

EXPLANATORY MEMORANDUM TO
THE WILTSHIRE COUNCIL (ARRANGEMENTS FOR THE PROVISION OF SUITABLE
EDUCATION) ORDER 2012

2012 No. 1107

1. This explanatory memorandum has been prepared by the Department for Education (DfE) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order facilitates an innovative project by Wiltshire Council (“the local authority”), and the governing bodies of secondary schools and the proprietors of the Academies in Wiltshire, to transfer the local authority duty to provide suitable full-time education to permanently excluded pupils to the governing bodies and proprietors for a period of not more than three years. The Order exempts the local authority from the duty in section 19(1) of the Education Act 1996; and requires the governing bodies and proprietors to exercise that duty in place of the local authority.

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

3.1 None

4. Legislative Context

4.1 This Order is made under section 2 of the Education Act 2002 (“the 2002 Act”) under the power to facilitate innovation – more commonly known as “power to innovate”. The purpose of Chapter 1 of Part 1 of the 2002 Act is to facilitate the implementation of innovative projects which may (in the opinion of the Secretary of State) contribute to the raising of educational standards in England and Wales. Section 2 gives the Secretary of State the power, on the application of one or more qualifying bodies, to exempt an applicant from particular provisions of education legislation, or to relax the requirements of, or to make modifications to, such provisions in order to further such innovative projects. Orders made under section 2 have effect for the period specified in the Order, which cannot initially exceed three years.

4.2 The local authority together with the governing bodies of the secondary schools and proprietors of Academies in Wiltshire, applied for a Power to Innovate Order to take part in the government’s national exclusion trial, as detailed in the White Paper, “The Importance of Teaching (2010)”. The Secretary of State is of the opinion that this Order facilitates the implementation of an innovative project to raise educational standards for the reasons set out in paragraphs 7.1 – 7.2 below and makes this Order under his powers as set out in paragraph 4.1 above.

4.3 The local authority will continue to maintain the statement of those pupils with SEN and will continue to be responsible for ensuring that the special educational provisions in the statement are made. Those pupils without a statement but identified as having a SEN, will experience the same process as other pupils in the Trial.

4.4 Regulation 8(1) (m) of the Education (Pupil Registration) (England) Regulations 2006 provides that, when a pupil has been permanently excluded from a school their name shall be

deleted from the register. It is an offence under section 434(6) of the Education Act 1996 for the proprietor of a school not to comply with the requirement to delete a pupil's name from the register on any prescribed ground. The Order omits this requirement for schools exercising the duty in section 19(1) to provide suitable full-time education to a permanently excluded pupil in place of the authority.

5. Territorial Extent and Application

5.1 This instrument applies in 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

• What is being done and why

7.1 In the Education White Paper, *The Importance of Teaching*, the Government announced its intention to test a new approach to permanent exclusion from school. The new approach will see schools, rather than local authorities, placing an excluded pupil in an appropriate alternative setting, funding the placement from a devolved budget, and monitoring both attainment and attendance. The trial will also enable schools - working in partnership with each other and the local authority - to try out new ways of tackling challenging behaviour.

7.2 There is a long established pattern of poor attainment of pupils who are excluded and placed in alternative education provision; in 2010 only 1.4% achieved five or more A* to C grades at GCSE. The overall aim of the trial is to improve the educational and personal outcomes for pupils who are at risk of exclusion, and who are excluded, by improving the quality of alternative education provision. The new approach will:

- see schools, rather than local authorities, placing an excluded pupil in an appropriate alternative setting, funding the placement from a devolved budget and monitoring both attainment and attendance;
- focus on raising the quality of alternative provision so that pupils achieve better educational outcomes and more valued qualifications;
- encourage schools to intervene earlier to tackle challenging behaviour and any underlying causes, thus reducing the need for exclusion;
- encourage new provision, either from existing providers or from new entrants, to give schools a greater choice of where to place their pupils.

7.3 The trial will run through three school years, from its implementation in May 2012 to its conclusion in July 2014.

8. Consultation outcome

8.1 Section 4(2) of the 2002 Act places a legal obligation on applicants for a PtI Order to consult with the local authority and with other appropriate persons on their proposal.

8.2 The local authority undertook a formal consultation over a period of four months. Head teachers were consulted, as well as the parents, pupils and all staff of the Young Peoples Support Service (YPSS). All of the groups and individuals consulted were provided with information about the proposal and given the opportunity to make their views known. There were no voiced objections to the proposal from all the people consulted. All secondary school head teachers gave their full support.

8.3 Under section 2(3) of the 2002 Act the Secretary of State shall, if appropriate, consult with the Chief Inspector before making an Order under the power to facilitate innovation. The Chief Inspector has not been consulted in relation to this Order as it was not considered appropriate to do so.

9. Guidance

9.1 Guidance is provided to applicants who seek a power to innovate order under Part 1. The Guidance sets out the requirements for project review and analysis, evaluation, and plans for reverting to existing practice at the end of the project if necessary. However, no guidance is given in respect of the Order itself since the Order is being made on the application of the participating bodies.

10. Impact

10.1 No impact on business, charities or voluntary bodies is foreseen.

10.2 The impact on the public sector is expected to be minimal as the public law duty is being exercised at a more local level.

10.3 An Impact Assessment has not been prepared for this Instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Power to innovate projects are monitored by the DfE to assess their impact on educational standards. Applications must include the measures to be used to monitor the effect of projects and must include a broad description of the evaluation strategy. A final evaluation report is required to be submitted by the schools to the DfE when the project ends, and where the project's outcomes show a positive impact on standards, the DfE will consider whether it would be desirable from a policy perspective to change education law. The DfE publishes an annual report on the Power to Innovate Orders made each academic year.

13. Contact

13.1 Neil Wakelam at the Department for Education Tel: 01325 735 764 or email: neil.wakelam@education.gsi.gov.uk can answer any queries regarding the instrument.