

EXPLANATORY MEMORANDUM TO
THE SCHOOL DISCIPLINE (ENGLAND) (CORONAVIRUS) (PUPIL EXCLUSIONS
AND REVIEWS) (AMENDMENT) REGULATIONS 2020

2020 No. 543

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

- 2.1 These regulations ('the Amendment Regulations 2020') amend the School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012 ('the 2012 Regulations') to address practical difficulties caused by measures needed to limit the spread of coronavirus (COVID-19). Those measures include social distancing guidance introduced by the Government and Public Health England, which restrict the ability for parties to meet in person, and guidance on self-isolation.
- 2.2 Where meetings are held under the 2012 Regulations to scrutinise school exclusions, the Amendment Regulations 2020 make provision for those meetings to be held virtually (for example via a videoconference) for reasons related to the incidence or transmission of coronavirus. They also make provision for the applicable time limits to be extended where it has not been reasonably practicable to hold a meeting, and extend the application window during which a parent (or pupil aged 18 years or above) can apply for an independent review of a decision not to reinstate a permanently excluded pupil.
- 2.3 These amendments apply to exclusions occurring from the coming into force date of 1 June 2020 to 24 September 2020 (inclusive of those dates), as well as to some exclusions occurring before 1 June for which the scrutiny procedures have not yet been exhausted.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 It is not possible in the case of this instrument to comply with the 21-day rule which requires relevant instruments to be laid before Parliament for at least 21 days prior to coming into force. The Department was not in an immediate position to assess the impact of 'stay at home' and social distancing measures on school exclusion processes and, given the significance of reinstatement decisions for excluded pupils and their families, needed time to devise flexible arrangements which respected children's rights and the need for procedural fairness. This has involved consultation with stakeholders representing those involved in the school exclusion process, who are aware that we are making these amendments (as mentioned in paragraph 10.1 below).
- 3.2 The Department anticipates that we may be able, from the week commencing 1 June 2020, to welcome back more children to early years and schools, provided the five key

tests set by the government justify the changes at the time. From the week commencing 1 June 2020 at the earliest, we will be asking primary schools to welcome back children in nursery, Reception, year 1 and year 6, alongside priority groups. From 15 June 2020, we will ask secondary schools, sixth form and further education colleges to offer some face-to-face support for year 10 and year 12 students (and equivalents) who are due to take key exams next year, alongside the existing full time provision they are offering to priority groups.¹

- 3.3 If the Amendment Regulations 2020 had complied with the 21-day rule, there would have been a chance that some pupils whose permanent exclusion had not yet been considered by a responsible body or independent review panel would not be able to return to their school or begin a permanent placement elsewhere until mid-June or later. This would reduce the time that such children were able to spend in school this academic year, and deny them the educational and wellbeing benefits which follow from regular school attendance, which are particularly important for younger children, pupils at transition points in their education, and vulnerable children. We have therefore decided that it is best in this case to bring the changes into force from 1 June 2020 and to publish guidance ahead of that date, so that those involved in the school exclusion process can quickly understand the temporary arrangements and take steps to minimise delays for pupils.
- 3.4 We know from stakeholder feedback and correspondence that having these amended regulations come into force quickly will be welcomed by those working to arrange meetings. The new arrangements will also be welcomed by pupils and their parents as their cases may be heard earlier, which would provide more clarity as whether or not they will be reinstated.

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)

- 3.5 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

¹ 'Priority groups' are vulnerable children and the children of critical workers. Guidance for schools on preparing for wider opening can be found at <https://www.gov.uk/government/publications/actions-for-educational-and-childcare-settings-to-prepare-for-wider-opening-from-1-june-2020/actions-for-education-and-childcare-settings-to-prepare-for-wider-opening-from-1-june-2020>

Academy schools and alternative provision Academies ('Academies'), in England, to exclude pupils under section 51A of the Education Act 2002.

