

**EXPLANATORY MEMORANDUM TO**  
**THE SCHOOL DISCIPLINE (ENGLAND) (CORONAVIRUS) (PUPIL EXCLUSIONS**  
**AND REVIEWS) (AMENDMENT) (NO.2) REGULATIONS 2020**

**2020 No. 908**

**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 These regulations ('the Extension Regulations 2020') amend the School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012 ('the 2012 Regulations'). They extend the effect of most of the time limited amendments made by the School Discipline (England) (Coronavirus) (Pupil Exclusions and Reviews) (Amendment) Regulations 2020 to exclusions occurring between 25 September 2020 and 24 March 2021 (inclusive of those dates).

2.2 The provisions that are now extended in full are: the provision for meetings of responsible bodies and independent review panels to take place virtually; and the extension of ten school days to the application window for an independent review, where a permanently excluded pupil is not reinstated by a responsible body.<sup>1</sup> In light of the need to ensure reinstatement decisions are made promptly, the Extension Regulations 2020 specify that if a responsible body or independent review panel has not been able to meet in person or virtually within the normal timescales, the time limit will be extended for only such period as is reasonably necessary for a reason related to coronavirus (COVID-19). This is a slight change from the arrangements set out in the previous amendment regulations, which are referred to below as 'the June Amendment Regulations'.

**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.

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<sup>1</sup> '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.

## **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 Academy schools and alternative provision Academies ('Academies'), in England, to exclude pupils under section 51A of the Education Act 2002; and in relation to the procedures for responsible bodies and independent review panels to consider whether excluded pupils should be reinstated.
- 6.2 In response to the coronavirus (COVID-19) outbreak, the June Amendment Regulations amended procedural rules relating to reinstatement decisions and reviews for a temporary period. The amendments provided for meetings of responsible bodies and independent review panels to take place virtually, where certain conditions are met. They also extended the timescales for such meetings in some circumstances, and extended the time window for application for an independent review. The June Amendment Regulations came into force on 1 June 2020 and the changes made by them affect exclusions occurring up to and including 24 September 2020 ('relevant exclusions').
- 6.3 The Extension Regulations 2020 come into force on 25 September 2020 and affect exclusions occurring on or after that date but before 25 March 2021.
- 6.4 They amend the definition of 'relevant exclusion' so that it covers exclusions occurring up to 25 March 2021. The effect of this is that the provisions relating to virtual meetings continue to apply to exclusions occurring up to and including that date, as does the extension of time for parents (or pupils, if 18 or above) to request an independent review of the responsible body's reinstatement decision. These provisions are carried over from the June Amendment Regulations.
- 6.5 The Extension Regulations do not extend the provisions in the June Amendment Regulations relating to timescales for meetings of responsible bodies or independent review panels. Rather, they confine those provisions to relevant exclusions occurring before 25 September 2020. In relation to relevant exclusions occurring from that date until 25 March 2021, they provide that where a meeting has not been held by the normal deadline because coronavirus (COVID-19) has made it impracticable to hold it in person and the conditions for a virtual meeting were not satisfied, the deadline is extended only as long as is reasonably necessary for a reason related to coronavirus (COVID-19). This is a stricter time extension than that granted by the June Amendment Regulations in similar circumstances.
- 6.6 For exclusions that occurred between 1 June 2020 and 24 September (inclusive) – as well as exclusions that occurred before the 1 June 2020 but in respect of which certain decisions have not yet been made when the amended regulations come into force – the provisions made by the June Amendment Regulations continue to apply.
- 6.7 Guidance has been published to help those involved understand which rules apply in the relevant circumstances.<sup>2</sup>

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<sup>2</sup> Statutory guidance can be found at <https://www.gov.uk/government/publications/school-exclusion>

## 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 bodies 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 an independent 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. Below, the use of the word ‘normal’ refers to the arrangements set out in the 2012 Regulations.
- 7.2 Earlier in the year, it became apparent that public health measures designed to limit the spread of coronavirus (COVID-19) made it difficult for responsible bodies and IRPs to meet in person within the normal time limits. In light of these difficulties, the June Amendment Regulations were put in place to make the procedures for responsible body meetings and IRPs temporarily more flexible, without detriment to parents’ and pupils’ rights or to the fairness of the scrutiny system. They do this by making provision for meetings of responsible bodies and IRPs to be held virtually where it is not reasonably practicable for the meeting to be held in person due to coronavirus (COVID-19) and where several conditions are met; by granting time extensions, where it has not been reasonably practicable to meet in person due to coronavirus (COVID-19) and the conditions for a virtual meeting have not been met within the normal time limit; and by extending the application window for an independent review by ten school days. These arrangements affect exclusions occurring from 1 June to 24 September 2020 (inclusive of those dates).
- 7.3 The June Amendment Regulations included a clause requiring the Secretary of State to review their effectiveness. The Department has considered scientific advice from the Scientific Advisory Group for Emergencies (SAGE) and Public Health England; correspondence; newly released research and official statistics on exclusions; and current Government advice to the general public, schools, local authorities, and parents. To assess the views of stakeholders across the education sector and to collect information from those ‘on the ground’, we have met with teaching unions, head teachers, academic researchers, local authority officers, representatives of governors and trustees, the Office of the Children’s Commissioner for England, advocacy groups, and stakeholders representing parents and pupils (including the Special Educational Consortium, with whose help we obtained information from SEND Information, Advice and Support Services). Our approach has been iterative and assessment of the effectiveness of the regulations continues.
- 7.4 In broad terms, stakeholders have so far been supportive of the June Amendment Regulations. There has been a consensus that, for some families, virtual meetings can be more accessible and less intimidating than a meeting in person, and we have heard that virtual meetings of both responsible bodies and IRPs have been held with success. Some stakeholders have reported that virtual meetings may be more difficult to chair than a meeting in person and that the conditions for a virtual meeting could be

