

EXPLANATORY MEMORANDUM TO
THE SCHOOL DISCIPLINE (PUPIL EXCLUSIONS AND REVIEWS) (ENGLAND)
(CORONAVIRUS) (AMENDMENT) REGULATIONS 2021

2021 No. 204

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 These Regulations ('the Extension Regulations 2021') amend the School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012 ('the 2012 Regulations'). They extend certain time-limited coronavirus-related provisions in the 2012 Regulations so that they also apply to exclusions occurring from 25 March 2021 to 24 September 2021.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The 2012 Regulations make provision in relation to the power of head teachers of maintained schools, teachers in charge of pupil referral units and principals of Academy schools and alternative provision Academies ('Academies'), in England, to exclude pupils under section 51A of the Education Act 2002; and in relation to the procedures for responsible bodies and independent review panels to consider whether excluded pupils should be reinstated.

6.2 The School Discipline (England) (Coronavirus) (Pupil Exclusions and Reviews) (Amendment) Regulations 2020 ('the First Amendment Regulations 2020') inserted coronavirus-related provisions into the 2012 Regulations. They provide that, in

relation to a ‘relevant exclusion’, defined as an exclusion occurring from 1 June to 24 September 2020, responsible bodies and independent review panels can hold meetings remotely in certain circumstances. They also, in specified circumstances, extend deadlines for certain procedural steps in relation to relevant exclusions. Those deadlines are extended by ten school days or, if that extended deadline still cannot be met, for as long as is reasonably necessary for a reason related to coronavirus. Finally, they also extend by ten school days the time limit within which an application for a review of a relevant exclusion must be made.

- 6.3 Due to the continued possibility for local disruption arising from coronavirus (COVID-19), the School Discipline (England) (Coronavirus) (Pupil Exclusions and Reviews) (Amendment) (No. 2) Regulations 2020 (‘the Previous Extension Regulations 2020’) extended the provisions for meetings of responsible bodies and independent review panels to take place virtually, where certain conditions are met. They also extended the timescales for such meetings in some circumstances and extended the time window for application for an independent review. Considering, however, the need to ensure reinstatement decisions are made promptly, the Previous Extension Regulations 2020 did not fully extend the changes to deadlines made by the First Amendment Regulations 2020. Rather, they provided that in relation to a relevant exclusion occurring in the period from 25 September 2020 to 24 March 2021, if a responsible body or independent review panel has not been able to meet in person or virtually within the normal timescales, the time limit will be extended for only such period as is reasonably necessary for a reason related to coronavirus (COVID-19).
- 6.4 The Extension Regulations 2021 come into force on 25 March 2021 and amend the definition of ‘relevant exclusion’ so that it covers exclusions occurring up to 24 September 2021. The effect of this is that the provisions relating to virtual meetings continue to apply to exclusions occurring up to and including that date, as does the extension of time for parents (or pupils, if 18 or above) to request an independent review of the responsible body’s reinstatement decision. This extends the effects of the Previous Extension Regulations 2020.
- 6.5 Guidance has been published to help those involved understand which rules apply in the relevant circumstances.¹

7. **Policy background**

What is being done and why?

- 7.1 The 2012 Regulations set out the process which maintained schools, Academies and pupil referral units must follow in relation to an exclusion of a pupil. According to those Regulations, the responsible bodies of these institutions must meet to consider permanent exclusions, and fixed period exclusions in some circumstances, so that they can decide whether or not the excluded pupil should be reinstated. The timescales within which these meetings (and other relevant steps) must take place depend on the length, type, and timing of an exclusion. If a responsible body decides not to reinstate a pupil who has been permanently excluded, the parent (or the pupil, if they are an adult) has 15 school days to request an independent review of the decision. If a request is made, the local authority (or academy trust, if the excluding school is an Academy) must arrange for a review panel (also referred to as an ‘independent review

¹ Statutory guidance can be found at <https://www.gov.uk/government/publications/school-exclusion>

panel' or 'IRP') to meet within 15 school days. Below, the use of the word 'normal' refers to the arrangements set out in the 2012 Regulations as originally made.

- 7.2 Early in 2020, it became apparent that public health measures designed to limit the spread of coronavirus (COVID-19) made it difficult for responsible bodies and IRPs to meet in person within the normal time limits. In light of these difficulties, the First Amendment Regulations 2020 were put in place to make the procedures for responsible body meetings and IRPs temporarily more flexible, without detriment to parents' and pupils' rights or to the fairness of the scrutiny system. They did this by making provision for meetings of responsible bodies and IRPs to be held virtually where it is not reasonably practicable for the meeting to be held in person due to coronavirus (COVID-19) and where several conditions are met; by granting time extensions, where it has not been reasonably practicable to meet in person due to coronavirus (COVID-19) and the conditions for a virtual meeting have not been met within the normal time limit; and by extending the application window for an independent review by ten school days.
- 7.3 These arrangements initially affected exclusions occurring from 1 June 2020 to 24 September 2020. The Previous Extension Regulations 2020 extended most of those arrangements to also affect exclusions occurring from 25 September 2020 to 24 March 2021, but with slightly different provisions as to deadlines for meetings².
- 7.4 The Previous Extension Regulations 2020 included a regulation requiring the Secretary of State to review their effectiveness. The Department has considered scientific advice from the Scientific Advisory Group for Emergencies (SAGE) and Public Health England; official statistics on exclusions; and current Government advice to the general public, schools, local authorities, and parents. We have also taken into account the views of stakeholders across the education sector including (but not limited to) teachers the Office of the Children's Commissioner for England, advocacy groups, and stakeholders representing parents and pupils.
- 7.5 In broad terms, stakeholders have been supportive of the policy that is given effect through the Extension Regulations 2021 as they were about the First Amendment Regulations 2020 and the Previous Extension Regulations 2020. There has been a consensus that, for some families, virtual meetings can be more accessible and less intimidating than a meeting in person, and we have heard that virtual meetings of both responsible bodies and IRPs have been held with success. Some stakeholders have asked if we would consider making these amendments permanent as they have seen the value in holding meetings about exclusions virtually and appreciate the flexibility the regulations allow.
- 7.6 The evidence suggests that, while rates of exclusion continue to be low in some areas, they are returning to normal in others. This shows that exclusions are continuing to occur during this period, and that the provision initially made by the First Amendment Regulations 2020 should remain in place. Some meetings of responsible bodies and IRPs have been delayed beyond the normal deadlines, in some cases because parents had expressed a preference for a meeting in person or did not have access to the requisite technology for a virtual meeting. The majority of stakeholders agreed that