- 6.2 The Amendment Regulations 2020 amend the 2012 Regulations to temporarily relax procedural requirements in relation to reinstatement decisions and review panels in response to the impact of coronavirus (COVID-19) on exclusion arrangements.
- 6.3 Regulations 3 to 8 of the Amendment Regulations 2020 amend the procedural rules relating to reinstatement decisions and reviews. Guidance has been published to help those involved understand which rules apply in the relevant circumstances.
- 6.4 The Amendment Regulations 2020 come into force on 1 June 2020 and will apply to exclusions occurring on or after this date, as well as exclusions that occurred before the coming-into-force date but in respect of which certain decisions have not yet been made when the amended regulations come into force, such that the case is ongoing.
- 6.5 Regulations 3 to 8 cease to have effect at the end of 24 September 2020 except in relation to those exclusions occurring before 25 September 2020.

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 bodies² 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 a 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 panel' or 'IRP') to meet within 15 school days.
- 7.2 The Government announced social distancing measures designed to limit the transmission of coronavirus (COVID-19) on 16 March 2020. Current public health measures make it difficult for responsible bodies and IRPs to meet in person to discuss exclusions within the timescales set out in legislation (or at all). The Amendment Regulations 2020 have been designed to identify the conditions under which the procedures for responsible body meetings and IRPs might be more flexible, while respecting parents' and pupils' rights, by ensuring that the process remains fair and that exclusions continue to receive the appropriate scrutiny in a timely manner.
- 7.3 These regulations make 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. The test of reasonable practicability has been chosen to allow meetings to proceed as normal if circumstances allow, and to provide flexibility to changing conditions. The guidance supplied alongside these regulations states that

² 'Responsible body' means the governing body in the case of a maintained school, the management committee in the case of a pupil referral unit, and the proprietor (i.e. the Academy Trust) in the case of an Academy.

responsible bodies and arranging authorities should consider the latest public health advice, the facts of the case, and local circumstances when determining whether it is reasonably practicable to meet in person.

- 7.4 The conditions for a ‘remote access’ meeting have been designed to ensure procedural fairness. They are that the participants must be able to take part fully; that they must have given their agreement to the use of remote access; that they must all have access to the necessary technology; and that the meeting can be held fairly and transparently in this way. It will be for the responsible body or arranging authority to determine whether these conditions are met. Participating pupils/parents who wish for a meeting to be held in person (for example, if they do not feel they could put across their case virtually due to language barriers) can refuse consent for a remote access meeting.
- 7.5 The Amendment Regulations 2020 extend relevant time limits as shown in the table below. The time limit is extended by 10 school days or for such longer period as is reasonably necessary for a reason related to coronavirus.
- 7.6 These revised time limits will only apply where they are needed; the responsible body or arranging authority will not receive an extension if it has been reasonably practicable to meet in person within the original time limit, or if it has been reasonably practicable for the meeting to be held via remote access within that time. This approach has been taken to ensure the changes are proportionate to the circumstances, and to minimise delays, which cause uncertainty for both families and schools. Guidance on the arrangements states that, where a time extension applies, the responsible body or arranging authority should reassess the practicability of meeting in person at regular intervals, to minimise delays. No time limit extension will apply if the time limit expires before the 1 June 2020.
- 7.7 The Amendment Regulations 2020 also extend the window for a parent (or adult pupil) to apply for an independent review in relation to a relevant exclusion from 15 days to 25 school days. This change has been made in case parents or pupils cannot, due to illness or disruption linked to the coronavirus (COVID-19) outbreak, apply for a review within the original 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 need it.

