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STATUTORY INSTRUMENTS

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**2012 No. 1107**

**EDUCATION, ENGLAND**

**The Wiltshire Council (Arrangements for the  
Provision of Suitable Education) Order 2012**

<i>Made</i>	- - - -	<i>18th April 2012</i>
<i>Laid before Parliament</i>		<i>23rd April 2012</i>
<i>Coming into force</i>	- -	<i>18th May 2012</i>

The Wiltshire Council (“the authority”) and the proprietors of the schools mentioned in the Schedule, being qualifying bodies for the purposes of Chapter 1 of Part 1 of the Education Act 2002 (“the Act”)(1), have applied for an Order to be made under section 2(1) of the Act.

In accordance with section 4(2) of the Act—

- (a) the authority and the proprietors of the schools mentioned in the Schedule (“the applicants”) have consulted such persons as appear to them to be appropriate; and
- (b) the proprietors of the schools mentioned in Part 1 of the Schedule have consulted the authority.

It is the opinion of the Secretary of State that the implementation by the applicants of the innovative project provided for by this Order may contribute to the raising of educational standards in England.

In forming that opinion, the Secretary of State—

- (a) has had regard to the need for the curriculum for any school affected by the project to be a balanced and broadly based curriculum which promotes the spiritual, moral, cultural, mental and physical development of children and of society; and
- (b) has considered the likely effect of the project on all the pupils or students who may be affected by it.

It does not appear to the Secretary of State that this Order would be likely to have a detrimental effect on the education of children with special educational needs.

Accordingly the Secretary of State in exercise of the powers conferred by sections 2(1) and 210 of the Act makes the following Order.

## PART 1

### General

#### Citation, commencement and expiry

1.—(1) This Order may be cited as the Wiltshire Council (Arrangements for the Provision of Suitable Education) Order 2012.

(2) This Order—

- (a) comes into force on 18th May 2012; and
- (b) ceases to have effect at the end of the day on 31st July 2014.

#### Interpretation

2. In this Order—

“the applicants” means the authority and the proprietors<sup>(2)</sup> of the schools;

“the authority” means the Wiltshire Council;

“the duty” means the duty conferred on the authority by section 19(1) of the Education Act 1996 (exceptional provision of education in pupil referral units or elsewhere) to make arrangements for the provision of suitable education<sup>(3)</sup> at school or otherwise than at school;

“permanently excluded” means permanently excluded from a school on disciplinary grounds;

“pupil” means a child of compulsory school age who lives in the area of the authority; and

“school” means an Academy or a maintained school mentioned in the Schedule.

## PART 2

### Arrangements for provision of suitable education for permanently excluded pupils

#### Exercise of the duty

3.—(1) The authority is exempt from the duty in relation to permanently excluded pupils.

(2) The proprietor of a school must exercise the duty in place of the authority in relation to any pupil who is permanently excluded from that school.

#### When Order ceases to apply

4.—(1) This article applies where a maintained school (“the school”) converts to an Academy.

(2) On the date on which the authority must cease to maintain the school under section 6(2) of the Academies Act 2010 (effect of Academy order)<sup>(4)</sup> (“the conversion date”), this Order ceases to apply to the exercise of the duty in relation to any pupil permanently excluded from the school.

(3) Immediately before the conversion date—

- (a) the proprietor of the school must delete from the school’s admission register the name of any permanently excluded pupil; and

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(2) See section 579 of the Education Act 1996 (c. 56) (“the 1996 Act”) for the meaning of “proprietor”.

(3) See section 19(3A) of the 1996 Act. Suitable education for permanently excluded pupils is full-time education, unless the child is within section 19(3AA) of the 1996 Act.

(4) 2010 c. 32.

- (b) the authority, before determining the amount of any surplus for the purpose of section 7 of the Academies Act 2010 (transfer of school surpluses), must reduce the school’s budget share in accordance with regulation 23(2) of the School Finance (England) Regulations 2012 (pupils permanently excluded from, or leaving, maintained schools)<sup>(5)</sup> as if that regulation had not been modified by this Order, but in calculating “B” for the purpose of paragraph (b) of that regulation, the relevant date is taken to be the conversion date.