² Timescales for exclusions between 1 June and 24 September 2020 are described here: <https://www.gov.uk/government/publications/school-exclusion/changes-to-the-school-exclusion-process-during-the-coronavirus-outbreak>

the temporary arrangements should continue in some form for exclusions that occur after 24 March 2021.

- 7.7 The effects of the provisions are identical to those that the Previous Extension Regulations 2020 had in relation to exclusions occurring from between 25 September 2020 to 24 March 2021.
- 7.8 The Extension Regulations 2021 extend provision for responsible bodies and independent review panels to meet via ‘remote access’ (i.e., live audio- or video-link) to consider exclusions, but only if it is not reasonably practicable for the meeting to take place in person for a reason related to the incidence or transmission of coronavirus, and if certain conditions are met. We have retained the test of reasonable practicability, which was chosen to allow meetings to proceed in person if circumstances allow, and to accommodate changing circumstances. While we were reviewing the effectiveness of the Previous Extension Regulations 2020, stakeholders confirmed meetings have been held in person where this has been deemed ‘reasonably practicable’ (though we have not been able to assess the validity of those decisions, which will be context-specific).
- 7.9 The Extension Regulations 2021 have the effect that if, in relation to an exclusion occurring from 25 March to 24 September 2021, it has not been reasonably practicable for a responsible body or IRP to meet in person within the normal timescales, and the conditions for a remote access meeting have not been met, the timescale for the meeting will be extended by ‘such longer period as is reasonably necessary for a reason related to the incidence or transmission of coronavirus’.
- 7.10 The Extension Regulations 2021 also keep the application window within which a parent (or adult pupil) can apply for an independent review at 25 school days. As previously, this change has been made in case parents or pupils cannot, due to illness or disruption related to the pandemic, apply for a review within the normal time limit of 15 school days. The time extension is not conditional, which avoids the need for parents or pupils to disclose or justify why they may need it.

8. **European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. **Consolidation**

- 9.1 There is no plan to consolidate.

10. **Consultation outcome**

- 10.1 There is no statutory requirement for the Department to consult on the Extension Regulations 2021. However, officials have engaged with a wide variety of stakeholders while reviewing the effectiveness of the Previous Extension Regulations 2020, the outcome of which is summarised in paragraphs 7.4 – 7.6. Stakeholders were broadly supportive of the Previous Extension Regulations 2020 and have supported the extension of the temporary arrangements to exclusions that occur after 24 March in some form. This consultation has informed the development of the present Regulations and updates to our statutory guidance.

11. **Guidance**

- 11.1 Statutory guidance on Changes to the school exclusion process during the coronavirus (COVID-19) outbreak is provided and is available at <https://www.gov.uk/government/publications/school-exclusion/changes-to-the-school-exclusion-process-during-the-coronavirus-outbreak>
- 11.2 The guidance is intended to be read as a supplement to the existing Departmental statutory guidance on exclusions titled ‘Exclusion from maintained schools, academies and pupil referral units in England’³. It describes which exclusions will be in scope for the temporary arrangements; when remote access meetings can be used and how they should be arranged and conducted; and the details of the time extensions and when they are available.

12. **Impact**

- 12.1 There is no, or no significant, impact on business, charities⁴ or voluntary bodies.
- 12.2 The impact on the public sector is on state-funded schools and local authorities, who will have more flexibility to deploy their resources. It is possible that local authorities’ costs for the temporary education of excluded pupils in alternative provision may be slightly reduced if cases are determined more quickly under the remote access arrangements than they would otherwise have been.
- 12.3 An Impact Assessment has not been prepared for this instrument because there is no, or no significant, impact on business, charities or voluntary bodies.

13. **Regulating small business**

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. **Monitoring & review**

- 14.1 The regulations place an obligation on the Secretary of State to review the effectiveness of the Extension Regulations 2021 during the period ending with 24 September 2021.
- 14.2 The Department for Education will continue to monitor the impact of the Extension Regulations 2021 and the continued impact of coronavirus (COVID-19) on scrutiny processes related to exclusions. Further amendments to regulations may be made if this is deemed necessary in light of the coronavirus (COVID-19) outbreak.

15. **Contact**

- 15.1 Nicola Nadanakumaran, Senior Policy Advisor for Expulsions and Suspensions, at the Department for Education, email: school.expulsions@education.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Charles Lang, Deputy Director for the Behaviour, Attendance, Exclusions and Alternative Provision division at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

³ Statutory guidance can be found at <https://www.gov.uk/government/publications/school-exclusion>

⁴ Except to the extent that some responsible bodies are themselves charities. Impact on them is covered by the following sentence as part of the impact on the public sector.

15.3 The Minister for School Standards at the Department for Education, Rt Hon Nick Gibb MP, can confirm that this Explanatory Memorandum meets the required standard.