

EXPLANATORY MEMORANDUM TO
THE EDUCATION (PUPIL REGISTRATION) (ENGLAND) (CORONAVIRUS)
(AMENDMENT) (NO. 2) REGULATIONS 2020

2020 No. 816

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.

2. Purpose of the instrument

- 2.1 The instrument amends the Education (Pupil Registration) (England) Regulations 2006 (“the 2006 Regulations”) to make provision for schools to record when a pupil is not attending in circumstances relating to coronavirus (COVID-19). This new category of non-attendance has effect from 24th August 2020 and will apply during the 2020-21 academic year.
- 2.2 It will facilitate consistent recording of non-attendance due to coronavirus (COVID-19) across England and make such non-attendance clearly identifiable in school attendance registers to help schools’ local planning. It supports the government’s commitment that parents following public health advice such as shielding, or self-isolating will not be penalised. It will also help assure parents that their child’s attendance record will not be adversely impacted by following official advice not to attend a given school session.

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 Section 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 in relation to England are the 2006 Regulations (there are separate Regulations applying to Wales). 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.

- 6.2 This instrument amends regulation 6 of the 2006 Regulations which sets out how the attendance register must be kept. The Education (Pupil Registration) (England) (Coronavirus) (Amendment) Regulations 2020 temporarily suspended the attendance recording obligations in regulation 6 in order to provide schools with the ability to record attendance in a way that reflected the different attendance expectations for different year groups until the end of the 2019-20 academic year. The situation has now changed and government has announced that attendance will once again be mandatory from the beginning of the 2020-21 academic year.
- 6.3 Under regulation 6 as it stands, without the amendment made by this instrument, 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 instrument introduces an additional category, ‘not attending in circumstances relating to coronavirus’.
- 6.4 The category will apply to sessions that take place in the 2020-21 academic year. This change is the subject of a review clause.

7. Policy background

What is being done and why?

- 7.1 Attendance recording serves several purposes including, but not restricted to, confirming the presence of registered pupils, verifying the reasons for authorised absence, and enabling schools to follow up on unauthorised absence. During the period in which only specified year groups were asked to attend school as a result of self-isolating and social distancing measures in relation to the coronavirus (COVID-19), the obligations in regulation 6 to record particulars were suspended for the remainder of the 2019-20 academic year by the Education (Pupil Registration) (England) (Coronavirus) (Amendment) Regulations 2020, which inserted regulation 6A. This was done to give schools the ability to record attendance in a way that reflected the differing expectations for different year groups as part of the phased wider reopening of schools from 1st June.
- 7.2 Now that the circumstances have changed and the Secretary of State has announced¹ the return to school for all pupils from the start of the Autumn term, it is vital to normalise the attendance system as far as possible to help minimise the longer-term impact of the pandemic on pupils’ education. The Department intends to end the current disapplication of section 444(1) and (1A) of the Education Act 1996 (under Schedule 17 of the Coronavirus Act 2020) on 23rd August so that from the beginning of the new academic year, attendance will be mandatory for all pupils of compulsory school age who are registered pupils. This will also restore the ability to issue penalty notices in line with local authorities’ codes of conduct; and to use the other parental

¹ <https://www.gov.uk/government/news/schools-and-colleges-to-reopen-in-full-in-september>

responsibility measures associated with section 444. As well as the reinstatement of parents' duty to secure regular attendance, the school attendance system will return to normal as regulation 6A of the 2006 Regulations automatically ceases to suspend the obligations in regulation 6, including attendance registers being taken at the beginning of every morning session, once during each afternoon session and containing the prescribed details.

- 7.3 This instrument amends regulation 6 of the 2006 Regulations to ensure that pupils not attending school in certain circumstances relating to the coronavirus (COVID-19) are appropriately recorded in a way that reflects the nature of the non-attendance. The new category of non-attendance will apply to all schools (except schools where all pupils are boarders) for the 2020-21 academic year. It will support the full return of pupils by recognising the unique nature of this non-attendance and without unfairly categorising those who are not attending because they are following public health guidance to shield, self-isolate or staying at home in the event of local or regional lockdowns. It will ensure consistency for all pupils in how this non-attendance is recorded and support schools and local authorities with information when following up. The category addresses parental concerns that a pupil's absence figures could be unfairly impacted by complying with government advice for their child not to attend a given session, by ensuring that those missed sessions are not recorded as absent. Removing this concern will also help incentivise parental compliance with public health advice which in turn will help limit the further transmission of coronavirus (COVID-19).
- 7.4 The department will provide non-statutory guidance to help schools interpret the new category in order to support fairness and consistency of approach across all schools. New paragraph (5A) of regulation 6 sets out what non-attendance in circumstances relating to coronavirus means. It covers any non-attendance in the 2020-21 academic year where the pupil would be contravening specified types of official public health guidance or legislation related to coronavirus by attending school. For example, at the time of writing, Public Health England guidance says that when an individual has tested positive for the virus, or lives with someone who has tested positive, they must self-isolate for a set period of time. It does not include absence after the self-isolation period comes to an end, or where a parent is keeping their child at home against official public health advice. In such cases, schools have been advised to discuss these concerns with parents and pupils, and provide reassurance of the measures they are putting in place to reduce the risk of coronavirus (COVID-19), whilst making it clear that absence as a result of those concerns would be unauthorised (unless a statutory exemption applies) and parents could therefore be liable to a penalty notice in line with their local authority's code of conduct.
- 7.5 We will continue to monitor the use of the new category, and the impact of the amendments throughout the 2020-21 academic year. The data collected will enable a national view of the scale and distribution of this type of non-attendance and provide us with insights into its efficacy to inform any change we may need to make ahead of the 2021-22 academic 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 eight 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 outcome

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

11. Guidance

- 11.1 The Department will update non statutory school attendance guidance to reflect the amendments made by this instrument.

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 groups with any of the protected characteristics outlined in the Public Sector Equality Duty.

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 amendments do not place additional burden on schools. They require schools to record when a pupil is not attending in circumstances relating to coronavirus but this is not an additional duty, just a new way to discharge their existing duty to take the register at the beginning of the morning session and once during each afternoon session. It can be done through their existing systems. We therefore do not expect any disproportionate impact to small businesses.

14. Monitoring & review

- 14.1 The instrument includes a review clause. We will monitor the effectiveness of recording school attendance through ongoing dialogue with school leaders and local authority representative bodies.

15. Contact

- 15.1 Adam Luke at the Department for Education, Telephone 07795507424 or email: Adam.Luke@education.gov.uk can be contacted with any queries regarding the instrument.
- 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 Nick Gibb MP, Minister of State for School Standards at the Department of Education can confirm that this Explanatory Memorandum meets the required standard.