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Consultation – summary of responses

Consultation analysis on the draft
Education (Pupil Referral Units)
(Management Committees etc.) (Wales)
Regulations 2014 and accompanying
guidance

Date of issue: October 2014

Consultation analysis on the draft Education (Pupil Referral Units) (Management Committees etc.) (Wales) Regulations 2014 and accompanying guidance

Audience	Local authorities, management committees and teachers in charge of pupil referral units, and other interested parties.
Overview	This document outlines the responses received to a consultation on new regulations and guidance for pupil referral unit management committees.
Action required	None – for information only.
Further information	Enquiries about this document should be directed to: Pupil Wellbeing Branch Support for Learners Division Department for Education and Skills Welsh Government Cathays Park Cardiff CF10 3NQ e-mail: PRURegulationsConsultation@wales.gsi.gov.uk
Additional copies	This document can be accessed from the Welsh Government's website at www.wales.gov.uk/consultations
Related documents	Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007 www.legislation.gov.uk/wsi/2007/1069/contents/made <i>Inclusion and Pupil Support</i> National Assembly for Wales Circular No: 47/2006 (2006) www.wales.gov.uk/topics/educationandskills/schoolshome/pupilsupport/inclusionpupilsupportguidance/?lang=en

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1. Introduction

The Welsh Government undertook a consultation exercise from 31 March 2014 to 23 June 2014 on the draft Education (Pupil Referral Units) (Management Committees etc.) (Wales) Regulations 2014 and accompanying guidance.

The purpose of the consultation was to seek respondents' views on the Welsh Government's draft Regulations on the constitution and roles of management committees of pupil referral units (PRUs), the procedures for the operation of management committees and on the associated draft statutory guidance.

Respondents were asked five questions relating to specific provisions in the Regulations and were given the opportunity to address any related issues which we had not specifically addressed. Respondents were also asked to indicate if they wished for their comments to remain confidential. A separate child and young people's version of the consultation was also made available.

A total of 16 responses were received for the adult version of the consultation and one response was received for the child and young person's version. The respondents are listed in the table below.

2. List of respondents

No.	Organisation
1	SNAP Cymru
2	Powys County Council
3	Flintshire Portfolio PRU
4	ACT Training
5	Estyn
6	A local authority (which wished to remain anonymous)
7	National Union of Teachers
8	Bryn y Deryn PRU
9	Dr Liz Camino
10	Torfaen PRU
11	Carmarthenshire County Council
12	Children's Commissioner for Wales
13	NASUWT Cymru
14	Association of School and College Leaders
15	Vale of Glamorgan School Improvement Service
16	UCAC
17	Powys County Council (children and young people version)

Only one respondent chose to keep their response confidential. Not all respondents answered the questions directly; some chose not to answer a particular question and others sent a summary of their views instead of the web-based form. Some respondents made suggestions for change outside

the scope of this exercise, for example, around the training of management committee members and the status of PRUs themselves.

The Welsh Government is grateful to those who took the time to respond to the consultation.

3. Key issues

There was broad agreement to all of the proposals in the consultation. However, one issue emerged which officials consider justifies amendment to the draft guidance. No amendments were considered necessary to the draft Regulations.

Pupil participation – While the draft guidance “recommends that the management committee encourage pupil participation in the committee”, there were calls from the Children’s Commissioner to strengthen this part of the guidance. The teachers’ union NASUWT, however, advised caution in relation to the draft guidance, citing, it said “the need for confidentiality and the vulnerability of the pupils placed in PRUs.” NASUWT called for the recommendation to be removed and an annex developed that identifies clear and secure ways of ensuring that the views of learners are considered as part of the decision making process of management committees.

Having considered these responses, the Welsh Government will retain the draft guidance as worded, but strengthen it to provide additional information and support for management committees on how they may engage with pupils in the decision making process.

4. Summary of consultation responses (adult version)

This section summarises and analyses the responses to each of the consultation document’s questions.

4.1 Question 1 – Do you foresee any difficulties in the proposed membership of management committees (as set out in section 2 of the draft statutory guidance)?

Yes	4	No	7	Not sure	2
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The majority of respondents did not foresee any difficulties in the proposed membership of management committees. Two were unsure. Three respondents did not answer the question directly.

