

**EXPLANATORY MEMORANDUM TO**  
**THE PUPIL REFERRAL UNITS (MISCELLANEOUS AMENDMENTS) (No.2)**  
**(ENGLAND) REGULATIONS 2012**

**2012 No. 3158**

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

**2. Purpose of the instrument**

2.1 This instrument amends the Education (Pupil Referral Units) (Management Committees etc) (England) Regulations 2007 (“the MCR”) and the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007 (“the AER”).

2.2 The principal changes are to:

- alter the functions that are delegated by local authorities (LAs) to the management committees (MCs) of Pupil Referral Units (PRUs);
- ensure that the MCs of PRUs have the necessary powers to spend any budget delegated to them by the LA. This includes powers to enter into contracts without needing consent from the LA;
- apply further legislation to PRUs with any necessary modifications, such as the School Staffing (England) Regulations 2009;
- provide for control over staffing when a PRU’s delegated budget is suspended;
- provide for the transfer of any budget surplus should the PRU convert to an alternative provision Academy; and
- ensure that PRUs’ financial reporting requirements are consistent with maintained schools’.

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

3.1 None

**4. Legislative Context**

4.1 The Education Act 2011<sup>1</sup> made amendments to the School Standards and Framework Act 1998<sup>2</sup> in order for PRUs to have delegated budgets. The amendments

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<sup>1</sup> See section 50 of the Education Act 2011.

have effect from 1 April 2013<sup>3</sup>. The School and Early Years Finance Regulations 2012 specify how the budget is determined. Due to these changes, it is necessary to amend the MCR and the AER to reflect the fact that PRUs will have delegated budgets.

4.2 Paragraph 3 of Schedule 1 to the Education Act 2002 (the 2002 Act) sets out the powers of governing bodies of maintained schools. By applying this enactment to PRUs, the powers that are conferred on governing bodies are also conferred on LAs<sup>4</sup>. This instrument alters the way that these powers apply to PRUs by amending the AER.

4.3 Unlike governing bodies of maintained schools<sup>5</sup>, MCs do not possess separate legal personality from the LAs which maintain them. MCs essentially act as LAs' agents with respect to the conduct of PRUs. Regulation 22 of the MCR sets out the functions which LAs must (and must not) delegate to MCs. Accordingly, regulation 22 is amended (in parallel to the AER) to update the functions and powers which LAs delegate to MCs in order that they may spend their delegated budgets (e.g. the power to enter into contracts).

4.4 This instrument also amends the AER so that the School Staffing (England) Regulations 2009 apply to PRUs with modifications. This instrument also applies Schedule 2 to the 2002 Act to PRUs, so that if a PRU's delegated budget is suspended control over staffing reverts to the LA.

4.5 Further, as PRUs will have delegated budgets it is necessary to make provision for the transfer of any budget surplus when PRUs convert to AP Academies. Accordingly, amendments are made to the AER to apply section 7 (transfer of school surpluses) of the Academies Act 2010 and the Academy Conversions (Transfer of School Surpluses) Regulations 2010 to PRUs with necessary modifications.

4.6 The instrument also updates the AER and the MCR for changes that have been made to legislation (such as repeals and revocations) that was applied to PRUs in 2007.

## **5. Territorial Extent and Application**

5.1 This instrument applies only to England.

## **6. European Convention on Human Rights**

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

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<sup>2</sup> See Part II of the School Standards and Framework Act 1998 (in particular sections 45 to 51).

<sup>3</sup> See Article 3 of the Education Act 2011 (Commencement No 4 and Transitional and Savings Provisions) Order 2012 (S.I.2012/1087).

<sup>4</sup> Under paragraph 1 of Schedule 1 to the 1996 Act, references in any enactment (that applies or is applied to PRUs) to the governing body of a school are to be read, in relation to a PRU, as references to the LA.

<sup>5</sup> See section 19(1) of the 2002 Act.