## PART 3

### Consequential modifications

#### Application of provisions modified by this Part

5.—(1) The provisions as modified by articles 6(3), 9 and 13 apply only in relation to the following applicants—

- (a) the authority; and
  - (b) the governing bodies of the maintained schools mentioned in Part 1 of the Schedule.
- (2) All other provisions as modified by this Part apply in relation to all applicants.

#### The Education Act 1996

6.—(1) The Education Act 1996<sup>(6)</sup> is modified as follows.

(2) In section 19(3A) (exceptional provision of education in pupil referral units or elsewhere), after “made by” insert “a proprietor exercising (by virtue of an order made under section 2(1) of the Education Act 2002) the duty conferred on”.

(3) Section 494 (recoupment: excluded pupils) is modified as follows—

- (a) in paragraph (1), for “by another” substitute “in the area of another”;
- (b) in paragraph (2), for “The old authority” substitute “If the pupil is provided with education at a school maintained by the new authority, the proprietor of the school in the old authority (“the proprietor”)”; and
- (c) after paragraph (2) insert—

“(2A) If the pupil is provided with education in the area of the new authority otherwise than at school, the proprietor must pay that amount to the provider of the education.”.

(4) In section 537B(9) (provision of information about children receiving funded education outside school), for the definition of “funded education” substitute—

““funded education” means education provided in the area of a local authority under arrangements made by a proprietor exercising (by virtue of an order made under section 2(1) of the Education Act 2002) the duty conferred on that local authority by section 19(1) (duty to make special arrangements for provision of education for children of compulsory school age who may not otherwise receive suitable education), other than such education provided at a school;”.

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(5) S.I. 2012/335.

(6) 1996 c. 56.

### **The Education and Inspections Act 2006**

7.—(1) Section 104 of the Education and Inspections Act 2006 (notice to parent relating to excluded pupil)(7) is modified as follows.

- (2) Subsection (5) is omitted.
- (3) In subsection (8)—
  - (a) for paragraph (a) of the definition of “the appropriate authority” substitute—
    - “(a) in the case of a permanent exclusion, the governing body of a maintained school or the proprietor of an Academy,”; and
  - (b) in paragraph (a) of the definition of “the relevant enactment”, for “a local authority” substitute “the governing body of a maintained school or the proprietor of an Academy”.

### **The Academies Act 2010**

8. Section 9(4) of the Academies Act 2010 (impact: new and expanded educational institutions)(8) is modified by inserting “or a governing body of a maintained school or a proprietor of an Academy, by virtue of an order made under section 2(1) of the Education Act 2002,” after “authority”.

### **The Education (Amount to Follow Permanently Excluded Pupil) Regulations 1999**

9.—(1) The Education (Amount to Follow Permanently Excluded Pupil) Regulations 1999(9) are modified as follows.

- (2) In regulation 1(2) (interpretation), in paragraph (a)(ii) of the definition of “relevant date”, for both occurrences of “by the” substitute “in the area of the”.
- (3) In regulation 2(1) (determination of amount)—
  - (a) in paragraph (a), for “by another” substitute “in the area of another”; and
  - (b) in the words that follow paragraph (b)(ii), for “the old authority shall pay to the new authority” substitute “if the pupil is provided with education at a school maintained by the new authority, the proprietor of the school in the old authority (“the proprietor”) shall pay to the new authority (or if the pupil is provided with education in the area of the new authority otherwise than at school, the proprietor shall pay to the provider of that education)”.

### **The Education (Pupil Registration)(England) Regulations 2006**

10.—(1) The Education (Pupil Registration)(England) Regulations 2006(10) are modified as follows.

- (2) In regulation 8 (deletions from admission register)—
  - (a) in paragraph (1)—
    - (i) in paragraph (c), omit “or (m)”; and
    - (ii) omit paragraph (m); and
  - (b) in paragraph (2), for “, (j) or (m)” substitute “or (j)”.
- (3) In regulation 12(3) (returns), for “, (i) or (m)” substitute “or (i)”.

