

## **Explanatory Memorandum to the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) (Amendment) Regulations 2024**

This Explanatory Memorandum has been prepared by the Education Directorate of the Welsh Government and is laid before the Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) (Amendment) Regulations 2024.

Jeremy Miles MS  
Minister for Education and Welsh Language

08 March 2024

## **1. Description**

- 1.1 The Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) (Amendment) Regulations 2024 (“the 2024 Regulations”) amend the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003 (“the 2003 PRU Regulations”) to:
- a) prescribe that the management committee of a pupil referral unit (“PRU”), instead of the local authority that maintains it, is to be the responsible body to consider whether an excluded pupil should be reinstated. This is a textual amendment only and does not alter the effect of the current legal framework, and
  - b) require the responsible body to consider whether pupils excluded permanently should be reinstated, in addition to those excluded for a fixed period in certain cases. This means that the two-stage process that applies to exclusions from maintained schools must be complied with following a permanent exclusion from a PRU. That is:
    - i. the PRU management committee meets to consider whether a permanently excluded pupil should be reinstated and allows oral representations to be made at that meeting, and
    - ii. if they decide not to reinstate, the relevant person (as defined in the 2003 PRU Regulations) has a right to appeal the decision not to reinstate to an independent appeal panel arranged by the local authority.

## **2. Matters of special interest to the Legislation, Justice and Constitution Committee**

- 2.1 None.

## **3. Legislative background**

- 3.1 The 2024 Regulations are made under powers in sections 52(3), (4)(b), (c) and (d) and (5)(b), 210(7) and 214(1) and (2) of the Education Act 2002.
- 3.2 The functions of the National Assembly for Wales under these sections were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006.
- 3.3 The 2024 Regulations are being made under the negative resolution procedure.

## **4. Purpose and intended effect of the legislation**

- 4.1 The purpose of the 2024 Regulations is to amend the 2003 PRU Regulations to require the two-stage process which applies to maintained schools to be complied with following a permanent exclusion from a PRU (see paragraph 1.1).
- 4.2 The 2003 PRU Regulations require the local authority which maintains a PRU, (as the responsible body under section 52(5) of the Education Act 2002), to consider whether a pupil excluded for a fixed period in certain cases should be reinstated. However, by virtue of regulation 22 of the Education (Pupil Referral Units)

(Management Committees etc.) (Wales) Regulations 2014 (“the 2014 Regulations”) these functions are delegated to the PRU management committee. In the interests of clarity, the 2024 Regulations prescribe the management committee of a PRU as the responsible body rather than relying on the delegation of the local authority’s functions under the 2014 Regulations. This is a textual amendment only and does not alter the effect the current legal framework.

- 4.3 Under the 2003 PRU Regulations, no responsible body is prescribed in relation to permanent exclusions from a PRU to consider whether a pupil should be reinstated. They provide that where the teacher in charge excludes any pupil permanently (or decides that an exclusion for a fixed period should be made permanent) the relevant person has a right to appeal the decision to an independent appeal panel arranged by the local authority.
- 4.4 The 2024 Regulations will amend the 2003 PRU Regulations so that the PRU management committee is required to meet when a pupil is excluded permanently (or where a fixed period exclusion is made permanent) to consider whether the pupil should be reinstated and allows oral representations to be made at that meeting. If the management committee decide not to reinstate the pupil, the relevant person has a right to appeal that decision to an independent appeal panel arranged by the local authority.
- 4.5 The 2024 Regulations also make several amendments to the 2003 PRU Regulations which are consequential to the changes referred to in 4.2 to 4.4 above. Amendments have also been made to reflect changes to the law since the 2003 PRU Regulations were made, by updating the references to “National Assembly for Wales” to “Welsh Ministers” and referring to the information the management committee must provide to a local authority where the excluded pupil has or may have additional learning needs under the Additional Learning Needs and Education Tribunal (Wales) Act 2018. Amendments have also been made to reflect gender-neutral drafting and to correct a grammatical error in the Welsh language text of the 2003 Regulations.
- 4.6 The amendments being made to the 2003 PRU Regulations reflect PRU current practice and do not alter policy, or its impact, in any significant way.

## **5. Consultation**

- 5.1 During the school year 2021/22, 30 pupils who attended education other than at school (EOTAS) settings<sup>1</sup> were excluded.
- 5.2 No consultation has been undertaken because local authorities and Teachers in Charge of PRUs have informed us current practice is in line with the proposed amendments.

## **6. Regulatory Impact Assessment (RIA)**

As these Regulations make technical amendments to change the wording of the law and factual amendments to update subordinate legislation which do not alter the policy (or its impact) in any significant way or how it is applied in a given situation, an

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<sup>1</sup> This includes EOTAS pupils registered at both PRUs and independent schools. Thus, the number of pupils excluded from PRUs could be lower than 30.

RIA is not required. This is in line with the policy set out in the Welsh Ministers' code of practice for carrying out regulatory impact assessments for subordinate legislation.