

## **REGULATORY APPRAISAL**

### **EDUCATION, WALES**

#### **THE EDUCATION (PUPIL REFERRAL UNITS) (APPLICATION FOR ENACTMENTS) (WALES) REGULATIONS 2007**

##### **Background**

1. Section 19 of the Education Act 1996 requires local education authorities to provide suitable education outside the mainstream school setting for learners of compulsory school age who might not otherwise receive education. Suitable education is defined as “efficient education suitable to the age, ability, aptitude and to any special educational needs”, the child or young person may have. The decision as to what provision to offer under section 19 is made in consultation with parents, in line with the Local Education Authority’s (LEA)’s own policies and the efficient use of resources.
2. Young people are educated outside mainstream schools for a number of reasons. They may be ill or injured; have been excluded; have emotional and behavioural difficulties; be habitual non-attenders; or be pregnant or young mothers.
3. Pupil Referral Units (PRUs) are one of an increasing range of out-of-school education provision used by LEAs. Although they may be diverse in terms of the number and type of pupils catered for, their length of stay, and nature of the curriculum, they are legally a type of school. As such the Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2006 would ensure that many of the statutory requirements for maintained schools would also apply to PRUs.
4. Schedule 1 of the Education Act 1996 provides for regulations to apply, and modify, in relation to PRUs enactments, which apply to other maintained schools.

##### **Purpose and intended effect of the measure**

5. These Regulations ensure that statutory requirements apply to Pupil Referral Units (PRUs) in the same way as they apply to maintained schools. They specify that:
  - PRUs must keep an up to date written statement on their policy on the provision of sex and relationships education (SRE) in relation to secondary school education at the unit. However, a parent of a pupil at a PRU could request that he may be wholly or partly excused from receiving SRE at the unit;

- the Local Education Authority (LEA) may prohibit or restrict employment of children registered at a PRU if it appeared that the employment was prejudicial to his health or to render him unfit to obtain the full benefit of the educational provision;
- where a Pupil Referral Unit (PRU) had been inspected by Estyn and found to require special measures or have serious weaknesses the Minister for Education and Lifelong Learning and Skills could direct the LEA to close the PRU;
- the Management Committee, or the LEA where there is no management committee, must ensure that a PRU had a written statement to promote good behaviour and discipline, which should be reviewed from time to time. The teacher in charge of the unit would also have various obligations in relation to discipline, mirroring those which headteachers of mainstream maintained schools have;
- the LEA may take action to prevent a breakdown of discipline in a PRU where the behaviour of pupils at the PRU or action taken by pupils or their parents severely prejudiced the education of any registered pupils. If the management committee have failed to comply, or secure compliance, the LEA must give notice in writing that they propose to take action;
- the teacher in charge of a PRU may require pupils to attend premises outside the PRU to receive instruction/training in respect of the secular curriculum for the PRU;
- the teacher in charge of the PRU must provide the LEA with reports in connection with the discharge of his or her functions as the teacher in charge;
- the LEA must determine the dates of the PRU's terms and holidays. The Management Committee (where there is one) and the LEA must determine the times of the PRU sessions;
- the curriculum of a PRU should comprise a basic curriculum, which includes the provision of SRE for all registered pupils who are provided with secondary education; and
- where a pupil attends a PRU, the LEA may pay expenses, to relieve financial hardship (depending on the means of the pupils' parents) on pupils who attend PRU's, to allow a pupil to take advantage of educational facilities available to them and allow him or her to take part in any school activity.

6. In addition, these Regulations draw together certain provisions specified in the Education Act 2005 and The Education (School Inspection) (Wales) Regulations 2006, in relation to the inspection of Pupil Referral Units (PRU's) These provisions include arrangements regarding:

- intervals for inspection;
- notification of inspection;
- meeting with parents;
- timescales within which inspection reports and action plans must be prepared;
- the period within which a local authority must prepare a statement; and
- permitted fees for the provision of an inspection report, summary and action plan.

