

EXPLANATORY MEMORANDUM TO
THE EDUCATION (PUPIL REGISTRATION) (ENGLAND) (CORONAVIRUS)
(AMENDMENT) REGULATIONS 2020

2020 No. 544

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 The instrument amends the Education (Pupil Registration) (England) Regulations 2006 (“the 2006 Regulations”) and will have effect from 1st June 2020 until the end of the 2019-20 school year. It temporarily suspends the obligations on schools in Regulation 6 to record details in their attendance register as set out in that Regulation. In recognition of the measures introduced by the Government as a response to the coronavirus (COVID-19) outbreak, schools will be afforded more freedoms and provided with non-statutory guidance on how to record attendance during this period. At present the majority of pupils have been asked to stay at home due to the social distancing and self isolation measures introduced by the Government. Schools have been asked to begin planning to welcome back more children from 1 June, provided the 5 key tests set by Government justify the changes at the time.
- 2.2 To enable schools to manage the non-attendance of certain pupils and the phased return of particular groups of pupils, they require a greater flexibility than the 2006 Regulations allow to record attendance and absence under these circumstances. Temporarily suspending the duty on schools to record attendance as prescribed in the 2006 Regulations will allow schools to maintain a record of attendance that can adapt as the situation develops without adding extra administrative burdens.

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.
- 3.2 During the period where the majority of school children were asked to stay at home except for children of critical workers and vulnerable children, the department advised schools to maintain a simplified daily record of children in attendance. The government announced on 10 May that it anticipates that, from the week commencing 1 June, primary schools may be able to welcome back children in Reception, Year 1 and Year 6, alongside the priority groups (critical workers and vulnerable children) which schools have already been supporting while schools have been closed to the majority of pupils. As schools welcome back more pupils, they will need a temporary system to record attendance that can flexibly respond to different expectations of

attendance on different groups of pupils; regulation 6 does not allow for this flexibility. Therefore, there is a need for the amendment to come into effect from the first day schools may be asked to welcome back more children. If the suspension came into force later, schools would for instance, need to grant a leave of absence for each of the pupils on their roll who are not eligible to attend or in some cases would have to record the absence as unauthorised. This would cause additional work for schools. We issued guidance¹ for recording attendance during the exceptional period when most children have not been attending school. As the situation developed and it became clearer that school attendance will be impacted for the rest of the school year as result of the impact of coronavirus (COVID-19), we took the decision to amend regulations. Subject to a final decision, as schools are asked to welcome back significantly more pupils from 1 June 2020, we have confirmed that schools should start taking the register from that point, with enhanced freedoms and flexibility with the suspension of the duty to record prescribed particulars in line with regulation 6 also coming into force from that date.

- 3.3 We have engaged with local authority and school leaders who are content with the planned suspension. The SI does not impose additional burdens or requirements on schools, it relaxes the requirement outlined in regulation 6 in order to ease their administrative burden and provide them with additional flexibility to record attendance in a more intuitive and responsive manner. We have provided advice to schools on how to record attendance as the situation with the coronavirus (COVID-19) developed and will continue to do so.

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)

- 3.4 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 Sections 434(1) of the Education Act 1996 provides that the proprietor of every school must ensure that a register of all pupils at the school is kept. The register must be kept ‘in accordance with regulations’ and must contain ‘the prescribed particulars’ of each pupil. The current Regulations made under section 434 are the 2006 Regulations. They specify that schools must keep an admission register and, except in the case of a school of which all pupils are boarders, an attendance register; and they set out the particulars to be recorded in the registers. They apply only to schools in England. We

¹ <https://www.gov.uk/government/publications/coronavirus-covid-19-attendance-recording-for-educational-settings>

are concerned with Regulation 6 of the 2006 Regulations which sets out how the attendance register must be updated. The duty to keep an attendance register in accordance with Regulation 4 will continue to apply to all schools.

