirely up to individual local authorities to decide whether to establish management committees for their units, and to decide their role and responsibilities, and their composition. This can lead to inconsistencies and the poor management as highlighted by Ofsted.

Rationale for Government Intervention

2.6 Although the number of failing pupil referral units is small, compared to mainstream schools, the proportion is relatively high. As one of the main causes of failing units is weak management, the Government needs to address this in order to ensure a fall in the number of failing pupil referral units. Pupil referral units deal with some of the most vulnerable and disadvantaged pupils and failing to make appropriate provision for them will have an adverse impact on their life chances. This can contribute towards such young people drifting into crime with the consequent financial and social costs. The potential financial cost of this is difficult to estimate but will involve the cost to the police in terms of manpower and time, and cost to the judicial system.

3. Consultation

Within government

3.1 There have been no consultations with other Government Departments, as the proposed regulations will affect local authorities, pupil referral units and schools only.

Public Consultation

3.2 The Government presented the outline plans for mandatory management committees to a group of around 20 local authority and pupil referral units representatives at the pupil referral unit national conference in July 2006. The group agreed with making management committees mandatory and supported the proposed composition of the committees.

3.3 There was a formal consultation on the proposed regulations and associated guidance from 20 December 2006 to 14 March 2007. Sixty three responses were received, the majority of which supported the proposals (83% of those who gave their overall view on the regulations and guidance rated them as helpful or very helpful). Responses were received from across all categories; local authorities, pupil referral unit teachers in charge, unit staff and management committee members, school head teachers and national organisations such as the LGA and NASUWT. The main concerns expressed by respondents were;

- there was not enough detail on the functions that local authorities should share with or delegate to management committees; and
- that the statutory involvement of management committees in key aspects of pupil referral units may lead to authorities not being able to adequately comply with their duty under section 19 of the Education Act 1996 to provide education for pupils who cannot attend mainstream or special schools (see paragraph 4.7 below).

3.4 To address these concerns, a separate consultation, as well as a workshop with representatives of key stakeholder groups, was held with more detailed proposals about functions which local authorities should or could share with or delegate to management committees. The consensus was that management committees should fulfil a largely advisory role though with specific responsibility for some functions or tasks. The regulations have been drafted with a view to ensuring that any autonomy which pupil referral unit management committees

may have as a result of the regulations will not diminish local authorities' capability to comply with their duty under Section 19 of the Education Act 1996.

4. Options

Option 1: Do nothing

4.1 This would mean leaving it up to each local authority to decide, as now, whether or not to establish management committees for their pupil referral units and, where they do so, leaving the constitution, procedures and role and responsibilities of the management committee to the discretion of the local authority.

4.2 Current information is that many pupil referral units have management committees, which indicates that local authorities recognise the benefits of having them. But anecdotal information shows that the composition of the current management committees, and their role and responsibilities are varied. It is possible that many management committees do not have significant responsibilities or do not comprise representative of key stakeholder groups. In contrast, it is a statutory requirement that all mainstream schools have a governing body, and the role, membership and duties of governing bodies are set out clearly in legislation and statutory guidance.

4.3 Without these regulations the likelihood is that there will continue to be pupil referral units that do not benefit from the strong leadership and management that a management committee with suitable membership and clear roles and responsibilities can bring. Pupil referral units deal with some of the most vulnerable children, whose needs are sometimes very complex. It is essential for the well being of those pupils that the weaknesses in pupil referral unit management and leadership be addressed, so that educational standards in units can be raised. To do nothing would allow the current situation to continue, with a relatively high percentage of weak or failing pupil referral units which cannot adequately provide their pupils with the support they need.

Option 2: bring into force the regulations making management committees mandatory for all pupil referral units, and giving them a clear role, clear responsibilities, and stipulating the composition and procedures of management committees

4.4 On the whole, mainstream schools have a better management record than pupil referral units. The Government therefore sees no reason not to replicate the management model of mainstream schools for pupil referral units, although there will be some differences between governing bodies and management committees, to reflect the different legal status of the two types of schools.

4.5 Local authorities will be required to establish management committees for their pupil referral units in accordance with the timetable set out in regulations. They will also have to ensure that the membership of the management committee is made up in accordance with the constitution set out in the regulations. Although management committees will play a largely advisory role, they will have responsibility for certain functions, or joint responsibility for matters such as discipline and the curriculum. They will also be expected to assist their local

authorities in raising the overall effectiveness of pupil referral units by their involvement in decision making for most matters.

