

**EXPLANATORY MEMORANDUM TO
THE EDUCATION (EXCLUDED DAYS OF DETENTION) (ENGLAND)
REGULATIONS 2007**

2007 No. 1304

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 Section 92(8)(c) of the Education and Inspections Act 2006 enables schools to put pupils in detention on days on which teachers are working but pupils are not in attendance (non-teaching days). Such days are normally used for training. Not all non-teaching days may be used for detentions. These regulations specify the days on which detentions may not be held. With two exceptions, non-teaching days that occur on public holidays, before the first day of term, during a half-term break or after the last school day of term are excluded from being days on which detentions may be set. The exceptions are term-time weekday non-teaching days which immediately follow the day a school breaks up before half-term or the end of term.

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

3.1 None.

4. Legislative Background

4.1 No specific undertakings relating to these regulations have been given to Parliament.

5. Extent

5.1 This instrument applies to England only. The regulations are the first to regulate detentions on non-teaching days.

5.2 The power under which these regulations are made was provided for the National Assembly for Wales in relation to Wales, though at the time of writing that power has not been brought into force for Wales.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Prior to commencement of the Education and Inspections Act 2006 detentions were regulated by section 550B of the Education Act 1996. This only provided for detentions to be held after the end of a school session (during the lunch break or at the end of the school day). Some schools held detentions at weekends or on non-teaching

days, but these had to be consensual, common law detentions because they had no statutory basis.

The overall purpose of Part 1 of Chapter 7 of the Education and Inspections Act 2006 (of which section 92 is part) is to clarify, strengthen and extend the legal basis of school discipline. Section 92 gives schools greater flexibility by giving them statutory power to hold compulsory detentions on certain weekend and non-teaching days. Ministers believed that legislation was necessary because holding detentions on a voluntary basis was inherently unsatisfactory. There was a perception among pupils put in detention at weekends and non-teaching days (and their parents) that they were obliged to attend so their 'consent' was not always genuine consent. That led to a need to regularise the position. There was also no requirement for parents to be notified of a detention. Notification had been identified as an important aspect of the legislation governing detentions as it was important on grounds of welfare that parents knew where their children were.

Ministers considered that as there was a public expectation that detentions should not be set on public holidays, such days should be excluded if they happened to be non-teaching days. Non-teaching days before the first day of term, during a half term break or after the last school day of term were also to be excluded (subject to the two exceptions) for these might unduly interfere with the family life of pupils. The exceptions (term-time weekday non-teaching days which immediately follow the day a school breaks up before half-term or the end of term) are permitted because they fall within term time and a school might legitimately expect to put pupils in detention on such dates without unduly interfering with the family life of pupils. (Note that there is an overriding requirement for detentions, being disciplinary penalties, to comply with requirements of reasonableness and proportionality under sections 91 and 92(2) of the parent Act).

The DfES sent a draft of these regulations to 64 education-related bodies and individuals on 1 December 2006 inviting comments by 9 February 2007. Twenty commented on the regulations. Of these 62% said that that the days excluded and included were the right ones (24% said they were not).

The DfES has produced guidance on all the provisions of Part 1 of Chapter 7 of the Education and Inspections Act 2006, including those dealing with detentions. This provides advice on practical issues such as how to notify parents and take account of transport arrangements.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 As for public sector impact, there is no requirement or expectation that any school will arrange detentions on non-teaching days. Decisions on whether to exercise this option will be a matter for head teachers of individual school and where it is available, the discretion of the individual member of staff who sets the detention. The DfES would not expect school staff to supervise such detentions other than on a voluntary basis.

9. Contact

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