

APPRENTICESHIPS, SKILLS, CHILDREN AND LEARNING ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 11: Learners

Short stay schools

Section 249: Short stay schools: miscellaneous

837. *Subsection (1)* changes the name of pupil referral units to “short stay schools”. This change applies only to pupil referral units in England; those in Wales will continue to be called “pupil referral units”. The name change will apply in law only. Individual pupil referral units will be free to use any name they wish for their own purposes (as they do currently).
838. *Subsection (2)* gives the Secretary of State powers by order, to make amendments to legislation consequential on the change of name from “pupil referral unit” to “short stay school”. This power applies to all primary legislation enacted before the end of the Session in which the Apprenticeships, Skills, Children, and Learning Act 2009 passed, and to all statutory instruments made before the passing of this Act.
839. *Subsection (3)* inserts a new paragraph 3A into Schedule 1 of the Education Act 1996. This extends the Secretary of State’s regulation-making powers in this area.
840. New paragraph 3A(a) gives the Secretary of State the power to make regulations which would require the LEA to obtain the consent of the Secretary of State before closing a “short stay school”. The Government intends to use this power to make the closure of a short stay school subject to the Secretary of State’s consent where:
- The short stay school has been described by Ofsted as requiring special measures; or
 - Ofsted have given notice to the LEA that an inspection is due.
841. The Government expects that the LEA will be required to provide information about the provision they are intending to replace the closing short stay school with, and the Secretary of State will give his consent dependent on an assessment of the adequacy of these plans.
842. Paragraph 3A(b) gives the Secretary of State the power to make regulations enabling the Secretary of State to give directions to a LEA about the exercise of its functions under section 19 of the Education Act 1996. The Government envisages that the powers will be used to enable the Secretary of State to give directions to a LEA about the provision to be made under section 19 to replace the provision lost where a short stay school is closed at the direction of the Secretary of State.
843. Under paragraph 3A(c) any regulations the Secretary of State makes in relation to short stay schools may include provisions requiring LEAs to comply with directions made

under the regulations. If a LEA failed to comply it would be open to the Secretary of State to enforce the directions using powers under section 497 of the Education Act 1996.

844. The Government envisages that these regulation-making powers will be used to allow the Secretary of State to give a direction to a LEA about the alternative provision that will replace a short stay school he decides should close. The Secretary of State already has the power to direct the closure of a short stay school that has been described by Ofsted as requiring special measures. This power is conferred by section 68 of Part 4 of the Education and Inspections Act 2006. "Special measures" is defined in section 44(1) of the Education Act 2005. The local education authority is under a duty (under section 19 of the Education Act 1996) to provide other suitable education for those pupils who are displaced by the closure of the short stay school, but how they do this is their decision. They could find places in independent schools, open a replacement short stay school, or use another provider of alternative provision.
845. The Secretary of State does not envisage using this direction-giving power to specify exactly who or what will replace the closing unit, but rather to specify the features it should exhibit. This might include directions in areas such as:
- The nature of the educational provision to be provided, such as the specific courses and subjects to be provided, and the ages and numbers of pupils to be catered for.
 - The manner in which the educational provision is to be provided, such as through a replacement short stay school, a third sector partner or another institution such as an FE college (NB specific institutions or providers would not be named, only types).
 - The management of the educational provision, such as specifying the internal management and review structures of provision, or specifying certain provisions which must be included in any contract with external providers.
846. The Secretary of State intends to use the powers to give directions to require the LEA to invite bids from external providers for the delivery of the alternative provision. The Secretary of State might specify the way in which the LEA should invite bids; for example by advertising in local newspapers or on the LEA website. He might also specify the date by which an invitation should be issued, and the length of time respondents are given to reply.
847. The Secretary of State does not intend to give directions as to the way that the LEA assesses the bids, but to require the LEA to report back to the Secretary of State once the process of inviting and assessing the bids has been completed. In its report the LEA would be expected to set out:
- The actual steps taken by the LEA in inviting bids,
 - Details of any bids received,
 - A description of the arrangements (if any) the LEA has entered into, or is proposing to enter into with any of the bidders,
 - Reasons why the LEA has reached the decision it has (including details of why they have decided not to enter into arrangements with any bidders, if this situation arises).