EXPLANATORY MEMORANDUM TO

THE EDUCATION (PUPIL REFERRAL UNITS) (APPLICATION OF ENACTMENTS) (ENGLAND) (AMENDMENT) REGULATIONS 2010

2010 No. 1074

1. This explanatory memorandum has been prepared by the Department for Children, Schools and Families and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These Regulations amend the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007 which apply to pupil referral units in England.

2.2 They provide for management committees of pupil referral units, or short stay schools, as they will be known from 1 September 2010[1] , to be covered by a legal duty on 'relevant partners' to cooperate with local authorities to improve the well being of children in the authority's area and to be represented on Children's Trust Boards. This will be on a similar but not identical basis to maintained schools which became 'relevant partners' on 12 January 2010 through section 10 (4) of the Children Act 2004 as amended by the Apprenticeships, Skills, Children and Learning Act 2009 (ASCLA). As relevant partners, management committees of pupil referral units or short stay schools ("management committees") will be required to co-operate with the local authority in the making of its arrangements to promote co-operation to improve children's well-being under section 10 of the Children Act 2004. Relevant partners will be represented on Children's Trust Boards, they will have to have regard to the Department's statutory guidance on Children's Trust Boards and will have to have regard to the Children and Young People's Plan in exercising their functions. Other relevant partners may also pool their budgets or share other resources, but this power will not be exerciseable by management committees.

2.3 The reason for this is that management committees do not control their budgets or staff in the same way as the other 'relevant partners' listed in the 2004 Act. The relevant Children Act 2004 provisions are therefore being applied to management committees with modifications. Management committees will not be able to contribute resources or money for the purposes of arrangements under section 10.[2] Nor will they be able to contribute to a pooled fund for the purposes of the Children's Trust Board.[3] Local authorities will not be able to do this on behalf of the management committee but can do this in their own right.

2.4 The amendment made by Regulation 4 provides that the provisions under section 248 of ASCLA are applied to management committees of pupil referral units/short stay schools, where they provide education for secondary aged pupils. The

[1] The date that section 249(1) of the Apprenticeships, Skills, Children and Learning Act 2009 will come into force
[2] Section 10 (5A) of the Children Act 2004 as amended by the Apprenticeships, Skills, Children and Learning Act 2009.
[3] Section 12C of the Children Act 2004 as amended by the Apprenticeships, Skills, Children and Learning Act 2009.

section 248 provisions place a duty on the governing bodies of maintained secondary schools and proprietors of Academies, city technology colleges or city colleges for the technology of the arts to make arrangements to cooperate and work with other secondary schools to improve pupil behaviour and tackle persistent absence. Section 248 also provides for these partnerships to report annually to the Children's Trust Board, and have regard to statutory guidance.

2.5 Section 249 of ASCLA changes the name of pupil referral units to short stay schools. This will come into force on 1 September 2010. These regulations are amending regulations and they therefore continue to refer to pupil referral units because this is what schools falling within 19(2B) of the Education Act 1996 are called in the substantive regulations. In this document references are made to pupil referral units as "pupil referral units or short stay schools" in recognition that the name is shortly to change.

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

3.1 None.

4. Legislative Context

4.1 Section 193 of the ASCLA amends section 10 (4) of the Children Act 2004 by adding additional 'relevant partners' to those already listed. These include maintained schools, Academies, city technology colleges, city colleges for the technology of the arts and non maintained special schools. Relevant partners are under a 'duty to co-operate' with the local authority in its duty to make arrangements to promote co-operation to improve the well-being of children and young people in the local area. The relevant partners are required to be represented on the Children's Trust Board and to 'have regard' to any relevant statutory guidance. They also have a power to share resources and contribute to a pooled fund in the interests of improving children's well-being and may contribute to the funding of the Children's Trust Board. A statement was made in the House of Commons by the Government Minister on March 26th 2009 during the passage of the ASCLA that these provisions, subject to differences in funding arrangements, would be applied to pupil referral units or short stay schools through regulations.

4.2 Section 248 of ACSLA places a duty on governing bodies of maintained secondary schools to cooperate with other schools in forming a partnership to improve behaviour and tackle persistent absence amongst pupils. A commitment was made in the House by the Government Minister during the passage of the ASCLA through parliament that these provisions would be applied to pupil referral units or short stay schools through regulations. This was primarily because the legal identity of pupil referral units or short stay schools is different from that of other schools maintained by a local authority. They are managed differently, through management committees with local authority involvement, rather than by governing bodies. These practical differences mean that, usually, new legislative obligations on governing bodies have been applied to management committees through secondary legislation, which allows modifications to be made in relation to how provisions will work. Applying the new duty on management committees to form partnerships through regulations maintains this legislative consistency.

4.3 The principle regulations applying provisions relating to schools maintained by local authorities to short stay schools are the Education (Pupil Referral Units)

(Application of Enactments) (England) Regulations 2007. These regulations amend those.

