

## **EXPLANATORY MEMORANDUM TO**

### **THE EDUCATION (PUPIL REFERRAL UNITS) (APPLICATION OF ENACTMENTS) (ENGLAND) (AMENDMENT) REGULATIONS 2016**

**2016 No. 608**

#### **1. Introduction**

- 1.1 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 These Regulations amend the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007 (S.I. 2007/2979) (“the 2007 Regulations”) to take account of amendments to provisions of the Academies Act 2010 (“AA 2010”) made by the Education and Adoption Act 2016 (“EAA 2016”) relating to the making of Academy orders and Academy conversion. The changes will ensure that the legal framework relating to Academy conversion for Pupil Referral Units (“PRUs”) will as far as possible be brought into line with that for maintained schools.

#### **3. Matters of special interest to Parliament**

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

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

#### **4. Legislative Context**

- 4.1 The 2007 Regulations apply, or modify the application of, legislation relating to maintained schools to PRUs. Part 1 of Schedule 1 deals with the application of primary legislation.
- 4.2 The AA 2010 sets out the legislative framework for a maintained school to become an Academy. Certain provisions of the AA 2010, such as sections 3 and 4 relating to the making of Academy orders by the Secretary of State and section 5 relating to the requirement to consult on Academy conversion, were applied to PRUs by amendments made to the 2007 Regulations under the Education (Pupil Referral Units) (Application of Enactments) (England) (Amendment) Regulations 2012 (S.I. 2012/1201) to enable a PRU to become an alternative provision Academy (“AP Academy”). The AA 2010 was amended by the EAA 2016 and therefore this instrument amends the 2007 Regulations to apply some of those legislative changes to PRUs.

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

- 5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is 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.

## **7. Policy background**

### *What is being done and why*

7.1 The EAA 2016 introduced new measures to improve educational standards across England. This included speeding up the process by which failing maintained schools become sponsored Academies. By applying some of these provisions to PRUs these Regulations speed up the process by which failing PRUs become AP Academies.

7.2 The amendments made by the EAA 2016 to the AA 2010 which these Regulations apply to PRUs will mean that where a PRU receives an inadequate Ofsted judgement (because it requires significant improvement or is placed in special measures), the Secretary of State for Education will be under a duty to make an Academy order to enable the PRU to become an AP Academy. In those circumstances, the PRU's management committee will not be required to conduct a consultation but, along with the local authority that maintains the PRU, will be under a duty to take reasonable steps to facilitate the conversion of the PRU into an Academy. Where necessary, the Secretary of State for Education will be able to direct the PRU's management committee or the local authority to take specified steps to facilitate the PRU becoming an Academy.

7.3 In order to ensure that parents are kept informed, there is a duty on the proposed Academy trust that will run the new AP Academy to communicate to parents information about their improvement plans before the PRU becomes an Academy.

### *Consolidation*

7.4 There are no plans to consolidate legislation.

## **8. Consultation outcome**

8.1 These Regulations have not been the subject of a specific public consultation. The Government did, however, consult between 21 October – 18 December 2015 on the 'Schools Causing Concern: Guidance for local authorities and Regional Schools Commissioners', which sets out how local authorities and Regional Schools Commissioners would use the provisions in relation to maintained schools that we are now applying to PRUs through these Regulations. The intention to apply these provisions to PRUs was set out in the Government response to the consultation on 'Intervening in failing, underperforming and coasting schools' published on 24 March 2016, this can be found on GOV.UK at: <https://www.gov.uk/government/consultations/intervening-in-failing-underperforming-and-coasting-schools>.

8.2 The Department did not consider it necessary to consult on the changes being made by these Regulations because those changes were needed to make the law clear, or to insert provisions that enabled the process to operate smoothly. As such the Department considers the general consultation to be sufficient.

- 8.3 Some of the amendments made by these Regulations are in respect of provisions of the AA 2010 which already apply to PRUs by virtue of the 2007 Regulations – sections 4 and 5 – and are necessary to ensure that the law in relation to PRUs is clear following the amendments made by the EAA 2016. In particular, an amendment to section 4 by the EAA 2016 to insert a new duty to issue an Academy order has meant that, under the 2007 Regulations, the Secretary of State now has both a duty and a power to issue an Academy order in respect of a PRU that is in special measures or requires significant improvement. Amendments to the 2007 Regulations are therefore needed to clarify that in those circumstances the Secretary of State has a duty to issue an Academy order. Whilst these Regulations do apply other new provisions to PRUs which have been inserted into the AA 2010, these are provisions that are triggered by the making of an Academy order pursuant to the new duty in section 4 and are necessary to ensure that the conversion of the PRU can be completed as smoothly and quickly as possible in all cases following the making of an order in those circumstances.

## **9. Guidance**

- 9.1 Guidance will be published on GOV.UK. This guidance will describe how Regional Schools Commissioners, on behalf of the Secretary of State for Education, will intervene in underperforming PRUs as a result of the amendments made by these Regulations.

## **10. Impact**

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is that when an Academy order is issued to a PRU that has received an inadequate Ofsted judgement, the management committee and local authority will be required to take the necessary actions to enable the PRU to become an Academy. This may include taking any specific steps and abiding by any timescales directed by the Secretary of State. However, these requirements simply make explicit what the local authority and the management committee would in any case be expected to do in these circumstances in order to ensure that the Academy conversion can proceed and therefore will not impose any significant new burdens. Furthermore, the management committee will no longer have to undertake a consultation in respect of the conversion. The Academy trust that it is proposed will run the AP Academy will be required to communicate information about its plans to improve the PRU to parents of registered pupils before the PRU is converted in to an AP Academy. This does not represent a significant new burden as it is what they would already be expected to do in practice.
- 10.3 An Impact Assessment has not been prepared for this instrument. An Impact Assessment was, however, prepared in relation to the EAA 2016 provisions, and we are applying some of those provisions to PRUs through these Regulations. That assessment considered that the overall aim of improving the quality of schools by streamlining intervention measures and facilitating the swifter transfer of failing maintained schools to Academies with effective sponsors will “advance equality of opportunity” for affected pupils.

## **11. Regulating small business**

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

## **12. Monitoring & review**

- 12.1 The AA 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 Alan Schneiderman at the Department for Education, (telephone: 020 7340 8267 or email: [alan.schneiderman@education.gsi.gov.uk](mailto:alan.schneiderman@education.gsi.gov.uk)) can answer any queries regarding the instrument.