

EXPLANATORY MEMORANDUM TO
THE EDUCATION (PUPIL EXCLUSIONS AND APPEALS) (PUPIL REFERRAL
UNITS) (ENGLAND) REGULATIONS 2008

2008 No. 532

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

2.1 The Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2008 replace the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, in order to reflect the changes to the legal status and the functions of management committees implemented under the Education (Pupil Referral Units) (Management Committees etc.) (England) Regulations 2007. The 2008 Regulations set out the duties of these new statutory management committees, along with those of teachers in charge of pupil referral units and local authorities, in regard to the exclusion of pupils, permanently or for a fixed period, from pupil referral units. It provides that management committees have a duty, under specified circumstances, to review both fixed term and permanent exclusions and the options open to them upon such a review. It also provides for appeal to the independent appeal panel against a decision of a management committee not to reinstate a pupil following a permanent exclusion and sets out the factors to be considered by the appeal panel and other matters related to appeals.

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

3.1 None

4. **Legislative Background**

4.1 The Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002 set out the functions of local authorities in relation to pupils excluded for a fixed period and their duty to make arrangements for enabling the relevant person to appeal against any decision of a teacher in charge of a pupil referral unit to permanently exclude a pupil from that unit. Those regulations provide that where a pupil is excluded for a fixed period, a parent of the pupil or, where the pupil is over 18, the pupil himself, has a right to make representations to the local authority about the exclusion and that the local authority should consider those representations and decide whether to uphold the decision to exclude, or reinstate the pupil. In the case of permanent exclusions, the regulations provide only for an appeal to the independent appeal panel – the regulations do not provide for a review of permanent exclusions by the local authority. Under the 2002 regulations, management committees have no role in exclusions, largely because they were not statutory bodies.

4.2 The Education (Pupil Referral Units) (Management Committees etc.) (England) Regulations 2007 came into force on 1 February 2008. The regulations set out the constitution and procedures of management committees, as well as the functions that should be delegated to them by local authorities.

4.3 The purpose of the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2008 is to give statutory management committees the same role in exclusions from pupil referral units as that played by governing bodies for exclusions from maintained schools. It provides that a decision by the teacher in charge of a pupil referral unit to exclude a pupil for a fixed period can be reviewed by the management committee, rather than the local authority. It also provides that management committees can review decisions by the teacher in charge to exclude pupils permanently, and gives them the option of reinstating the pupil. The regulations therefore replicate the provisions of the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002 to a large extent.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument 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 the Education (Pupil Referral Units) (Management Committees etc.) (England) Regulations 2007, 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 led to inconsistencies and poor management. It was therefore decided to introduce regulations to make it a statutory requirement that local authorities establish management committees for their pupil referral units.

7.2 The current, non-statutory management committees play no role in reviewing decisions by the teacher in charge of a pupil referral unit to exclude pupils. Local authorities are able to review fixed period exclusions but in the case of permanent exclusions there is no review stage – the parents of the pupil have to appeal directly to the independent appeal panel. It is desired that the role of management committees be similar to that of governing bodies of mainstream schools, and this includes the role played in the exclusions process. The Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2008 therefore apply to management committees similar functions and duties to those of governing bodies in regard to reviewing decisions by the teacher in charge to exclude pupils from pupil referral units. The guidance ‘Exclusion from Schools and Pupil Referral Units’ will be amended to reflect the changes implemented by the 2008 regulations.

7.3 A small, targeted consultation was held in May 2007 on the functions which

should be delegated to management committees, including their role and responsibilities in regard to exclusions. Included in the consultation were LAs, PRU staff, unions, the Local Government Association and Local Government Employers. The consensus of opinion was that management committees should be given the same role and responsibilities with regard to exclusions as the governing bodies of mainstream schools, which is what these regulations provide for. As these regulations are essentially a re-enactment to reflect the changes to the responsibilities of management committees, it was not deemed necessary to consult separately on the regulations themselves.

7.4 The Council on Tribunals was also consulted on the proposal to introduce these regulations and responded favourably. The Administrative Justice and Tribunals Council (which took over from the Council on Tribunals) was then sent a copy of the draft regulations, on which they commented. Issues commented upon included the wording of some sections of the regulations (for example, seeking to remove the words ‘take reasonable steps’ in regulation 5 – these were removed from this regulation and other parts of the regulations where they appeared), and strengthening the reference to the exclusions guidance so that local authorities, management committees and appeal panels have to ‘act in accordance with’ it rather than ‘having regard to it’ (which is not possible as the existing guidance is not statutory). Other comments sought clarification of certain parts of the guidance.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is covered in the Impact Assessment of the Education (Pupil Referral Units) (Management Committees etc.) (England) Regulations 2007, as these regulations are consequent to those.

9. Contact

Tim Youlden at the Department for Children, Schools and Families (tel 020 7273 5666 or e-mail Timothy.Youlden@dcsf.gsi.gov.uk) can answer any queries regarding the instrument.