Flintshire Portfolio PRU commented, “*No problems foreseen...Young People's views will be sought by the parental rep attending the student council meetings. It is hoped that young people will be encouraged to take a more active role in future committee meetings.*”

ACT Training agreed that the various categories of membership seem sensible and appropriate. They recognised that various arrangements should be made so that the views of pupils are communicated regularly to the management committee.

The Children's Commissioner commented, "*that there is very little consideration within the draft guidance to effectively listen and involve children and young people in the processes of PRU management committees.*" The Commissioner is asking that this area is strengthened.

[The Welsh Government's comment below also takes into account the views on pupil engagement made by NASUWT in response to Question 6, and the request from the young person's response that management committees should listen to the views of young people]

Welsh Government: Paragraph 2.7.1 of the draft guidance recommends that MCs encourage pupil participation, so that learners' views are represented in the decision making process. We will nevertheless strengthen the guidance to support management committees and clarify the process for consulting with pupils. We will also keep this issue under review.

Estyn commented, "*The priority....to appoint school based community members to management committees is appropriate. However, management committees would be strengthened with the appointment of members of the Child and Adolescent Mental Health Services (CAMHS) and members of children's social services. Although this is implied in section 2.4.1 on guidance on the appointment of local authority members, these services could be highlighted as suitable due to their relevant professional knowledge and experience.*"

Welsh Government: Para 2.5.1 of the draft guidance suggests LAs appoint from services where there are a high number of young people who use the PRU e.g. LAC.

We will amend the guidance to include reference to CAMHS as another example of a community member.

SNAP Cymru had reservations about the proposed membership of management committees, suggesting that there is unlikely to be a proper representation of the user groups able and willing to enter into a very authority based structure. Instead, SNAP Cymru felt that gaining a true authentic voice of these families would be better met through an Independent Family Participation Officer who would gather views and support participation.

Welsh Government: Independent Family Participation Officer is not a nationally recognised role and so it would be impractical to use it as an example of community member.

NUT Cymru felt that the way community membership was being suggested in the legislation might create the possibility of certain types of committee members being over represented through the community member position. Given one of the roles of the committee is the appraisal of staff, and the likelihood of staff appraisals playing a role in future pay discussions due to a performance related pay structure, NUT Cymru felt the notion of a committee overrepresented by individuals without qualified teacher status to be “*extremely worrying*”.

NASUWT Cymru was concerned that, as constructed, the draft Regulations and related draft statutory guidance could result in management committees being set up that exclude staff members other than teachers-in-charge, thus circumventing any democratic process for the election of a staff member.

The NASUWT maintains that the draft Regulations and related draft statutory guidance should be amended to ensure that:

- the teacher-in-charge is an ex officio member of the management committee;
- the teacher-in-charge can elect not to take up the position on the management committee;
- there should be at least one place on a management committee for a representative of the teaching staff (excluding the teacher-in-charge) for each PRU, where the PRU operates separately or jointly;
- there should be at least one place on a management committee for a representative of the non-teaching or support staff for PRU, where the PRU operates separately or jointly.

Welsh Government: Paragraph 2.5.2 suggests that local authorities should first seek to appoint representatives from local schools as community members, thus potentially increasing the number of teaching staff on the MC.

Given the balance in favour of community members proposed by the Welsh Government, adopting the structure suggested by NASUWT may prove difficult for PRUs, many of which are small and have few teachers and staff. Moreover, where a management committee covers a number of PRUs (a portfolio PRU) it is quite possible that by adopting the staffing membership proposed by NASUWT, the total membership of the management committee would far exceed the legal maximum of 20.

NASUWT also had reservations about the category of ‘sponsor members’ which it felt does not sit well with the principles and ethos of state education. The Union was concerned that, as constructed, the legislation provides an opportunity for those with wealth, whether individuals or companies, to secure places on management committees to promote either themselves or their products.

Welsh Government: The draft regulations seek to provide management committees with a similar structure to that of governing bodies. We are not aware of any evidence which support NASUWT’s assertion that the legislation, as drafted, would provide an opportunity for those with wealth to secure places on management committees to promote themselves or their products.