7. These Regulations also prescribe that the requirements of The Staffing of Maintained Schools (Wales) Regulations 2006, which came into force on 21 March 2006, will apply to PRUs. Those requirement provide that:

- the Local Education Authority (LEA) has a duty to ensure that there is a staff suitable and sufficient in numbers for the purpose of securing the provision of education appropriate to the ages, abilities, aptitudes and needs of the pupils at the Pupil Referral Unit (PRU);
- the LEA has a duty to ensure that there is an acting teacher in charge whenever there is a vacancy in the post of teacher in charge of a PRU;
- the LEA can delegate functions to the teacher in charge for the appointment of teachers and support staff;
- the regulation of conduct and discipline in relation to staff of the PRU and procedures for staff to seek redress of grievances relating to their employment is under the control of the LEA. This includes the obligation to appoint an independent investigator to investigate allegations that involve issues of child protection;
- it is the responsibility of the LEA to appoint the acting teacher in charge, teacher in charge or other staff. When appointing other staff the LEA must seek the advice of the teacher in charge of the unit before making any appointment; and
- both the LEA and teacher in charge of a unit have the power to suspend any person employed or engaged otherwise than under a contract of employment, to work at the school. A suspension can only be ended by the LEA.

8. These Regulations also revoke The Education (Pupil Referral Units) (Application of Enactments) Regulations 1994 and the Education (Pupil Referral Units) (Application of Enactments) (Amendment) Regulations 1996.

### **Risk Assessment**

9. If these Regulations are not made Pupil Referral Units (PRUs) will not be subject to the same statutory requirements as mainstream schools. Therefore, pupils educated in PRU's will not be treated equally with children in mainstream schools.

### **Options**

#### Option 1: Do Nothing

10. The Regulations would not be implemented. The statutory requirements, which apply to mainstream schools, would not apply to PRUs. Therefore, pupils who attend PRUs would not be treated on an equal footing with children who attend mainstream schools.

#### Option 2: Make the Legislation

11. These Regulations ensure that PRUs have the same statutory duty as maintained schools in respect of the above list of requirements.

### **Benefits**

12. Implementation of these Regulations will:

- require PRUs to produce a written statement to promote good behaviour and discipline This will be of greater importance to those PRUs that cater for pupils that are disengaged and have behaviour problems; and
- ensure that PRUs are treated the same as mainstream schools as they draw together existing requirements for inspection of PRU's under the Education (School Inspection) (Wales) Regulations 2006.

### **Costs**

13. There will be no costs to the Assembly associated with implementation of these Regulations.

14. However, there may be costs in relation to the additional time that teachers in charge of PRU will need to prepare the required written policies such as the sex and relationship policy and the written statement regarding promoting good behaviour and discipline. There will be costs to Local Education Authorities (LEAs) to cover payments to allow pupils to take advantage of educational facilities and school activities and also in relation to publication and making information available. It is not possible to quantify these costs as they will vary for each LEA, depending on a number of factors including:

- the diversity of PRUs within an LEA, including their number, type of pupil and their length of stay;
- the level of work, and therefore staff time, required to produce the policies and written statements, as many units may already have these in place; and
- the number of pupils who may require some financial assistance from the LEA, and the level of this financial assistance (depending on the means of the pupils' parents), to allow them to take advantage of educational facilities and school activities.

However, it is envisaged that any costs, indirect through staff time, or direct through financial assistance, would be minimal. In addition, it should be noted that the power to provide financial assistance to pupils who wish to take advantage of facilities and school activities is discretionary rather than a statutory requirement. For this reason the new power introduced by these Regulations will not necessarily incur additional costs on local authorities.

## **Consultation**

### With Stakeholders

15. Consultation was carried out on the Regulations from 27 November 2006 until 19 January 2007. The consultation included pupil referral units, Local Education Authorities (LEAs), teaching unions and other professional associations. A list of consultees is attached at Annex A.
16. In total, 4 consultees responded to the consultation. Respondents were generally content with the proposed Regulations. A summary of consultation responses is attached at Annex B. No amendments were made to the Regulations in light of the responses to the consultation.

### With Subject Committee

17. These Regulations were notified to the then Education and Lifelong Learning Committee, via the list of forthcoming legislation, on 16 March 2006 (ELLS(2)-05-06, Paper 2 (item No. ELL-05-06) and have remained on the list ever since. However, at that time the title of the legislation was The Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2006. The Regulations were not identified for detailed scrutiny.

