

EXPLANATORY MEMORANDUM TO
THE EDUCATION (PUPIL REFERRAL UNITS) (APPLICATION OF ENACTMENTS)
(ENGLAND) (AMENDMENT) REGULATIONS 2012

2012 No. 1201

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 The instrument applies the Academies Act 2010 to Pupil Referral Units (PRUs), in order to create the legal framework that allows PRUs to become alternative provision (AP) Academies. The instrument also reintroduces the statutory duty on PRUs to cooperate with local authorities (LAs) to improve the well-being of children in the authority's area.

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

3.1 None

4. Legislative Context

4.1 The Education Act 2011 provides for new types of Academies, including alternative provision (AP) Academies. AP Academies were created to give PRUs the opportunity to benefit from Academy freedoms and to allow for the creation of Free Schools in the AP sector. The Academies Act 2010 provides the legal framework for maintained schools to become Academies but does not cover PRUs. This instrument applies the relevant sections of the Academies Act 2010, with any necessary modifications, to PRUs, thereby allowing PRUs to become AP Academies.

4.2 The instrument uses, for the first time, new powers in section 1D of the Academies Act 2010 (inserted by the Education Act 2011) which allow provisions relating to Academy Schools to be applied to AP Academies.

4.3 The Children Act 2004 provides a duty on LAs to make arrangements to promote cooperation between the LA, relevant partners and such others as the LA considers appropriate to improve the well-being of children in the area. Relevant partners are required to cooperate with the LA in these arrangements. The Apprenticeships, Skills, Children and Learning Act 2009 added the governing bodies of maintained schools, proprietors of Academies (Academy Trusts) and the governing bodies of further education institutions (FEIs) to the list of relevant partners. The management committees¹ of PRUs were added to the list by regulations which came into force on 30th April 2010. It was originally intended that the Education Act 2011 would remove the duty in relation to governing bodies of maintained schools and proprietors of Academies. Regulations were

¹ PRU management committees are similar to the governing bodies of maintained schools.

therefore made to remove this duty from the management committees of PRUs. However, during debate on the Education Bill in the House of Lords on 24th October 2011 the Government agreed that this duty should remain upon schools and Academies (<http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/111024-0003.htm>). Lord Hill of Oareford then wrote to Baroness Hughes of Stretford confirming that this duty would be reintroduced for PRUs and this instrument implements that commitment.

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 AP is education arranged for pupils who for various reasons, such as illness or exclusion, would not receive suitable education without these arrangements. PRUs are schools established and maintained by LAs to provide education for children who require AP.

Regulations relating to AP Academies

7.2 The Education Act 2011 provides for two new types of Academies; 16 -19 Academies and AP Academies. The intention is that PRUs will be able to benefit from Academy freedoms by converting to become an AP Academy. Giving PRUs the opportunity to benefit from Academy freedoms will give their education professionals greater scope to innovate, allowing them to better meet the needs of some of the most vulnerable young people and play a leading role in driving up quality across the whole AP sector.

7.3 The Academies Act 2010 sets out the legislative framework for a maintained school to become an Academy. This instrument modifies the application of relevant sections of that Act so that PRUs can become AP Academies.

7.4 This instrument provides:

- the management committee of a PRU with the power (similar to that of a community school governing body) to apply to become an AP Academy;
- the Secretary of State with the power to issue an Academy Order for PRUs that apply for an Order, and for PRUs which have been issued with a notice by Ofsted that they require special measures or significant improvement (a failing PRU) – replicating a similar power that he has for maintained schools;

- that the management committee of the PRU (or, in the case of failing PRUs, the management committee or the Academy sponsor) must consult on whether a conversion should take place before proceeding with the conversion; and
- that the Secretary of State can transfer the property, rights and other liabilities used by or held for the PRU, by the LA, to the new AP Academy.

7.5 This instrument also applies section 6(5) of the Act to AP Academies so that, as with maintained schools, when a PRU becomes an AP Academy it does not require a pre-opening inspection to confirm it meets the independent school standards.

