

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

2020 No. 599

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Education (“the Department”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The instrument amends the Education (Pupil Information) (England) Regulations 2005¹ (“the 2005 Regulations”) to relieve head teachers of maintained schools of their obligations to include in their annual report to parents and adult pupils for the school year 2019/20 (“the current school year”) information on a pupil’s attendance in the current school year and on certain information connected to assessment and attainment at Key Stages 1 and 2. This amendment addresses the impact of the coronavirus (COVID-19) outbreak on pupils’ attendance in the current school year, as well as the lack of assessment information following the cancellation of statutory assessments for Key Stage 1 and 2 pupils in the current school year.

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 instrument amends the 2005 Regulations which contain provision about the duties on maintained schools to keep certain records and produce certain reports including head teachers’ annual reports (regulation 6 and Schedule 1), head teachers’ reports to

¹ <http://www.legislation.gov.uk/ukxi/2005/1437/contents/made>

school leavers (regulation 8) and information to be provided to a school to which a registered pupil of a maintained school transfers (regulation 9 and Schedule 2).

- 6.2 In particular regulation 6 of, and Schedule 1 to, the 2005 Regulations require head teachers of maintained schools to provide an annual report in respect of every registered pupil at the school to their parents, or where the report relates to an adult pupil, to that pupil, other than where the 2005 Regulations require a school leaver's report to be provided. Annual reports must be provided prior to the end of the summer term of every school year.
- 6.3 Schedule 1 to the 2005 Regulations sets out what information needs to be included in an annual report. Amongst other things, an annual report needs to contain information regarding the pupil's attendance record, the results of any Key Stage 1 or Key Stage 2 statutory assessments taken by the pupil during the school year, and certain results, assessment and attainment information, and comparative information, if the pupil is at the end of Key Stage 1 or 2.
- 6.4 The Education (National Curriculum) (Key Stage 2 Assessment Arrangements) (England) Order 2003² and the Education (National Curriculum) (Key Stage 1 Assessment Arrangements) (England) Order 2004³ create requirements for certain assessments, checks and tests to be carried out for pupils at Key Stage 1 and Key Stage 2. The Education (National Curriculum) (Key Stages 1 and 2 Assessment Arrangements) (England) (Coronavirus) (Amendment) Order 2020⁴ ("the 2020 Order") abolishes those requirements for the current school year.

7. Policy background

What is being done and why?

- 7.1 The coronavirus (COVID-19) outbreak has had a significant impact on the ability of pupils to attend school. This impact means that attendance figures in the current school year are unlikely to be comparable with previous years. Reporting attendance figures in the head teacher's annual report this year could lead to parents drawing unreliable conclusions about their child's attendance and could create concerns about poor attendance levels which were outside of the parent and child's control. The lower attendance figures may also be understood as penalising the parent and child for lower attendance even when attendance was not possible. This in turn could create unhelpful burdens on schools in responding to any concerns this creates.
- 7.2 Therefore, the instrument removes the requirement on head teachers to report attendance figures from the current school year in annual reports. Making this change will not prevent staff at schools from raising any concerns they have about a pupil's attendance with the child's parents.
- 7.3 This change aligns with broader changes that the Department has made to ensure that there is flexibility in the school attendance system so parents are not unduly penalised for their child's non-attendance at the present time. Other key changes include amending the Education (Pupil Registration) (England) Regulations 2006⁵ to give schools more freedom to enable them to record attendance accurately during this

² <http://www.legislation.gov.uk/uksi/2003/1038/contents/made>

³ <http://www.legislation.gov.uk/uksi/2004/2783/contents/made>

⁴ <http://www.legislation.gov.uk/uksi/2020/436/contents/made>

⁵ <https://www.legislation.gov.uk/uksi/2020/544/contents/made>

period, and the temporary disapplication of section 444(1) and (1A) of the Education Act 1996⁶, which means that parents will not be penalised for failing to secure their child's regular attendance at school. In addition, no absence data from the current school year will be published in the Department's school and college performance tables.