## **7. Policy background**

7.1 Alternative Provision (AP) is education arranged for pupils who, for various reasons, such as illness or exclusion, would not receive suitable education without such arrangements being made. Children in AP are some of the most vulnerable in the education system. Many are from deprived backgrounds with a range of underlying issues that may affect their education. Their educational attainment falls far below those of their mainstream peers, for example just 1.5% of those in AP achieve 5 or more A\*-C grades at GCSE, compared to 59% in schools as a whole<sup>6</sup>.

7.2 LAs have a statutory duty to provide suitable education for pupils who, as a result of illness, exclusion or other reasons, would not receive suitable education without such provision. Historically, many LAs have decided to fulfil this duty by establishing and maintaining PRUs. Where a PRU exists, regulations state that LAs must establish a management committee (MC) (which acts much like the governing body of a maintained school) and delegate particular functions to the MC.

7.3 Currently, LAs are responsible for commissioning AP services but also manage directly the main AP provider (the PRU) which can result in default placements of pupils into the PRU. This system also can add an unnecessary additional layer of bureaucracy which slows down a PRU's ability to respond to the needs of the pupils they serve.

7.4 The Government is committed to raising educational standards in AP and better meeting the needs of pupils through a more vibrant and responsive AP market. As part of the Secretary of State's plans to reform the AP sector, he announced in the Education White Paper 2010 his intention to give PRUs "the same self-governing powers as community schools including, for the first time, giving their management committees powers over staffing and finance".

7.5 This instrument applies, with necessary modifications, legislation to enable PRUs' MCs to manage their budgets and staff effectively from 1 April 2013. This includes applying, to PRUs, the legislation which gives the governing bodies of community schools the powers to conduct their schools (such as signing contracts) and make decisions about to appointing, managing, appraising, disciplining, suspending and dismissing members of their staff. The instrument does not create any new duties or burdens but merely transfers responsibilities from the LA to the MC of a PRU. This greater autonomy will enable MCs to respond quickly to the needs of their pupils, and thereby help improve their educational attainment and outcomes.

## **8. Consultation outcome**

8.1 Our intention to delegate budgets and staffing decisions from LAs to the MCs of PRUs was announced in the 2010 Education White Paper. These proposals do not create any new duties or responsibilities. Ministers have already delayed implementation of this

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<sup>6</sup> Department for Education statistical first release GCSE and Equivalent Results in England, 2010/11.

policy to allow PRUs and LAs time to prepare. The Department for Education consulted, from 3 April to 15 May 2012, on a package of reforms for AP based on Charlie Taylor's report. The consultation included questions on the readiness of PRUs to take on budget and staffing control from April 2013. The outcome of the consultation, and other relevant information, can be found at:

<http://www.education.gov.uk/schools/pupilsupport/behaviour/a00204776/taylor-review-of-alternative-provision>

## **9. Guidance**

9.1 The Department for Education has published statutory guidance on alternative provision, which comes into force in January 2013. The guidance contains a new section on the requirement for LAs to delegate budgets to PRUs and the management committee's new staffing responsibilities.

## **10. Impact**

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

10.2 The impact on the public sector is positive. The instrument will reduce the burden on PRUs by allowing them the freedom to make their own decisions without seeking consent from the LA. It will also have a positive impact for pupils as providers will be better able to take swift decisions to improve standards.

10.3 An Impact Assessment has not been prepared for this instrument as the total unfunded cost to the public sector will be less than £5 million per year and no effect on other sectors is foreseen. The instrument does not place or create any new or additional duties or responsibilities. It clarifies in law that an MC, rather than another part of the LA, should fulfil existing duties. An Equalities Impact Assessment on the implementation of Charlie Taylor's AP review, to which this instrument contributes, can be found on the Department's equality analyses webpage.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 Ofsted will continue to monitor AP using thematic surveys during academic year 2013/14. The Department for Education will also continue to monitor AP in the course of its business and will review the effectiveness of delegating budgets and staffing decisions to PRUs during 2014.

## **13. Contact**

13.1 Peter Jackson at the Department for Education (tel: 020 7340 7491 or email [peter.jackson@education.gsi.gov.uk](mailto:peter.jackson@education.gsi.gov.uk)) can answer any queries regarding the instrument.