EXPLANATORY MEMORANDUM TO

THE EDUCATION (PUPIL REFERRAL UNITS) (APPLICATION OF ENACTMENTS) (ENGLAND) (AMENDMENT) (No.2) REGULATIONS 2010

2010 No. 1919

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 (SI 2010/2979) ("the 2007 Regulations") which apply to pupil referral units in England and revoke the Education (Pupil Referral Units) (Application of Enactments) (Amendment) (England) Regulations 2010 (SI 2010/1074)("the 2010 Regulations") which amended the 2007 Regulations.

2.2 The effect of these Regulations is to omit two provisions from the 2007 Regulations which would have required management committees of pupil referral units to become relevant partners of Children's Trust cooperation arrangements and be represented on Children's Trust Boards which came into force on 30 April 2010, and from 1 September 2010 to cooperate with other schools to form behaviour and attendance partnerships to work together to improve behaviour and tackle poor attendance. These requirements are no longer to apply to the management committees of pupil referral units.

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

3.1 None

4. Legislative Context

4.1 The 2010 Regulations amend Part 1 of Schedule 1 to the 2007 Regulations to provide that two new legislative requirements, which apply to the governing bodies of maintained schools and proprietors of Academies, apply also to the management committees of pupil referral units. These Regulations amend the 2007 Regulations to omit the two new legislative requirements inserted by the 2010 Regulations. The first legislative requirement is a requirement to cooperate with local authorities to improve the wellbeing of children (Children's Trusts). This requirement (section 10 of the Children Act 2004 as amended by section 193 of the Apprenticeships, Skills, Children and Learning Act 2009 ("ASCLA 2009") was applied to pupil referral units with modifications by the 2010 Regulations and came into force on 30 April 2010. The second legislative requirement is a requirement to cooperate to form behaviour and attendance partnerships to tackle poor attendance and improve behaviour. This requirement (section 248 ASCLA 2009) was applied to pupil referral units with modifications by the 2010 Regulations and is due to come into force on 1 September 2010. Section 248 ASCLA 2009 was due to come into force on 1 September 2010 but this has now been delayed. There is therefore no commenced provision to apply to pupil referral units.

4.2 These Regulations revoke the 2010 Regulations and come into force on 1 September 2010.

5. Territorial Extent and Application

5.1 This instrument applies to England only.

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 The government has decided not to proceed with placing a statutory duty on the management committees of pupil referral units to form behaviour and attendance partnerships and to remove the requirement on them to cooperate with the local Children's Trust. Pupil referral units if they wish can work voluntarily in collaborative arrangements with schools, the local authority and other partners in their areas to improve behaviour and tackle poor attendance and improve children's wellbeing more generally. The policy aim is to reduce bureaucratic burdens on schools and local authorities and allow them to take responsibility for and develop their own innovative solutions to local problems. The government has therefore delayed the commencement of section 248 of ASCLA 2009 (the requirement to form behaviour and attendance partnerships) which will not now come into force on 1 September 2010 (The Apprenticeships, Skills, Children and Learning Act 2009 (Commencement No. 2 (Amendment) and Transitional Provision) Order 2010, SI 2010/1891(C.99)).

7.2 In relation to the duty on maintained schools to cooperate with local authorities through the Children's Trust arrangements, the government intends to remove this requirement at the next available opportunity. The intention is to repeal recent amendments to section 10 of the Children Act 2004 (that name schools as "relevant partners") introduced in the ASCLA 2009 which came into force on 12 January 2010.

7.3 There are about 450 pupil referral units in England. They provide one form of alternative educational provision for children who cannot attend mainstream or special school for any reason including illness, disability or permanent exclusion or for children who are temporarily without a school place. Pupil referral units are established by local authorities and have their own legal identity as schools. They are part of the local community of schools, although their governance differs from that of maintained schools. The majority offer education to pupils on a temporary basis. Because the governance of pupil referral units differs from that of maintained schools, legal obligations applied to maintained schools are very often applied to pupil referral units by secondary legislation to allow modifications to be made.

- **Consolidation**

7.4 This is an amending Instrument and there is no intention to consolidate at this time.

8. Consultation outcome

8.1 The government wishes where possible to remove burdens on schools including pupil referral units and local authorities. As it is considered that the effect of these Regulations is to reduce the burdens on schools there has been no consultation. We anticipate that the removal of the duties on management committees of pupil referral units to form behaviour and attendance partnerships and to cooperate with Children's Trusts will not be controversial since schools and pupil referral units will still be able to work collaboratively on a voluntary basis and agree on what local arrangements suit them best.

9. Guidance

9.1 None. All statutory guidance previously published setting out schools and pupil referral units' new legal responsibilities in relation to behaviour and attendance partnerships and cooperating with local Children's Trusts will be withdrawn. Local partners will be able to agree on what arrangements suit them best.

10. Impact

10.1 This will not impact on business, charities and voluntary bodies.

10.2 Only local authorities can establish and run pupil referral units under their duty in section 19 of the Education Act 1996 to ensure there is sufficient suitable educational provision for those children of compulsory school age who by reason of illness or exclusion, or other reason, would not otherwise receive an education unless such arrangements were made for them in their area. The main impact will be on pupil referral units and local authorities.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 None.

13. Contact

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