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(7) 2006 c. 40.

(8) 2010 c. 32. Section 9 was substituted by section 60 of the Education Act 2011 (c. 21).

(9) S.I. 1999/495. Regulations 2, 3 and 4 were amended by the School Discipline (Pupil Exclusions and Reviews)(England) Regulations 2012 (S.I. 2012/1033).

(10) S.I. 2006/1751.

### **The Education (Information About Children in Alternative Provision)(England) Regulations 2007**

**11.**—(1) The Education (Information About Children in Alternative Provision)(England) Regulations 2007(**11**) are modified as follows.

(2) In regulation 2(1) (interpretation), in the definition of “relevant local authority”, for “that funds” to the end substitute “in whose area the funded education is provided”.

(3) In regulation 3 (application)—

(a) in paragraph (a), the reference to “funded education” is a reference to education provided in the area of a local authority under arrangements made by a proprietor exercising (by virtue of an order made under section 2(1) of the Education Act 2002) the duty conferred on that local authority by section 19(1) (duty to make special arrangements for provision of education for children of compulsory school age who may not otherwise receive suitable education), other than such education provided at a school; and

(b) for paragraph (b), substitute—

“(b) such funded education provided at an independent school (in these Regulations referred to as “funded independent school education”)”.

### **The Education (Provision of Full-Time Education for Excluded Pupils)(England) Regulations 2007**

**12.**—(1) Regulation 4 of the Education (Provision of Full-Time Education for Excluded Pupils) (England) Regulations 2007(**12**) is modified as follows.

(2) In paragraph (1), the reference to the duty of a local authority under section 19(1) and (3A) of the 1996 Act to make arrangements for the provision of suitable full-time education for a pupil of compulsory school age who is permanently excluded from a relevant school on disciplinary grounds is a reference to the duty of the proprietor of the relevant school to make those arrangements.

(3) In paragraph (2), for “local authority from providing” substitute “proprietor from making arrangements for the provision of”.

### **The School Finance (England) Regulations 2012**

**13.**—(1) Regulation 23 of the School Finance (England) Regulations 2012 (pupils permanently excluded from, or leaving, maintained schools)(**13**) is modified by omitting paragraphs (1), (2), (5), (7) to (9) and (12).

(2) Paragraphs (1), (2), (8) and (9) of that regulation continue to apply for the purposes of paragraphs (6) and (13) of that regulation.

18th April 2012

*Jonathan Hill*  
Parliamentary Under Secretary of State  
Department for Education

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(11) [S.I. 2007/1065](#).

(12) [S.I. 2007/1870](#). Regulation 4 was amended by the School Discipline (Pupil Exclusions and Reviews)(England) Regulations 2012 ([S.I. 2012/1033](#)).

(13) [S.I. 2012/335](#). Regulation 23 was amended by the School Discipline (Pupil Exclusions and Reviews)(England) Regulations 2012 ([S.I. 2012/1033](#)).

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## SCHEDULE

article 2

### Schools

## PART 1

### Maintained schools

Abbeyfield School, STANLEY LANE, CHIPPENHAM SN15 3XB  
Avon Valley College, RECREATION ROAD, DURRINGTON, SALISBURY SP4 8HH  
Bradon Forest School, THE PEAK, PURTON, SWINDON SN5 4AT  
Devizes School, THE GREEN, DEVIZES SN10 3AG  
Matravers School, SPRINGFIELD ROAD, WESTBURY BA13 3QH  
Melksham Oak Community School, DEVIZES ROAD, BOWERHILL, MELKSHAM SN12 6QZ  
St John's School & Community College, Marlborough, ORCHARD ROAD, MARLBOROUGH SN8 4AX  
St Joseph's Catholic School, Salisbury, CHURCH ROAD, LAVERSTOCK, SALISBURY SP1 1QY  
The Clarendon College, FROME ROAD, TROWBRIDGE BA14 0DJ  
The Stonehenge School, ANTROBUS ROAD, AMESBURY, SALISBURY SP4 7ND  
The Trafalgar School at Downton, BREMORE ROAD, DOWNTON, SALISBURY SP5 3HN  
Wyvern College, CHURCH ROAD, LAVERSTOCK, SALISBURY SP1 1RE