- 6.2 In accordance with Regulation 6, at the beginning of every morning session and once during each afternoon session each pupil must be recorded as present, absent, 'attending an approved education activity', or 'unable to attend due to exceptional circumstances'; and in the case of pupils of compulsory school age, any absence must be recorded as authorised or unauthorised. This is to ensure the presence of every registered pupil is accounted for and to ascertain the reasons for any absences for safeguarding purposes or whether it has been approved.
- 6.3 In response to the coronavirus (COVID-19) outbreak particular groups of children have been asked not to attend school and, of the groups eligible to attend, some of them may attend schools where they are not a registered pupil. In order to lift the requirements placed on schools by the 2006 Regulations in relation to the attendance register, the Secretary of State has taken the decision to temporarily suspend the requirements outlined in regulation 6. Instead, he will issue guidance on recording attendance which: reflects the different and changing expectations of attendance by different groups of pupils; is proportionate in terms of the information required; and can be updated regularly as the situation develops. The suspension of the usual requirements will expire at the end of the 2019-20 school year.

7. Policy background

What is being done and why?

- 7.1 This instrument introduces a temporary suspension of the requirements in Regulation 6 of the Education (Pupil Registration) (England) Regulations 2006 for schools to enter certain particulars in their attendance registers. Regulation 6 is relevant to all schools (including independent schools) except in the case of a school of which all the pupils are boarders. The particulars of what schools are required to record are outlined in regulation 6 and the only amendment being made is in relation to that regulation. The duty for all schools to keep an attendance register will continue to apply.
- 7.2 As well as ensuring the presence of registered pupils, verifying the reasons for authorised absence and following up on unauthorised absence, attendance recording, and monitoring serves a number of additional purposes. This includes but is not restricted to; providing available data for Ofsted to inspect when reviewing the effectiveness of a school's attendance procedures and informing the use of parental responsibility measures by schools and local authorities when deciding to provide support and/or sanctions to parents when their child's attendance at school becomes a problem.
- 7.3 Due to the coronavirus (COVID-19) outbreak along with the self isolation and social distancing measures introduced by the Government, not all children who would usually be expected to attend school are doing so. At present the majority of school children have been asked to stay at home. Vulnerable children are expected to attend school where appropriate. Children of critical workers are eligible to attend school on a voluntary basis. To assist schools with their safeguarding responsibilities, ease their administrative burden and accommodate a transient school population, we provided

advice to schools on how to record attendance during this period². Schools were asked to complete a new streamlined record of attendance confirming if they are open and provide information on the number of pupils and staff attending every day. The advice however does not align with the Regulations. Given the evolving nature of the outbreak and the uncertainty regarding when usual practice will resume, the department has taken the decision to amend the Regulations.

- 7.4 This advice dovetailed with the disapplication of section 444(1) and (1A) of the Education Act 1996 - offences of failing to secure regular attendance at school of a registered pupil, and the modification of section 3 of the Education Act 1996 (definition of pupil) so that a child attending a school other than their registered school on a temporary basis as a result of the incidence of coronavirus (COVID-19) will not be a registered pupil at that school. Collectively, the modification and attendance recording advice ensures schools are provided with the flexibility to record attendance (there will be children attending who aren't registered at the school and/or attending and departing at irregular hours) and the disapplication ensures that no parent is penalised or sanctioned for their child's non-attendance at school due to the coronavirus (Covid-19) outbreak. In addition, no absence data from the year 2019-20 will be published in the school and college performance tables³. Routine Ofsted inspections have been suspended and when they resume, inspectors will take the pandemic into account when talking to schools about absences.
- 7.5 The Government's plan for schools to start welcoming back more groups of pupils from 1 June, subject to scientific advice on 28 May, means that there will be different sets of attendance expectations for different groups of pupils. We recognise parental concerns regarding the safety of their children when they return to school with valid reasons in some instances as to why they may be unable to meet those expectations. Suspending the obligations in Regulation 6 allows schools to record attendance in a way that accommodates the different attendance expectations for different groups of pupils. The returning priority year groups and children of critical workers will be strongly encouraged to attend whilst other year groups will not be expected to attend, unless they are vulnerable children. Maintaining the attendance register in accordance with Regulation 6 during this short period would entail significant additional work for schools, who would, for instance, need to grant a leave of absence for each of the pupils on their roll who are not eligible to attend or who choose not to attend in order to avoid the absence being treated as unauthorised. Temporarily removing this statutory requirement enables a more proportionate and flexible approach to be put in place, whilst still ensuring an accurate record of pupils in attendance.
- 7.6 The department considered legislating to add a Covid-19 related authorised absence. However, parents would still be required to apply for leave of absence for the absence to be authorised and the additional burden on schools would remain. Given this, the evolving nature of the outbreak, and the likelihood that further regulatory amendments would be required, this was unconsidered undesirable. The suspension of the requirements in Regulation 6 will last until the end of the 2019-20 school year and