Time limit set out in the 2012 Regulations	Condition for extension	Extended time limit, provided the conditions for a time extension are met
Time limit of 15 school days for a responsible body to take steps to consider a permanent exclusion, or a fixed period exclusion that would result in the child having been excluded for a total of 16 or more days in a term	It has not been reasonably practicable to meet in person within the normal time limit for a reason related to coronavirus, or remotely for a reason relating to the conditions for a	25 school days , or such longer period as is reasonably necessary for a reason related to the incidence or transmission of coronavirus

	meeting via remote access	
Time limit of 50 school days for a responsible body to take steps to consider a fixed period exclusion that would result in the child having been excluded for a total of 6 or more days in a term but not for more than 15 days in that term, where the parent (or the pupil, if they are an adult) has made representations about the exclusion	It has not been reasonably practicable to meet in person within the normal time limit for a reason related to coronavirus, or remotely for a reason relating to the conditions for a meeting via remote access	60 school days , or such longer period as is reasonably necessary for a reason related to the incidence or transmission of coronavirus
Time limit of 15 school days for a parent (or a pupil, if they are an adult) to apply for a review of a responsible body's decision not to reinstate a permanently excluded pupil	None	25 school days
Time limit of 15 school days for an IRP to meet, if requested by the parent of a permanently excluded pupil (or by the pupil, if they are an adult)	It has not been reasonably practicable to meet in person within the normal time limit for a reason relating to coronavirus, or remotely for a reason relating to the conditions for a meeting via remote access	25 school days , or such later date as is reasonably necessary for a reason related to the incidence or transmission of coronavirus

7.8 These arrangements will apply to exclusions occurring from the coming into force date of 1 June 2020 to 24 September 2020 (inclusive of those dates), as well as to some exclusions occurring before 1 June 2020 for which the scrutiny procedures have not yet been exhausted. The exclusions occurring before 1 June 2020 which are in scope are: any permanent or fixed term exclusion occurring before 1 June 2020 which triggers a responsible body's duty to meet, but which has not yet been considered by the responsible body; any permanent exclusion occurring before 1 June 2020 which has been considered by the responsible body but for which the time limit for requesting a review has not elapsed; and any permanent exclusion occurring before 1 June 2020 that has not yet been considered by an IRP where the parent or pupil has made an application within the time limit. This approach has been taken to ensure that remote access meetings and time extensions are available for exclusions cases that are 'live' at the coming into force date, as far as this is possible.

7.9 It is ultimately uncertain how long the disruption caused by coronavirus (COVID-19) will affect schools, families and local authorities. The amendments will be reviewed to

ensure they are working effectively and that they (and the guidance provided) are appropriate to the evolving circumstances. Unless further legislation is necessary in response to the outbreak, the normal arrangements will apply to all exclusions occurring on or after 25 September 2020.

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. The 2012 Regulations have not been amended before.

10. Consultation outcome

10.1 There is no statutory requirement for the Department to consult on the Amendment Regulations 2020. However, over a 4-week period leading up to the laying of the regulations, officials have engaged with a number of stakeholders, including teaching unions, local authority officers, representatives of governors and trustees, and stakeholders representing parents and pupils (including the Office of the Children's Commissioner for England). The feedback has been broadly positive and the proposed changes have been welcomed, particularly by groups representing school governors and trustees.

11. Guidance

11.1 Guidance is provided and is available at <https://www.gov.uk/government/publications/school-exclusion>

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'. 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 An Impact Assessment has not been prepared for this instrument because no significant impact on business, charities or voluntary bodies is foreseen and because the Amendment Regulations 2020 will have effect for a limited period.

12.2 As far as it exists, 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.

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 regulations 3 to 8 during the period for which they have effect.
- 14.2 The Department for Education will continue engagement with stakeholders to monitor the impact of the Amendment Regulations 2020 and the continued impact of coronavirus (COVID-19) on scrutiny processes related to exclusions. Further amendments to regulations may be made (for example to extend these changes to exclusions occurring on or after 25 September) if this is deemed necessary in light of the coronavirus (COVID-19) outbreak.

15. Contact

- 15.1 Duncan Montgomery, Senior Policy Adviser for Exclusions, at the Department for Education, Telephone 07876 475277 or email: school.exclusions@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.
- 15.3 The Minister for School Standards, Rt Hon Nick Gibb MP, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.