## PART 2

### Academies

Bishop Wordsworth's School for Boys, 11 THE CLOSE, SALISBURY SP1 2ED  
Hardenhuish School Limited, HARDENHUIISH LANE, CHIPPENHAM SN14 6RJ  
Kingdown School, WOODCOCK ROAD, WARMINSTER BA12 9DR  
Lavington School, THE SPRING, MARKET LAVINGTON, DEVIZES SN10 4EB  
Malmesbury School, CORN GASTONS, MALMESBURY SN16 0DF  
Pewsey Vale School, WILCOT ROAD, PEWSEY SN9 5EW  
Sheldon School, HARDENHUIISH LANE, CHIPPENHAM SN14 6HJ  
South Wilts Grammar School for Girls, STRATFORD ROAD, SALISBURY SP1 3JJ  
St Augustine's Catholic College Limited, WINGFIELD ROAD, TROWBRIDGE BA14 9EN  
St Edmund's Girls' School, Salisbury, CHURCH ROAD, LAVERSTOCK, SALISBURY SP1 1RD  
St Laurence School Academy Trust, ASHLEY ROAD, BRADFORD ON AVON BA15 1DZ  
The Corsham School, THE TYNINGS, CORSHAM SN13 9DF  
The John Bentley School, CALNE SN11 8YH  
The John of Gaunt School, WINGFILED ROAD, TROWBRIDGE, BA14 9EH

Wootton Bassett School, LIME KILN, WOOTTON BASSETT, SWINDON SN4 7HG

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order provides the legal framework for the Wiltshire Council and secondary schools (maintained schools and Academies) in Wiltshire to participate in an exclusions trial. The Order is made on the application of the local authority and the proprietors of the schools mentioned in the Schedule. The Order ceases to have effect on 31 July 2014 when the trial is due to end.

Article 3(1) provides that the local authority is exempt from the duty conferred by section 19(1) of the Education Act 1996 (“the 1996 Act”) to make arrangements for the provision of suitable education for permanently excluded pupils (“the duty”). Article 3(2) provides that the proprietors of the schools must exercise the duty in respect of those pupils in place of the local authority.

The Order applies to the exercise of the duty only in relation to children of compulsory school age who live in Wiltshire and who are permanently excluded from a participating school in Wiltshire (articles 2 to 4).

Article 4 provides that if a maintained school converts to an Academy, on the conversion date the Order ceases to apply to the exercise of the duty in relation to any pupil permanently excluded from the maintained school. The effect of this provision is that, from the conversion date, the local authority must exercise the duty in section 19(1) of the 1996 Act in relation to those pupils.

Part 3 contains modifications to provisions of education legislation consequential on the provision made by article 3. The major modifications are—

- (a) the omission of the requirement for the proprietor of the excluding school to delete from the admission register the name of a permanently excluded pupil (article 10);
- (b) the omission of the requirement for the local authority to reduce a school’s budget share by an amount calculated in accordance with regulations following the permanent exclusion of a pupil (article 13); and
- (c) if a permanently excluded pupil is provided with education in the area of another local authority (“the new authority”), the proprietor of the excluding school must pay an amount calculated in accordance with regulations—
  - (i) to the new authority; or,
  - (ii) if the education is provided in the area of the new authority but otherwise than at school, to the provider of the education (articles 6 and 9).

There are further consequential modifications applying the duty to the proprietor in place of the local authority. With the exception of the financial provisions, all provisions modified by the Order apply to proprietors of both maintained schools and Academies (article 5). Deeds of Variation making similar modifications to financial provisions in the Academies’ Funding Agreements have been agreed and are to have effect from the coming into force of this Order.

An impact assessment of the effect of the provisions commenced by this Order has not been produced as no impact on the private, voluntary or business sectors is foreseen.

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