² <https://www.gov.uk/government/publications/coronavirus-covid-19-attendance-recording-for-educational-settings>

³ The performance tables report the achievements of schools for the academic year and how these results compare with other schools in a local authority area and in England as a whole. The data includes pupil absences and Ofsted ratings.

will apply to all schools (except schools where all pupils are boarders). Through [non-statutory guidance](#), the Secretary of State will advise schools on how to record attendance as the situation develops, taking into consideration the latest scientific advice and available public health information. The suspension is time limited and will not be made permanent. Where a child that is expected to attend does not, we expect schools, local authorities, and other relevant partners to work with the child's parents to support their return to school. Parents will not be penalised if their child does not attend school during this period.

- 7.7 During the short period of suspension, we will continue to monitor its effectiveness. This will provide us with insights into the efficacy of the measures and inform any change we may need to make ahead of the 2020-21 school year in order to maintain an efficient school attendance system.

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 Since 2006 the Regulations have been amended on seven occasions. We do not consider a consolidation to be appropriate as this time given that this is a short amendment with a time-limited effect, however the potential merits of a consolidation at an appropriate time are under consideration.

10. Consultation

- 10.1 There is no statutory duty to consult on the contents of this instrument. We have discussed our approach with school leaders and local authority representative bodies as part of the policy making process and informal consultations and they are in agreement with our approach.

11. Guidance

- 11.1 Guidance providing information on how to record attendance during the period in which the regulations are in force is available as part of the Coronavirus (COVID-19): Education and childcare guidance on GOV.UK at <https://www.gov.uk/government/publications/coronavirus-covid-19-attendance-recording-for-educational-settings>

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Equalities Impact Assessment has been carried out and based on our initial assessment and current available evidence, we do not expect the amendment to have an adverse effect on pupil cohorts with any of the protected characteristics outlined in the Public Sector Equality Duty. Where evidence develops that there could be an adverse effect, the matter will be addressed through appropriate measures.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 The legislation applies to independent schools. The suspension is administrative in nature and does not place additional burdens on schools. Schools will continue to record attendance using their current systems. We therefore do not expect any disproportionate impact to small businesses.

14. Monitoring & review

- 14.1 We are seeking to ease the administrative burden on schools and ensure they are able to record attendance in a way that reflects the current circumstances and grants them flexibility. Given that parents will not be penalised for non-attendance during this period, the approach to monitoring of this legislation will be through DfE's ongoing dialogue with school leaders and local authority representative bodies about how the school attendance system is functioning.
- 14.2 The Regulations do not include a statutory review clause. The provision made in these Regulations will cease to have effect at the end of the 2019-2020 school year, which is within five years of the date when the Regulations come into force. Accordingly, by virtue of section 28(3)(d) of the Small Business, Enterprise and Employment Act 2015 there is no requirement for a review provision or for the Minister to make a statement under section 28(2) of that Act.

15. Contact

- 15.1 Adam Luke at the Department for Education Tel: 07795507424 or email: Adam.Luke@education.gov.uk can answer any queries regarding the regulation.
- 15.2 Charles Lang, Deputy Director for Behaviour, Attendance, Exclusion & Alternative Provision Division, at the Department of Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister Nick Gibb at the Department of Education can confirm that this Explanatory Memorandum meets the required standard.