4.6 For most pupil referral units, their local schools will be their biggest 'client' group; so the Government wants local schools to have formal involvement in the running of these units. This is especially so given that, from September 2007, all secondary schools are expected to be working in partnerships to improve behaviour and tackle persistent absence. One of the aims of these partnerships is to reduce exclusions and persistent absence, by addressing behavioural problems before they reach the stage where exclusion is needed. Partnership schools are expected to commission alternative provision for their pupils, where this is appropriate. Pupil referral units have an important role in helping school partnerships achieve their goals and it is sensible that the 'client' group of schools are involved in the running of the unit which serves their needs. Guidance is recommending that representatives of local schools should be invited to serve on management committees. Pupil referral units are also expected to benefit from having experienced school leaders as stakeholders on their management committee.

4.7 A potential risk identified by several responses to the consultation on the regulations, was that they should be carefully drafted so as not to restrict the ability of local authorities to comply with their duty under Section 19 of the Education Act 1996. Section 19 imposes a duty on local authorities to make arrangements for pupils who cannot attend school for any reason to receive education outside a mainstream or special school. Pupil referral units are set up by local authorities to ensure that they can provide such an education. If management committees have complete autonomy they could, for example, control admissions to their pupil referral unit in such a way that local authorities cannot offer places to pupils who need them. The Government recognised the potential risk this could pose. Following the consensus of stakeholders, including the Local Government Association and the unions, the regulations do not give management committees statutory responsibility for matters such as admissions, budgets, staffing and performance management. The regulations will not prevent or restrict local authorities from complying with their duties under section 19. It is envisaged that management committees should essentially play an advisory role.

Option 3: Issue stronger guidance to local authorities about establishing management committees.

4.8 This option would avoid the need for regulations. However, current guidance already encourages local authorities to establish management committees and we know that many have done so. But there is no reason to suppose that local authorities who have not already established management committees would so do, even were the guidance to be firmed up, without an element of compulsion.

4.9 There would also continue to be inconsistencies in the way that management committees were constituted and in the role and responsibilities they were given. One of the aims of the regulations is that the community served by the pupil referral unit, including local schools, should be given a greater say in the running of units, and the units most likely to benefit from this would be those which are weak or failing. Most of the responses to the consultation indicated support for putting management committees on a proper statutory footing, as is

the case with school governing bodies.

5. Costs and Benefits

Benefits

Option 1: Do nothing

5.1 The main benefit is that keeping the status quo will cost local authorities less financially. Local authorities do not have to establish management committees and, even where they do, there is no legal requirement for them to employ any staff (primarily an administrator to record minutes, arrange meetings etc.) or to pay committee members any expenses (although they may do so). There will also inevitably be some set up costs for the first year of statutory management committees.

5.2 However, doing nothing would not address the problem of failing pupil referral units and the consequent poor education provided to vulnerable pupils. Such pupils can often be in danger of drifting into crime if their needs are not addressed. The financial and social cost of not providing the support these pupils need can, therefore, be high. It is difficult to estimate such costs but any estimate would have to take into account the costs of police time and manpower, and the cost to the judicial system of dealing with young offenders.

Option 2: bring into force the regulations making management committees mandatory for all pupil referral units, and giving them a clear role, clear responsibilities, and stipulating the composition of management committees

5.4 Having a management committee with clearly defined constitution, procedures and roles and responsibilities will provide pupil referral units with clear leadership and strong management. This should, in turn, raise the educational achievement of pupil referral units, benefiting the pupils attending them.

5.5 Positive effects include lifting some of the burden from local authorities and placing responsibility closer to the 'front line'. The regulations will turn management committees into a strong partner of local authorities and schools in delivering education for a vulnerable group of young people without the risk of diluting local authorities' ability to comply with their section 19 duties.

Option 3: Publish stronger guidance on pupil referral unit management committees

5.6 This would be cost neutral but would not ensure that all local authorities establish management committees for their pupil referral units, or that local schools have a place on such committees. It would not be enough to address the most common problem of failing pupil referral units – poor management and leadership. The costs of not addressing this problem include the administrative costs of attempting to bring failing pupil referral units up to an appropriate standard, and the financial and social costs of failing to provide appropriately for vulnerable young people.

Sectors and groups affected

5.7 Local Authorities, pupil referral units, pupil referral unit management committees, schools, senior schools staff and school governing bodies.

Costs

Option 1: Do nothing

5.8 It is difficult to assess the costs of maintaining the status quo. There are however, administrative costs for pupil referral units that are identified as having serious weaknesses or fall into special measures, in that they have to prepare improvement plans and take the measures specified in them. And when a unit falls into special measures the LA responsible for it will sometimes close it down and then has to find other alternative provision for the affected pupils, either by commissioning it from the private/voluntary sector or by setting up a new unit. Both of these options will incur cost and disruption to pupils.

