

**EXPLANATORY MEMORANDUM TO
THE EDUCATION (PROVISION OF FULL-TIME EDUCATION FOR EXCLUDED
PUPILS) (ENGLAND) REGULATIONS 2007**

2007 No. 1870

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 prescribe the day from which, in certain cases, suitable full-time education must be provided by the governing body of a school or a local education authority for pupils of compulsory school age who have been excluded. They also prescribe the time by which a notice must be given containing the date on which education will be made available for the pupil, the days on which the parent has a duty under section 103 of the Education and Inspections Act 2006 to ensure the pupil is not present in a public place at any time during school hours, and other information relating to the education to be provided.

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

- 3.1. None.

4. Legislative Background

- 4.1. Sections 101 and 102 of the Education and Inspections Act 2006 impose a new duty on governing bodies or proprietors and on local education authorities to provide suitable full-time education for excluded pupils with effect from September 2007. The Act provides that the precise arrangements should be set out in regulations. This gives the Government flexibility to adjust the arrangements from time to time in the light of practical experience.

5. Territorial Extent and Application

- 5.1. This instrument applies to England.

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 September 1994 local education authorities were placed under a broad duty to provide suitable education for excluded pupils of compulsory school age but this was not specified as being full-time and was not held to apply to fixed period exclusions or to a permanent exclusion which was in the process of being contested by the parents. From September 2002 local education authorities have been encouraged to provide suitable full-time education for permanently excluded pupils of compulsory school age from the sixteenth school day of their exclusion onwards until such time as they are admitted to another school or a PRU, but this has not been a legal requirement. The report *Learning Behaviour The Report of The Practitioners' Group on School Behaviour and Discipline*

published by the DfES in October 2005 recommended that the requirement for local education authorities to provide full-time education for excluded pupils from the sixteenth school day after their exclusion should be brought forward to the sixth school day and cover both fixed period and permanent exclusions (Recommendation 3.5.22).

- 7.2. The Government in its White Paper *Higher Standards, Better Schools for All* (Cm 6677 October 2005) accepted this recommendation in principle but decided that the duty in respect of fixed period exclusions should be discharged by the governing body or proprietor of a school rather than by the local education authority. Sections 100 and 101 of the Education and Inspections Act 2006 impose these new duties leaving the precise arrangements, including the actual day from which the education must be provided, to be set out in regulations.
- 7.3. In Spring 2007 the Department undertook a full public consultation (publicised to all schools and local authorities and inviting key stakeholders to comment) on revised guidance on exclusion which included information on these requirements. A draft of the regulations was included in the consultation document. No respondents commented on them.
- 7.4. The Department will be issuing revised guidance – *Improving Behaviour and Attendance Guidance on Exclusion from Schools and Pupil Referral Units* in July 2007 which will explain the new duties in greater detail.

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. The impact on the public sector is that a new burden is placed on governing bodies who for the first time must provide alternative education for pupils excluded for a fixed period of more than five consecutive school days, and a new burden is placed on local education authorities who must provide for all permanently excluded pupils from day 6 instead of from day 16 as at present. We estimate that this additional provision will cost around £16m a year from September 2007 and we have allowed for this in calculating Local Authority settlements.

9. Contact

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