

## EXPLANATORY MEMORANDUM TO

### THE EDUCATION (INFORMATION ABOUT CHILDREN IN ALTERNATIVE PROVISION) (ENGLAND) (AMENDMENT) REGULATIONS 2017

2017 No. 807

#### 1. Introduction

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

#### 2. Purpose of the instrument

- 2.1 This instrument amends the Education (Information About Children in Alternative Provision) (England) Regulations 2007 to require schools which are not state place funded but are providing education commissioned by the local authority to provide additional information about the pupils receiving this education.

- 2.2 The additional information required is:

- Individual special educational needs
- Primary reason for funded provision placement
- Date of entry into funded provision
- Date of leaving funded provision
- Frequency of attendance

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

##### *Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

#### 4. Legislative Context

- 4.1 These Regulations require non state place funded schools providing education commissioned by the local authority to supply additional information to the Secretary of State and local authorities about the children placed into these settings.
- 4.2 This is achieved by amending the Education (Information About Children in Alternative Provision) (England) Regulations 2007 to allow for the collection of this additional information by means of the Alternative Provision census.

#### 5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is 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 The Education Act 1996 allows the Department to make regulations which require schools to provide information to the Department. These regulations amend the Education (Information About Children in Alternative Provision) (England) Regulations 2007 which set out the information that non state place funded schools must provide. The amendment sets out additional information that schools must now supply.
- 7.2 The purpose of this change is to facilitate local authorities to be able to return additional information about pupils for whom they commission education outside of state place funded schools. These Regulations will allow local authorities to obtain further information about children from the education providers they are attending. The local authority will, in turn, be able to return fuller details to the Department for Education of those children for whom education is commissioned outside of state place funded schools.
- 7.3 Children are educated outside of state place funded schools (e.g. academies or maintained schools) for a number of reasons and in a variety of settings. For example, some children have medical conditions that mean they are educated in a hospital school or at home with one-to-one tuition funded by the local authority; some have Education, Health and Care plans where parents and the local authority have chosen a Non-Maintained Special School as the best place for meeting the child's special educational needs. In January 2017, there were a total of 22,212 children in these settings.
- 7.4 We know that the outcomes for children who are educated in these placements is poor. However, at present, we know very little about the educational placements themselves, and the children who need them. There will always be some children who need to be educated outside of school. This information will promote a stronger understanding of how the needs of the often very vulnerable children in these placements are met, where this is effective and where outcomes are not effective.
- 7.5 Specifically, these Regulations will enable the Department to collect data as to why a child is in a local authority commissioned placement, how long they spend in this placement and how regularly they attend it. In addition, this will also enable the Department to collect information about any special educational needs a child has, so that this aligns with the information collected for pupils in state place funded school to ensure consistency of data collection across all educational setting and placements. This information will provide an evidence base to support improvement in this section of the education sector, and support these children to achieve their potential. It will be used in the following ways:
- a) for research and statistical purposes which inform, influence and improve education policy and to monitor the performance of this section of the Education sector;
  - b) for the matching Departmental data sources together to model and monitor pupils' educational achievements and progression;

- c) to obtain samples for statistical surveys, and to match data to data obtained from statistical surveys;
  - d) for operational purposes including the identification of where new schools are required.
- 7.6 We have explored collecting this information by other means, but given that evidence shows that use of these placements is variable across England, only a routine and complete collection of this information will provide a sound evidence base.
- 7.7 In order for the new Regulations to come into force in September 2017 and the new data collection items included in the next collection round in January 2018, the Regulations have to be laid in Parliament in August 2017 during recess.

## **8. Consultation outcome**

- 8.1 The proposal to gather new information as part of this census was informally tested with stakeholders in 2015. The outcome of this was that some of the additional data items being proposed were considered to be too onerous. In April 2017, the Star Chamber Scrutiny Board, comprised of representatives of schools and local authorities who review the Department for Education data collections approved a business case (SC Ref 825a). The Star Chamber's role is to ensure all data collections are possible, necessary, good value and as easy and quick to complete as possible. The business case proposed to collect the new information on children in non-state place funded placements commissioned by local authorities.
- 8.2 We have worked with the Star Chamber to refine the data items we are proposing to collect and have actively incorporated their feedback to ensure that the additional data items are not overly onerous for local authorities to return. After the consultation, they had no reservations over the additional data items being included.

## **9. Guidance**

- 9.1 Guidance to local authorities on how to complete this collection is reviewed at least annually. We have updated the 2018 guidance to reflect the changes to this collection. This details the new data being collected and how local authorities should respond.

## **10. Impact**

- 10.1 The impact on business, charities or voluntary bodies is minimal as this will only apply to business activities undertaken as part of the delivery of public services.
- 10.2 The impact on the public sector is minimal. In 2016, there were 22,212 children recorded as being in local authority funded placements outside of state place funded schools, including children who are educated in private voluntary and independent ("PVI") settings. Local authorities already collect information from these PVIs where necessary to complete the census return, such as whether they have SEN and what category of provider they attend. This proposal will not impose a significant burden on providers as all they will be required to do is provide a small amount of additional information where this is not already held by the local authority, such as they type of SEN or how regularly the child attends the setting. In most cases, the local authority will already hold the necessary information at the time of making the placement and will therefore not need to seek further information from PVIs. Where it is requested, the data should already be held by providers. Where data is already held we have assumed it will take approximately 5 minutes per child to access this. Based on a

population of 22,200 and assuming an hourly wage of £15, this will equate to a total annual cost of £27,750.

Where a provider uses a management information system to record pupil data, there will also be additional costs with regards to changes to management information systems (MIS) which are not included above. MIS are commercial products. Where a provider uses a MIS to record pupil data the costs of any necessary changes will be a contractual matter between school/local authority and the software supplier. The Department for Education are therefore not able to quantify these costs.

- 10.3 An Impact Assessment has not been prepared for this instrument. The legislation falls under statutory exclusions contained in s.27 of the Small Business, Enterprise and Employment Act 2015, because it regulates business activities acting on behalf of a public authority as part of the delivery of public services.

## **11. Regulating small business**

- 11.1 The legislation applies to activities that are undertaken by small businesses. However, this will only apply to business activities undertaken as part of the delivery of public services.

## **12. Monitoring and review**

- 12.1 The Department is required to report annually to the Office for National Statistics on the cost of all our data collections and this is something with which the Department fully engages. In addition, guidance to local authorities is reviewed at least annually.

## **13. Contact**

- 13.1 Eva Elks at the Department for Education. Telephone: 020 7340 7485 or email: [eva.elks@education.gov.uk](mailto:eva.elks@education.gov.uk) can answer any queries regarding the instrument.