We will, however, keep these arrangements under review.

4.2 Question 2 – Do you foresee any difficulties in certain functions being delegated to management committees by local authorities?

Yes	5	No	8	Not sure	0
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A small majority did not foresee any difficulties in certain functions being delegated to management committees by local authorities. Three respondents did not answer the question directly.

NASUWT Cymru felt that the draft regulations and related guidance provided sufficient clarity on those functions that can and cannot be delegated by a local authority to a management committee.

Estyn acknowledged that members of management committees need to be knowledgeable to carry out their roles and responsibilities effectively and that the arrangements for delegated responsibility set out in the guidance will make arrangements for the line management and governance of PRUs more robust. However, Estyn was of the opinion that in order to deliver the desired outcomes, a suitable level of training and advice should be made available regarding the effective discharge of their delegated responsibilities.

Welsh Government: Training and advice for management committee members falls outside the scope of these regulations and guidance. We will however separately explore whether elements of school governors’ training might be accessed by members of management committees.

Estyn suggested that clear lines of accountability should be established around the provision and implementation of policies for promoting pupil wellbeing.

Welsh Government: In setting out the management committee’s roles and responsibilities, the guidance states that “As part of their responsibility for the good management of PRUs, management committees have a duty to promote pupils’ wellbeing”. It would be for individual management committees to determine how this function is discharged.

Powys County Council noted that management committees will have joint statutory responsibility for some functions, such as deciding the curriculum to offer, but will not have a delegated budget or delegated control of staffing. This may present a problem.

Welsh Government: It is not entirely clear from the comment why this might present a problem. Para 5.1.4 of the draft guidance states that, “where a power or duty relating to the running of a PRU has not been formally delegated...to the management committee, the Welsh Government strongly recommends that the committee is invited to advise its local authority on such matters.” It should also be noted that local authority staff will be represented on the management committee.

4.3 Question 3 – Do you agree that certain functions should not be delegated by local authorities to management committees, as set out in paragraph 4.1.2 of the draft statutory guidance?

Yes	12	No	0	Not sure	1
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The vast majority of respondents agreed that certain functions should not be delegated by local authorities to management committees, as set out in the draft statutory guidance. One was unsure. Three respondents did not answer the question directly.

Flintshire Portfolio PRU commented, “*The Management Committee should only be in a monitoring and supervisory capacity in ensuring that LA functions/policies are delivered to a high standard. Appraisal (Performance Management) of teaching staff should be the responsibility of the LA.*”

Welsh Government: By making management committees responsible for the appraisal of teaching staff, the Welsh Government believes that management committees will have a better understanding of the quality of teaching in their PRUs and will be in a stronger position to drive up standards of teaching where required.

Powys County Council acknowledged that LAs cannot delegate its powers to intervene in a PRU and the direction in relation to Health and Safety. However, the authority felt that if the intention is to make the management committee similar to a governing body, three important areas undermine this intention i.e. they will not have control of the premises; they will not have control of the appointment, suspension and dismissal of teaching and non-teaching staff; and they will not have a delegated budget. Greater clarity needs to be provided in the guidance as to why these aspects have been excluded from delegation.

The NASUWT considered that the draft regulations and related guidance provide sufficient clarity on those functions that cannot be delegated by a local authority to a management committee. However the NASUWT maintains that the procedures for the appointment, suspension and dismissal of staff working in PRUs should reflect the provisions of the Staffing of Maintained Schools (Wales) Regulations 2006, rather than be dealt with under corporate procedures that apply to centrally employed local authority staff.

While it agreed with the guidance, SNAP Cymru suggested that in appointing staff, the local authority should involve the management committee or its representative(s).

Estyn agreed the guidance sets out appropriate levels of responsibility for local authorities, management committees and the teacher in charge, regarding the provision and implementation of a health and safety policy.

Welsh Government: Paragraph 4.1.4 of the draft guidance states that, “In cases where a power or duty relating to the running of the PRU has not been formally delegated to or conferred on the management committee, the Welsh Government strongly recommends that the committee is invited to advise its local authority on decisions on such matters.”