5.9 There is also the wider cost to the community where pupils do not have appropriate provision (particularly excluded pupils). This can result in them become disengaged with education or drifting into crime and the gang culture. Financial costs of this include police time and manpower and costs to the judiciary of dealing with young people who are involved in criminal activities – court costs, legal representation, costs of custody and rehabilitation.

Option 2: bring into force the regulations making management committees mandatory for all pupil referral units, and giving them a clear role, clear responsibilities, and stipulating the composition of management committees

5.10 There will inevitably be some set up costs for the first year of statutory management committees – designing and printing ballot forms for election of members, disseminating information and ballot forms to relevant parties, counting ballots etc. There may also be extra administrative costs for running management committee meetings etc. But we expect these costs to be low. Using the costs that apply to school governing bodies as a basis for calculation, we estimate the initial cost to set up management committees to be around £4,000¹; and the clerking costs to be around £3,000² per year per LA. This cost is not necessarily an additional financial burden for many LAs. LAs whose pupil referral units have management committees already meet similar levels of costs to support and service their management committees. But the main benefit of having management committees constituted under the regulations is that the local authority can delegate or share some of the functions to a statutory body who has a key interest in the success of the pupil referral unit.

Option 3: Publish stronger guidance on pupil referral unit management committees

5.11 Seemingly cost neutral, but with similar implied costs as doing nothing. Unless the guidance was statutory, there would be no requirement for local

¹ Based on a total of 20 days at £200 per day for admin staff.

² Based on average cost charged by a large LA to a school governing body. Service includes clerking 3 main meetings and all sub committee meetings in a year for an average of 3 PRUs per LA.

authorities to comply with it. The likelihood is that there would continue to be a high rate of pupil referral units with weak governance and some failing, with the resultant social and financial costs.

Other costs

5.12 Guidance will recommend that local authorities assist members of management committees with relevant training needs. While the majority of members will be from local schools, already having the relevant skills and experience, there will be a small proportion of members, eg parent, that may need some training.

5.13 We do not expect many management committees to have more than one parent member each and the total number of management committees will be less than 450. This is because the regulations allow one management committee to cater for two or more pupil referral units. Also, local authorities did not raise this issue as a matter of concern, probably because they already arrange training for their school governors and they may include management committee members on some of the existing relevant training and development courses.

6. Small Firms Impact Test

6.1 Not applicable. These regulations impact only on the public sector.

7. Competition Assessment

7.1 Not applicable. These regulations impact only on the public sector.

8. Enforcement, sanctions and monitoring

8.1 The initial measure of success will be that all pupil referral units have management committees in place by 1 February 2008. This will require follow up with local authorities for confirmation.

8.2 Pupil referral units are subject to inspection by Ofsted. Any shortcomings in leadership and management should be identified by Ofsted. In the longer term, the Government expects to see fewer pupil referral units receiving poor Ofsted reports and falling into special measures.

8.3 There is no reason to presume that local authorities would fail to comply with the requirement to establish statutory management committees. This has not been a problem since the introduction of statutory governing bodies for schools. Also, the vast majority of LAs that responded to the consultation supported the introduction of mandatory management committees.

9. Implementation and delivery plan

Regulations to be in force by mid-November 2007.

Local authority appoint members November 2007 - January 2008

Management committees operational 1 February 2008.

10. Post-implementation review

10.1 The impact on local authorities will be reviewed after three years. Any adverse impact will be assessed and acted upon.

11. Summary and Recommendation

11.1 The Government recommends that regulations are made to:

- making it mandatory for local authorities to establish management committees for their pupil referral units; and
- consolidate and update the previous regulations relating to the application of enactments, with the changes to confer certain functions on management committees.

11.2 These provisions will contribute to the improvement of leadership and management of units, allow local schools to share their expertise with the running of units, and allow local authorities to delegate or share the running of their pupil referral units with key stakeholders serving on management committees.

11.3 Although the regulations will involve a cost, it is not considered to be prohibitive. Using the costs that apply to school governing bodies as a basis for calculation, we estimate the initial cost to set up management committees to be around £4,000³; and the clerking costs to be around £3,000⁴ per year per LA.

Declaration and publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed Kevin Brennan

Date 16 October 2007

Parliamentary Under Secretary of State for Children, Young People and Families

Contact Point

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³ Based on a total of 20 days at £200 per day for admin staff.

⁴ Based on average cost charged by a large LA to a school governing body. Service includes clerking 3 main meetings and all sub committee meetings in a year for an average of 3 PRUs per LA.

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