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

- What is being done and why

7.1 The Children Act 2004 placed a duty on local authorities to make arrangements to promote co-operation to improve children's well-being and certain named 'relevant partners' were placed under a duty to co-operate with the local authority in the making of those arrangements – this is commonly known as the 'duty to co-operate', Arrangements made have been referred to as Children's Trusts. The original relevant partners were primarily large strategic bodies including the Primary Care Trusts, police and district councils. The ASCLA extended that list to include schools, Academies, city technology colleges, city colleges for the technology of the arts, non maintained special schools and colleges. It also established Children's Trust Boards and provided for the 'relevant partners' to be represented on the Children's Trust Board. The Children's Trust Board has been given responsibility for the Children and Young People's Plan: a joint strategy that will set out how the Children's Trust Board partners will co-operate to improve children's well-being. Management committees are also to be added through these regulations. The other new 'relevant partners' came under the 'duty to co-operate' on 12 January.

7.2 The Department published the White Paper called *Back on Track* in 2008, which set out the Government's strategy to implement a step-change improvement in the standard of alternative provision. The key themes of *Back on Track* are early intervention, improved accountability and a concentration on the individual needs of the child or young person in alternative provision. Pupil referral units or short stay schools provide a form of alternative educational provision for children who cannot attend mainstream or special school for any reason including illness, disability or permanent exclusion. These schools focus on improving the behaviour of pupils so that they can be reintegrated back into mainstream schools and the time spent in these units are variable depending on the pupil's progress. They also provide education to those children who are temporarily without a mainstream school place.

7.3 There are about 450 pupil referral units or short stay schools in England. They are established by local authorities and have their own legal identity as schools and 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. Most pupils are of secondary school age and it is therefore expected that most pupil referral units or short stay schools will be covered by the new behaviour and attendance partnership requirements. It is important that pupil referral units or short stay schools work with other local schools in their area as they can provide expertise on behaviour management. Partnerships will also share resources including training, facilities and staff expertise as well as funding. Staff from pupil referral units or short stay schools

will be able to work with mainstream schools to share knowledge and skills and agree on how to place pupils who may need a managed move to another school or to a pupil referral unit or short stay school.

7.4 Pupil referral units or short stay schools should be engaged with and contribute to the work of the local Children's Trust Board. This will help to ensure that the children for whom these schools provide education for are not excluded or further marginalised from the mainstream provision.

- **Consolidation**

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

8. Consultation outcome

8.1 Consultation on the legislative proposals during the progress of ASCLA through Parliament to include schools as 'relevant partners' in the Children's Trust co-operation arrangements took place during 2009, and respondents strongly supported the inclusion of pupil referral units or short stay schools to the list.

8.2 The White Paper called *Back on Track* published in May 2008 signalled the Government's intention to include pupil referral units or short stay schools in behaviour and attendance partnerships and to change the name from pupil referral unit to short stay school. The proposals were also further debated in the House during the progress of ASCLA through parliament when a statement was made by the Government Minister that the duty to cooperate to form partnerships would apply to management committees through regulations. There was no opposition to these provisions. We consider that the provisions in this Instrument are therefore uncontroversial as they replicate what is already in primary legislation in relation to maintained secondary schools, Academies, city technology colleges and city colleges for the technology of the arts to cooperate and form partnerships to improve behaviour and tackle persistent absence amongst pupils, which will come into force on 1 September 2010.

9. Guidance

9.1 The DCSF has produced new statutory guidance on Children's Trust Boards to which the local authority and all of its 'relevant partners' are legally required to have regard. The guidance has been subject to a formal consultation process between 12 November 2009 and 29 January 2010. It sets out what the co-operation arrangements mean for the different partners, statutory and non statutory, and provides further advice on the Children's Trust Board and the Children and Young People's Plan.

9.2 The DCSF has revised existing guidance on *School Partnerships for Improving Behaviour and Tackling Persistent Absence* in the light of the new provisions in ASCLA and also taking account of recommendations in an independent review of pupil behaviour issues by Sir Alan Steer. The DCSF has consulted key stakeholders including teacher professional associations, the PRU association, local government and governing body representatives. With effect from 1 September 2010, there will be a legal duty on the relevant partners in these partnership arrangements to have regard to this guidance. The guidance explains the legal requirements on participation in such a partnership, the benefits, funding arrangements and requirements on reporting to the Children's Trust Board.

10. Impact

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

10.2 Only local authorities can establish and pupil referral units or short stay schools 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 would not otherwise receive an education unless such arrangements were made for them in their area. The main impact will be on short stay schools and local authorities.

10.3 An Impact Assessment was produced in relation to Children's Trust Boards for the statutory guidance on the Children's Trust Boards and The Children's Trust Board (Children and Young People's Plan) Regulations 2010 and the relevant extract is attached for information.

10.4 An Impact Assessment was produced on behaviour and attendance partnerships for the ASCLA 2009 and the relevant extract is attached for information. We do not envisage that the application of the duty on pupil referral units/short stay schools would be different from mainstream schools.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The policy on Children's Trusts Boards will be monitored through the routine assessment and inspection arrangements which focus on outcomes for children.

12.2 The policy on behaviour and attendance partnerships, and its effectiveness in addressing behaviour and persistent absence in schools, will be reviewed by the DCSFto establish the actual costs and benefits in 2010/11, after the work of the pilot scheme is completed.

13. Contact

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