A PRU is not a mainstream or special school. The legislation and supporting guidance is intended to put management committees on a similar, but not identical, footing to governing bodies. Not every aspect of how PRUs function is covered by the draft regulations, and the Welsh Government does not feel it would be appropriate to use these regulations to introduce wholesale changes. We will however keep this situation under review.

4.4 Question 4 – Do you agree that certain functions should not be delegated by management committees to a sub-committee, to a member, or to a teacher in charge (as set out in paragraph 7.1.2 of the draft statutory guidance)?

Yes	14	No	0	Not sure	0
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The vast majority of respondents agreed with the question. However, two respondents did not answer the question directly.

Powys County Council fully supported the proposed list of functions as included in paragraph 7.1.2.

The NASUWT agreed that the functions listed cannot be delegated to a sub-committee, a member, or to the teacher-in-charge. However, the Union questioned the inclusion of the delegation of responsibility for pupil discipline to an individual, at paragraph 7.1.3 of the draft guidance document, as this, it felt, could imply that staff working at a PRU could not apply a disciplinary sanction without the approval of the management committee. The Union felt that such a situation could undermine the ability of staff to maintain a safe, orderly and secure learning environment on a day-to-day basis.

Welsh Government: Paragraph 7.1.3 of the draft guidance states that, “the management committee cannot delegate to an individual responsibility for pupil discipline and exclusions.”. The paragraph seeks to ensure that decisions on these issues are made by at least two committee members.

In light of the comment above, we will amend the guidance to read ‘the management committee cannot delegate to an individual member of the management committee overall responsibility for pupil discipline and exclusions. Staff working in a PRU will still have responsibility for applying disciplinary sanctions, in line with the PRU’s behaviour management policy.’

The Children’s Commissioner agreed that the functions set out in 7.1.2 should not be delegated to the responsibility of a sub-committee, member or the teacher-in-charge. He did however have concerns about the mechanics of representation rather than the function of the PRU Management. He said, “7.1.1 relates to delegating some responsibilities to a sub-committee, member or teacher-in-charge but does not clearly state which functions can be delegated.I would like to see this addressed and for it to provide a greater focus on what functions can and cannot be delegated to sub-committees, members or teachers-in-charge in order to promote and protect children and young people’s wellbeing within PRUs.”

Welsh Government: Paragraph 4.1.1 of the draft guidance sets out the fundamental role and responsibility of management committees. Section 7 of the guidance seeks to provide management committees with flexibility to determine what functions it may delegate to sub-committees.

4.5 Question 5 – Do you find that the draft statutory guidance on the Education (Pupil Referral Unit) (Management Committees etc.) (Wales) Regulations 2014 helps you to interpret the legislation?

Yes	12	No	0	Not sure	2
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The majority of respondents agreed that the draft guidance helped interpret the legislation. Two respondents were not sure and two respondents did not answer the question directly.

SNAP Cymru commented that it was, “A long and carefully written document which will be useful in checking areas, very clear on functions, what can and cannot happen.”

ACT Training’s view was that “The document and its appendices provide a valuable insight into the government and management of PRUs. It is invaluable in considering and interpreting the legislation envisaged.”

The Children’s Commissioner remarked, “The draft guidance provides the insight into the structural mechanics of the Draft Regulations. I would, however, like to see further guidance on how management committees can implement their functions in relation to the remit of promoting and protecting children and young people’s wellbeing. In order to support this, I would like to see the guidance aligned with the Governors’ Wales resource and handbook.”

Welsh Government: The statutory guidance is intended to explain the regulations, not how management committees should discharge their functions. As has already been mentioned in response to comments against question 2, the Welsh Government will separately explore whether school governors' training might be used by members of management committees.

Estyn considered that the guidance provides useful information regarding the roles and responsibilities of local authorities and management committees. However, it believes that more information is required regarding delegated responsibilities for pupil wellbeing.

Estyn said that, *“Under the proposed guidance some aspects of wellbeing, such as the security of the premises and safe recruitment practice remain the responsibility of the local authority.*

Responsibility for other aspects of wellbeing are delegated to the management committee. Wellbeing covers a large and very important area of the work of a PRU and the management committee will need training and support to ensure that suitable policies and procedures are in place.

