

**EXPLANATORY MEMORANDUM TO
THE EDUCATION (SHORT STAY SCHOOLS) (CLOSURE) (ENGLAND)
REGULATIONS 2010**

2010 No. 1071

1. This explanatory memorandum has been prepared by DCSF and is laid before Parliament

2. Purpose of the instrument

2.1 These regulations provide that, where the Secretary of State has exercised powers to direct the closure of a short stay school, he may give directions to the local authority concerned as to the alternative educational provision it is to make instead. The regulations also provide that in specific circumstances a local authority cannot close a short stay school without the consent of the Secretary of State.

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

3.1 None

4. Legislative Context¹

4.1 The Secretary of State has had the power to close short stay schools in special measures since the relevant provisions of the Education and Inspections Act 2006 were applied to short stay schools by the Education (Pupil Referral Units)(Application of Enactments)(England) Regulations 2007. These new regulations make using the power to close a short stay school a practically option. We anticipate that these regulations will be only used occasionally and as a last resort.

4.2 Members of both houses were provided with a summary of what would be included in regulations during the passage of the Apprenticeships, Skills, Children and Learning Act 2009 (ASCLA 2009). We have treated the measures as uncontroversial because there were no amendments laid in relation to the intervention powers. Members focussed mainly on the name change of pupil referral units to short stay schools (s 249(1) ASCLA 2009 which comes into force on 1 September 2010).

5. Territorial Extent and Application

5.1 This instrument applies to England

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 About half of the 70,000 children nationally whose education is arranged by LAs under section 19 of the Education Act 1996 receive this provision by attendance at short stay schools. The remaining half receive it through LA funded places at independent schools, further education colleges, non-maintained special schools and other providers operating in the private and voluntary sector.

7.2 The Secretary of State has had the power to close short stay schools in special measures since the relevant provisions of the Education and Inspections Act 2006 were applied to short stay schools by the Education (Pupil Referral Units)(Application of Enactments)(England) Regulations 2007 which came into force on 1 February 2008. However, these powers have never been used. This is largely because the Secretary of State does not currently have the power to specify what should replace the closing short stay school, and thus cannot guarantee the quality of the alternative provision that pupils displaced by the closure would be provided with. Pupils may be placed in inappropriate provision, including provision that does not qualify for Ofsted scrutiny, or placements a long distance away.

7.3 These regulations will allow the Secretary of State to specify the features of the alternative provision that should replace a short stay school that he directs should close. He will not be able to name a specific provider, but rather will specify features such as subjects to be offered, management structure, ages and numbers of pupils to be catered for. He will also be able to instruct the local authority to hold a competition to find a new provider to run the alternative provision.

7.4 Finally, these powers will be used to make the closure of a short stay school in special measures, or due an inspection by Her Majesty's Chief Inspector of Education, Children's Services and Skills (OFSTED), subject to the Secretary of State's consent. This is to prevent short stay schools being closed to avoid an intervention. The government has clearly stated its intention for these powers in The Children's Plan (2007), the White Paper called "*Back on Track* (2008)", and in the Explanatory Notes that accompany the ASCLA 2009.

7.5 It is crucial that underperforming short stay schools are turned around with speed, as while pupils often only spend a short time in them, this time has a big impact in terms of their future progress. Pupils often need short stay school provision at moments of difficulty or crisis in their lives, and thus it is crucial that the education and support they receive is of a high standard.

8. Consultation outcome

8.1 The government has clearly stated its intention to seek these powers in The Children's Plan (2007), the White Paper called "*Back on Track* (2008)", and in the Explanatory Notes that accompanied the ASCLA 2009. There was a full three month public consultation on "*Back on Track* (2008)"and, although there were no specific questions asked on these intervention powers, the opportunity was available for any individual or organisation to comment on any area of "*Back on Track*(2008)". A total of 110 responses were received during the consultation and only one stated that it did

not support this particular power of intervention. There were no other comments on these intervention powers.

8.2 During the passage of the ASCLA 2009 no amendments were put forward at any stage on this subject. When this clause was discussed at Commons committee the only discussion focussed on the change of name from pupil referral units to short stay schools. No one expressed any opinion at all in debate on these intervention powers. Therefore we do not consider them to be controversial and further, they will only be used in very rare circumstances.

9. Guidance

9.1 We intend to insert a reference to these regulations into the short stay school guidance when it is revised later in 2010.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is minimal.

10.3 An Impact Assessment has not been prepared for this instrument but one was prepared as part of the ASCLA 2009 and the relevant page is attached at annex A. It has not required any further updating as minimal costs are involved.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

We will review in 2013 to see how these regulations are being used.

13. Contact

Lesley Hollick at the Department of Children, Schools and Families email:
Lesley.hollick@dcsf.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Analysis & Evidence

Policy Option: 2.7	Description: Alternative Provision		
COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' The necessary evidence to accurately monetise the costs of this policy is not available.
	One-off (Transition)	Yrs	
	£ N/A		
	Average Annual Cost (excluding one-off)		
	£ N/A		Total Cost (PV)
Other key non-monetised costs by 'main affected groups' Significant costs are not anticipated from this policy.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' The necessary evidence to accurately monetise the benefits of this policy is not available.
	One-off	Yrs	
	£ N/A		
	Average Annual Benefit		
	£ N/A		Total Benefit (PV)
Other key non-monetised benefits by 'main affected groups' Strengthened powers of intervention in failing alternative provision will have significant benefits for the pupils in those institutions, particularly in terms of improved educational outcomes. There are also significant equity considerations in ensuring that pupils in alternative provision			



Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £	
What is the total annual cost of enforcement for these			£	
				Yes/No
				Yes/No
What is the value of the proposed offsetting measure per year?			£	
What is the value of changes in greenhouse gas emissions?			£	
				Yes/No
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium Large

	Yes/No	Yes/No		

Key: Annual costs and benefits: Constant Prices (Net) Present Value