- 7.4 Changes made by the 2020 Order, also as a result of the coronavirus (COVID-19) outbreak, mean that certain statutory national curriculum assessments which would have been required for pupils at Key Stage 1 and Key Stage 2, during the current school year, are not required. At the same time, assessments which are usually carried out for children performing below the standard of the national curriculum assessments will also not have been carried out. In the absence of having carried out these assessments, it will not be possible for head teachers to meet the current requirement to include either the outcomes of such assessments, or comparative information about the attainment of pupils of the same age in the school or nationally, in reports for the current school year. Therefore connected requirements in the 2005 Regulations are amended to relieve head teachers of the obligation to report in connection to these assessments. In turn, the definition of "comparative information" is amended because the assessments which would have otherwise been required of Key Stage 1 and Key Stage 2 pupils will not have taken place in the current school year.
- 7.5 Head teachers will still be required to provide information on pupils' progress and achievements in annual reports so that parents will continue to receive information about their children's education. The Department will issue updated guidance to support schools in producing this year's reports, which reflects the amendments.
- 7.6 The 2005 Regulations also require information on pupils' attendance and on certain information connected to attainment at Key Stages 1 and 2 to be provided within the common transfer file (CTF), the information that must be provided when a pupil moves from a maintained school to another school. These requirements are not being amended. Schools will continue to be required to include attendance information relating to the current school year in the CTF. While, as schools will be aware, attendance data for the current school year will not be comparable with previous years, it will still provide useful information that will help schools to understand and plan for the needs of pupils joining the school. Schools will not be able to provide information connected to attainment at Key Stages 1 and 2 for the current school year, but it would be impractical to amend the software underpinning the CTF solely for this year. The data fields for this assessment data field will therefore remain. Updated guidance will be issued to schools clarifying how the relevant fields should be completed for the current school year.

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.

9. Consolidation

- 9.1 There are no plans to consolidate the 2005 Regulations.

⁶ <https://www.gov.uk/government/publications/disapplication-notice-school-attendance-legislation-changes>

10. Consultation outcome

- 10.1 In accordance with section 408(5) of the Education Act 1996, which requires the Secretary of State to consult persons with whom consultation appears to him to be desirable, the Department consulted with the National Association of Head Teachers (NAHT), the Association of School and College Leaders (ASCL), the National Association of Schoolmasters / Union of Women Teachers (NASUWT), the National Education Union (NEU) and Voice on excluding attendance information relating to the current school year from the requirements to produce a head teacher's annual report. All of these organisations were supportive of this approach.
- 10.2 In addition, the Office of Qualifications and Examinations Regulation (Ofqual), the NAHT and the ASCL were separately consulted by the Department on the alteration to the requirements for head teacher's annual reports to contain information relating to Key Stages 1 and 2 assessments. These organisations were previously consulted on the changes made by the 2020 Order. No objections were raised by any of these organisations to the changes made by the instrument.

11. Guidance

- 11.1 The Department published guidance⁷ for schools on 21st May 2020 to advise them about the completion of annual reports in the current school year. The guidance explained that legislation was planned to remove the requirement to include in annual reports attendance information relating to the current school year. The guidance also advised that there is no requirement to include in annual reports assessment information in relation to assessments that have not been carried out in the current school year. The guidance will be updated to reflect the legislative changes being made. This will be done before the instrument comes into force. Similarly, the guidance on completing CTF's will be updated to advise on the completion of fields on attendance and where no information is available, e.g. the outcome of Key Stage 1 and 2 assessments.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 The impact on the public sector is not anticipated to be significant.
- 12.3 An Impact Assessment has not been prepared for this instrument because there is no anticipated impact on businesses.

13. Regulating small business

- 13.1 The 2005 Regulations, and therefore, the changes being made, do not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The instrument does not include a statutory review clause. The changes being made only relate to information about, or annual reports produced during, the current school year.

⁷ www.gov.uk/guidance/reporting-to-parents-at-the-end-of-key-stages-1-and-2; and www.gov.uk/guidance/school-reports-on-pupil-performance-guide-for-headteachers

15. Contact

- 15.1 Kevin Dixon at the Department for Education, email: Kevin.Dixon@education.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 Lesley Jones, Deputy Director for Governance, Intervention, Faith and Accountability Division, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Nick Gibb MP, Minister of State for School Standards at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.