It is very important that there is clarity regarding who has the responsibility for implementing, monitoring and reporting on serious incidents, the use of sanctions, the use of physical intervention and the use of time out / seclusion in PRUs. This is not clear in Annex D.”

Welsh Government: The draft guidance states that as part of their responsibility for the good management of PRUs, management committees have a duty to promote pupils' wellbeing and community cohesion. We will however consider how the guidance can be expanded to include references to other guidance and publications on safeguarding and, where appropriate, information and advice from the Governors Wales website.

4.6 Question 6: Respondents were asked if they had any related issues which we had not specifically addressed. Some of these are listed below.

Bryn y Deryn PRU commented, *“The procedures look clear. The Management Committee will function like school governors who normally have a clerk allocated who sets the dates etc. and the training for the governors by the LA. These facilities need to be allocated to PRU Management Committees as well or they will be working under a disadvantage.”*

Welsh Government: Clerks must be appointed to the management committee and the functions of the clerk are set out in paragraph 5.2.4 of the draft guidance.

Powys County Council was fully supportive of the proposal to ensure that each management committee has an instrument of government and a number of statutory responsibilities. The authority felt the decision to make regulations to control this area was timely and would result in greater consistency.

The NASUWT advised great caution in relation to the recommendation in the draft guidance about including pupil participation in the management committee, given the need for confidentiality and the vulnerability of the pupils placed in PRUs. The NASUWT maintained that paragraph 2.7.1 should be removed from section 2 of the draft statutory guidance and an annex developed in consultation with the teacher unions that identifies very clear, precise and secure ways of ensuring that the views of learners are considered as part of the decision-making processes of management committees.

[The Welsh Government's comment below takes into account the views on pupil engagement made by the Children's Commissioner in response to Question 1, and the request from the young person's response that management committees should listen to the views of young people.]

Welsh Government: We believe that paragraph 2.7.1 of the draft guidance should remain, as it sets an important precedent for pupil engagement and one which exists for mainstream schools. We nevertheless acknowledge NASUWT's point and will strengthen the guidance to support management committees and clarify the process for consulting with pupils. We will keep this issue under review.

SNAP Cymru commented, *"The concept of management committees is useful but as stated in the Edinburgh University research report: 'Evaluation of education provision for children and young people educated outside of the school setting', these resources are diverse and range in size, purpose and occupancy and need to be fit for purpose for the current not the notional client group. Whether management committees will be able to respond to these adequately is a moot point. The ability to rapidly and flexibly respond to individual need and set individual challenges is an important factor in individual success. This must not result in a group focussed on box ticking."*

Welsh Government: It will be a matter for management committees to make decisions on conducting the unit, which would include responding to individual needs and setting individual challenge. We will however keep these arrangements under review.

The Children's Commissioner commented that, *"Underpinning and enshrining the UNCRC is, therefore, an essential requirement that should be explicitly included within the constitution of PRU Management Committees."*

Welsh Government: We will amend the guidance to reflect this comment.

5. Summary of consultation responses (child and young person's version)

This section summarises and analyses the responses to each of the consultation document's questions.

5.1 Question 1 – Do you think that parents/carers should be members of the management committee?

Yes	1	No	0	Not sure	0
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The comment was made that PRU pupils should have a say in whose parents join the management committee, including their own.

5.2 Question 2 – Do you agree that the management committee should be responsible for dealing with bad behaviour?

Yes	1	No	0	Not sure	0
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The respondent agreed, provided Management Committees take account of everyone's views, especially pupils.

5.3 Question 3 – Do you agree that the management committee should deal with any complaints about what is taught at the PRU?

Yes	1	No	0	Not sure	0
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The comment made was that it was important that MCs deal with complaints about what is not taught as well, i.e. widening opportunities for alternative curriculum.

5.4 Question 4 – Do you think there's anything else we need to think about when making these rules?

Yes	1	No	0	Not sure	0
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The comment from CYP was that Management Committees should listen and take action on pupil's views. Pupil views should be gained by someone from Committee visiting them regularly.

Welsh Government: The comments above reflect the need for pupil engagement with management committees. See also the Welsh Government's comment in response to other comments on this issue in respect of Question 1 above.