Regulations relating to the duty to cooperate

7.6 In April 2010 PRUs were made 'relevant partners' with a duty to cooperate with LAs and other relevant partners to improve the well-being of children in the authority's area. This replicated a broadly similar duty on maintained schools and Academies introduced in January 2010. In October 2010 Ministers announced the Government's intention to remove this duty from maintained schools, colleges and Academies and regulations were made to remove this duty from PRUs.

7.7 During the passage of the Education Act 2011, the Government agreed that the duty should continue on maintained schools, colleges and Academies and be reconsidered in the light of the type of local cooperation needed to implement the *Support and aspiration: A new approach to special educational needs and disability* Green Paper. This instrument therefore reinstates this duty on PRUs to ensure consistency with other schools.

Consolidation

7.8 The Department intends to consolidate the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations next year.

8. Consultation outcome

8.1 A public consultation took place from 7 February to 20 March seeking the sector's view on a draft of this instrument. The consultation was limited to 6 weeks as the regulations are largely technical and implement policy already agreed by Parliament through the passage of the Education Act 2011. The consultation was published on the Department's e-consultation webpage and the Department emailed LAs and PRUs directly to publicise it and encourage responses. The full report on the consultation responses can be found on the Department's consultation website here <http://www.education.gov.uk/consultations>.

8.2 Respondents were equally split on whether the draft regulations would be effective in allowing PRUs to become AP Academies. Most who disagreed mentioned lack of information or concerns about the funding of AP Academies (over 50%), how they will operate or how the conversion process will work (40%). These concerns are not specifically relevant to the content of this instrument but have been addressed by the

Department through the publication of further details regarding how AP Academies will be funded and guidance on becoming an AP Academy (both of which can be found on the Department's website www.education.gov.uk).

8.3 Respondents were evenly split on the question of whether the draft regulations would allow PRUs to fulfil effectively their role as 'relevant partners' in the duty to cooperate. While nearly a quarter of respondents that disagreed (21%) had practical concerns about these regulations, including how arrangements should be made locally, other responses stated that local cooperation arrangements were already in place. We have not therefore amended this section of the instrument to prescribe how local cooperation arrangements should work, so that local areas have the flexibility to maintain or create arrangements that work for their pupils.

9. Guidance

9.1 The Department has published detailed guidance on becoming an AP Academy (see above). These documents explain the process for PRUs becoming an AP Academy and include details of the interim funding arrangements for AP Academies. The Department has also published further details of school funding reforms (see above) including how AP Academies will be funded post April 2013. Finally, the Department is currently consulting on amendments to regulations and new guidance relating to AP (the link to the Department's consultation website can be found above) – the new guidance will outline the regulations in this instrument which relate to AP Academies.

9.2 No guidance has been provided on how the regulations relating to the duty to cooperate should be applied. Arrangements should be made locally to fit with local circumstances and should suit the needs of their pupils. We have avoided prescription so that effective working arrangements can be made to fit local circumstances and to encourage innovation.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is positive. Creating AP Academies will have the same impact on the public sector as creating mainstream academies; the impact assessment for the Academies Act 2010 can be found on the Parliament website (www.parliament.uk) and shows the benefits are significantly higher than the costs. The impact of the duty to cooperate on the public sector is negligible, as statutory guidance on this duty has been withdrawn and partners in the duty to cooperate are free to decide how best to work together.

10.3 An Impact Assessment has not been prepared for this instrument as the total unfunded cost on the public sector will be less than £5m a year. An Equalities Impact Assessment on the implementation of Charlie Taylor's review of AP, to which these regulations contribute, 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 The instrument intends to allow PRUs to become AP Academies. The Academies Act 2010 requires the Secretary of State to publish an annual report containing information on the Academies (including AP Academies) opened and the performance of Academies.

13. Contact

13.1 Bethany Caines at the Department for Education Tel: 02077838374 or email: bethany.caines@education.gsi.gov.uk can answer any queries regarding the instrument.