

**EXPLANATORY MEMORANDUM TO
THE EDUCATION (INFORMATION ABOUT CHILDREN IN ALTERNATIVE
PROVISION) (ENGLAND) REGULATIONS 2007**

2007 No. 1065

1. This explanatory memorandum has been prepared by the Department for Education and Skills and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations allow for the supply of information about children who are receiving education outside a maintained school, funded by the local authority. The Regulations oblige the providers of such alternative educational provision (providers) to supply the Secretary of State or local authority prescribed items of information about individual children, when required to do so. The Regulations further stipulate the persons who can exchange such information.

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

3.1 None

4. Legislative Background

4.1 Section 537A of the Education Act 1996 allows for individual pupil information as prescribed to be collected in respect of all pupils in schools and for this information to be provided to the Secretary of State and other prescribed persons. Section 537A also gives the Secretary of State the power to make regulations providing for information collected in this way to be exchanged with other prescribed persons.

Section 537B was inserted into the 1996 Education Act by section 164 of the Education and Inspections Act 2006. These Regulations are made under section 537B. It contains similar provisions to those in section 537A of the Education Act 1996 but relating to children receiving education outside a school and which is funded by the local authority. Both sections stipulate who can exchange information and what information must be supplied to the Secretary of State but each deals with differing types of provision.

This instrument is the first use of the powers of section 537A in requiring such information from independent schools and of section 537B in regard to other providers. No specific undertakings were required or made during the progress of the Education and Inspections Act through Parliament.

5. Territorial Extent and Application

5.1 These Regulations apply 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 From April 2006 funding for local authorities to support the delivery of the education services was consolidated within the ring-fenced Dedicated Schools Grant (DSG). DSG is calculated on the basis of a guaranteed level of funding for every child while reflecting key local variables such as deprivation, ethnicity and other area costs. The Secretary of State has a responsibility to ensure that available funding is allocated fairly, transparently and accurately. It follows that it is imperative that the data used to determine the allocation of funding is suitably comprehensive and accurate to fulfil that objective.
- 7.2 A public consultation took place from 5 October to 28 December 2006. The consultation sought views on the collection of individual child level information from local authorities and from bodies who represent providers.. The consultation also sought views on who should be permitted to access the data, on appropriate measures to safeguard the information about children and on the likely level of burden on those providing information.
- 7.3 No comments were received to the consultation. However in a number of workshops with representatives of local authorities in the last year local authorities have supported this collection and exchange of data. They did comment on the anticipated additional costs that local authorities and providers of education may incur in implementing these Regulations e.g. for the collection and transfer of data to DfES IT systems both in the set up phase and ongoing costs, such as training staff. There is currently no evidence to suggest that costs will be higher than the Department has estimated but a pilot data collection beginning in May 2007 will refine our costings.
- 7.4 Individual level data on children and their outcomes would allow improved monitoring of the effectiveness of delivery of education services at national and local level, feeding through into future policy development and targeting of resources. Such information would also support local authorities in meeting their statutory duties to improve outcomes, reduce inequalities and to plan appropriate intervention strategies early.
- 7.5 Guidance on the new statutory power and the implications for local authorities and providers will be issued to those affected prior to the requests being made for the relevant data.
- 7.6 These child data may be shared with other Government Departments and Agencies (including the Office for National Statistics) for statistical or research purposes only. The DfES may also disclose individual child information to independent researchers into the educational achievements of pupils who have a legitimate need for it for their research, but each case will be determined on its merits and subject to the approval of the Department's Chief Statistician. Present

practice is that researchers will only be given access to anonymised child level data and must complete a confidentiality declaration.

- 7.7 Child information may be matched with other data sources that the Department holds in order to model and monitor pupils' educational progression facilitating matching with post-16, higher education and adult learner records. For this purpose the Department needs to keep data for several years to pull together information on a life cycle of learning adding value back into the system.
- 7.8 We carried out an initial review of the retention and security of data in 2006. Our current retention policy is that a young person's information should be kept on the live system up to their 20th birthday. The Head of Profession for Statisticians at DfES is keen that we continue this review process and has set up a Data Release & Storage Advisory Panel including Data Protection and legal experts and an independent ONS representative. One of the roles of this group is to agree the storage, retention and security policy within the Data Services Group and to advise on the processes required to manage this area of work.

8. Impact

- 8.1 An initial assessment of the costs and benefits of the exercise suggest a minimal impact on the sector as providers already collect these data. A partial regulatory impact assessment has been prepared based on current information.
- 8.2 In the first year of operation of these Regulations, the information prescribed in them will be requested from a sample of 31 local authorities. This pilot exercise will inform the policy and the full regulatory impact assessment which will be prepared in the Autumn of 2007.

9. Contact

Maleck Boodoo in the School Standards Group in DfES (tel 020 7925 5475 or email maleck.boodoo@dfes.gsi.gov.uk) can answer any queries regarding the instrument.