## **Enforcement, monitoring and review**

18. These Regulations will introduce a number of new requirements for Pupil Referral Units (PRUs) and LEAs. The Welsh Assembly Government will not monitor these requirements directly. However, there should be a more consistent approach across Wales with the introduction of the revised definition of PRUs. LEAs will need to ensure that all PRUs that fall within the

definition are registered with the Welsh Assembly Government. Estyn will ensure that these registered PRUs are included in the schedule of school inspections and will be inspected in line with their inspection framework.

### **Summary**

19. These Regulations ensure that statutory requirements apply to Pupil Referral Units (PRUs) in the same way as they apply to maintained schools. In addition, they draw together existing requirements for school inspection, under the Education (School Inspection) (Wales) Regulations 2006, which apply in relation to PRUs.

## **ANNEX A**

### List of consultees

Directors of Education at County Borough Councils

Church Diocesan Authorities

Teachers in Charge of PRUs

Teaching and other unions

National and local bodies with an interest in education:

- Governors Wales
- Estyn
- Children's Commissioner for Wales
- Senior Education Welfare Officers
- Heads of Behaviour Support Services
- PSE advisers

Association of Directors of Education in Wales Inclusion Group

The Social, Emotional and Behavioural Difficulties Association

## ANNEX B

### THE EDUCATION (PUPIL REFERRAL UNITS) (APPLICATION OF ENACTMENTS) (WALES) REGULATIONS 2007 CONSULTATION RESPONSES

#### Responses

##### Paragraph 1: Written SRE Policy

What about a written policy for primary schools?

*Response: Accepted. There is a requirement under s.404 of the Education Act 1996 for every maintained school (which includes a primary school) to have a written policy on sex education. It is too late to amend the Regulations at this late stage as any further delay would result in the regulations being postponed until after the election period. However, we accept that there is a need for PRUs to provide a written policy for primary school age pupils. This statutory requirement could be included in further regulations which the Assembly Government expect to make in 2007-08.*

##### Paragraph 5: Behaviour and Attendance

The power of the management committee needed clarifying.

*Response: Noted. Not an issue to be addressed in Regulations. More appropriate for guidance to provide a more detailed explanation of the role of the management committee.*

There was also a need for a curriculum written policy statement; an assessment, recording and reporting written policy statement; and a teaching and learning policy statement. It is recognised that the nature of PRUs means that they will vary because of different needs and ages of student groups they support. However, this should not detract from the status of the PRU ie students are there to be educated.

*Response: Noted. Would need further consultation before considering implementing – PRUs do not follow the national curriculum as closely as mainstream schools. They should offer a balanced and broadly based curriculum which: promotes the spiritual, moral, cultural, mental and physical development of pupils at the school and of society; and prepares pupils for the opportunities, responsibilities, and experiences of adult life. Curriculum flexibility enables LEAs and schools to ensure that more time is spent on activities aimed at addressing pupils' individual needs. The curriculum should include English, Welsh for pupils educated in a Welsh medium school, mathematics and, for pupils in Key Stages 1 to 3, science. Key stage 4 pupils curriculum should be*



*consistent with Learning Pathways. These obligations are found in paragraph 6 of Schedule 1 to the Education Act 1996.*

Paragraph 9: dates of terms/holidays

Number of hours per week offered would be different at each key stage.

*Response: Noted.*

Paragraph 12: Expenses

Supplying bus passes helps attendance but the complexity of journeys is a factor in PRU places not being taken up and low attendance.

*Response: Noted.*

Paragraphs 14 and 15: Staffing

Definition of 'suitable and sufficient' needed as this could be an area of debate. Eg what are the appropriate pupil:staff ratios. Should these have a maximum/minimum.

*Response: Noted. Not an issue to be addressed in regulations. More appropriate for guidance.*

General comments:

Need to change title of "teacher in charge" to "headteacher".

*Response: Noted. As with the term PRU - it is acceptable for LEAs to use a different term to identify an alternative education unit to avoid stigmatism. Although "teacher in charge" is used under legislation, LEAs can use the term "head teacher" if they wish.*

Management committees – there are clear differences between management committees and school governing bodies. The latter are made up of volunteers. Members of management committees do not volunteer but are opted into this role – not part of their job description and therefore extra workload. This can lead to poor attendance and lack of support.

*Response: Noted. Not an issue for these regulations.*