

**EXPLANATORY MEMORANDUM TO**  
**THE EDUCATION (PUPIL INFORMATION) (ENGLAND) (MISCELLANEOUS**  
**AMENDMENTS) REGULATIONS 2016**

**2016 No. 808**

**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.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

This instrument amends the Education (Information about Individual Pupils) (England) Regulations 2013 to require schools to return the following data items, in addition to existing requirements, via the termly School Census:

- Nationality
- Country of Birth
- Proficiency in English.

This instrument also amends the Education (Pupil Information) (England) Regulations 2005 to allow the three data items listed above to be transferred between schools when pupils move between settings - via the common transfer file (CTF) process.

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

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

- 3.1 The making of these Regulations is outside the normal practice of providing schools with at least one full term's notice, as the result of an unavoidable delay in obtaining the necessary clearance
- 3.2 The Department regrets that it was not possible to give schools one term's notice, but have ensured the Regulations have been made in time for a September commencement. The Department also considers these regulations to be a modest expansion to an existing requirement already placed on schools, minimising the potential effect on workload.

*Other matters of interest to the House of Commons*

- 3.3 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 are necessary to improve central Government's understanding of the scale and impact of migration on the education sector, through the collection of information on children's nationality, country of birth and proficiency in English.

- 4.2 These Regulations provide for maintained schools and providers of ‘Alternative Provision’ and ‘Early Years Provision’ a duty to provide information on individual children’s nationality and country of birth (via the school, early years and alternative provision censuses and child’s common transfer file) and proficiency in English (via the school census and common transfer file only).
- 4.3 This is achieved by amending the Education (Information about Individual Pupils)(England) Regulations S.I. 2013/2094 to allow schools to collect this information as part of the School Census and amending the Education (Pupil Information) (England) Regulations S.I. 2005/1437 to allow this information to be part of a pupil’s common transfer file.

## **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 the negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

### *What is being done and why*

- 7.1 The amendment of the Regulations will facilitate the collection of nationality, country of birth and proficiency in English data via the School Census, the Alternative Provision Census and the Early Years’ Census.
- 7.2 Data on a child’s origins – the country of birth and nationality – are to be collected for all children in scope of the three censuses. These data items are standard characteristics about individuals and will bring these data collections in line with the national population census. This information will be used alongside existing data items (such as ‘ethnicity’ and ‘language’) to improve central government’s understanding of the scale and impact of migration on the education sector.
- 7.3 Data on the English proficiency of children classed as having English as an Additional Language (EAL) will be used to inform policy on this high needs group with the basic rationale being that current data on EAL pupils does not distinguish between pupils who lack a basic command of the English language versus those who are bilingual and have mastered English sufficiently to access the curriculum. English proficiency statistics would therefore provide for the first time important national statistics on the characteristics of this group, along with their attainment and destinations and allow the Department to measure whether the individual pupils, or the schools they attend, face additional educational challenges.
- 7.4 Country of birth and nationality will be collected from all state funded early years and school age children, as declared by the parent / guardian. English proficiency will only be collected from schools and is required for all children in reception and above (or those aged 4 and above in special schools not following a particular national curriculum year group).
- 7.5 Alongside collection via the school, early years and alternative provision censuses, each of these data items will also be included within the common transfer file used to

transfer pupil information when a pupil transfers from one school to another. This will minimise the burden of data collection on schools, allow a full history of proficiency in English assessments to follow the child and allow receiving schools to ensure adequate levels of EAL support are provided to support the child's ongoing education.

## **8. Consultation outcome**

- 8.1 In November 2015 the Star Chamber Scrutiny Board – comprising of representatives from schools and local authorities - considered a business case for the proposal to collect data, through the school census, on the language proficiency of children who are classed as having English as an Additional Language (EAL) together with data on the child's country of birth and nationality. This business case was approved subject to further discussions with EAL assessment experts about the scale that schools will use to report the level of language proficiency reached by individual EAL pupils. Following these discussions the proficiency framework was considered and approved by Star Chamber in February 2016 alongside the request for each of the new data items to be included within the common transfer file.

## **9. Guidance**

- 9.1 Guidance for schools and local authorities on completing the School Census, Early Years Census and Alternative Provision Census is available [here](#).

## **10. Impact**

- 10.1 There is no impact on business, charities or voluntary bodies.

The impact on the public sector relates only to maintained education in England. The Department does not expect the changes made by these instruments to place an additional burden on schools and local authorities and believes that the required information will be collected from parents via the same method as other child / pupil characteristics already routinely collected as part of the census process. Likewise, schools will already be required to undertake an assessment of the impact Proficiency in English has on a child's ability to engage in class activities to ensure adequate levels of EAL support are provided to support the child's education.

- 10.2 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

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

## **12. Monitoring & review**

- 12.1 The outcome of these instruments, alongside the content of the data collections, will be reviewed on an annual basis as part of the ongoing maintenance of these data collections.

## **13. Contact**

- 13.1 Phil Dent at the Department for Education Telephone: 01325 340499 or email: phil.dent@education.gsi.gov.uk can answer any queries regarding the instrument.