misinterpreted by governing boards and arranging authorities, and have sought more guidance on these points, which has been provided.<sup>3</sup>

- 7.5 The evidence gathered on the use of time extensions shows that some meetings of responsible bodies and IRPs have been delayed beyond the normal deadlines, in some cases because parents had expressed a preference for a meeting in person, or did not have access to the requisite technology for a virtual meeting. Some stakeholders representing children and families voiced concerns that the time extensions for responsible body and IRP meetings which the June Amendment Regulations granted in limited circumstances could be interpreted more broadly than intended and could lead to excluded pupils waiting longer for a reinstatement decision. We are not able to estimate what effect the extension of the application window for an independent review has had, though we collected evidence that IRPs had been held virtually. The majority of stakeholders agreed that the temporary arrangements should be extended in some form to exclusions that occur after 24 September, though some stakeholders asked for a resumption of the normal timescales for governing board and IRP meetings.
- 7.6 In light of the information we have received about the impact of the June Amendment Regulations, and the continued possibility for local disruption arising from coronavirus (COVID-19), the Extension Regulations 2020 put in place similar arrangements for exclusions which occur between 25 September 2020 and 24 March 2021 (inclusive of those dates). The provisions described below are identical to those set out in the June Amendment Regulations unless otherwise noted.
- 7.7 The Extension Regulations 2020 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. We have retained the test of reasonable practicability, which was chosen to allow meetings to proceed in person if circumstances allow, and to accommodate changing circumstances. While reviewing the effectiveness of the June Amendment Regulations, we have found evidence that meetings have been held in person where this has been deemed ‘reasonably practicable’ (though we have not been able to assess the validity of those decisions, which will be context-specific). The updated guidance published alongside these Regulations (see footnote 2) describes what information responsible bodies and arranging authorities should consider when making this decision.
- 7.8 The conditions for a remote access meeting were intended to ensure procedural fairness, and have been retained. 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. Supplementary guidance has been provided in response to stakeholders’ requests (see paragraph 7.4).<sup>4</sup>
- 7.9 The Extension Regulations 2020 specify that if it has not been reasonably practicable for a responsible body or IRP to meet in person within the normal timescales, and the conditions for a remote access meeting have not been met, the timescale for the

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<sup>3</sup> Statutory guidance can be found at <https://www.gov.uk/government/publications/school-exclusion>

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meeting will be extended by ‘such longer period as is reasonably necessary for a reason related to the incidence or transmission of coronavirus’. This is a stricter time extension than the one granted in such circumstances by the June Amendment Regulations (‘ten school days, or such longer period as is reasonably necessary for a reason related to coronavirus’). The effect is to return to the normal timescales for such meetings, albeit with an extension – only applicable where the delay is due to coronavirus – requiring responsible bodies and IRPs to meet as soon as possible after the deadline.

- 7.10 This change has been made in light of the clear benefit to pupils and their families of meetings being held within the normal timescales, or as soon as possible afterwards, so that pupils can receive a reinstatement decision quickly. It delivers a return to the normal timescales while a) making it explicit that responsible bodies and IRPs who have not been able to meet due to coronavirus (COVID-19) within the normal timescales must meet as soon as possible;<sup>5</sup> and b) avoiding responsible bodies and arranging authorities being in breach of their duties due to a combination of circumstances out of their control, such as would render a meeting in person impracticable and a virtual meeting impossible. It also responds to schools’ and local authorities’ increasing capability with both remote access technology,<sup>6</sup> and the protective measures which minimise the risks of transmission,<sup>7</sup> which will increase the proportion of meetings which can be held – in person or via remote access – within the normal time limits. This renders the initial extension of ten school days less necessary than it was in June, when responsible bodies and arranging authorities had limited notice of the new arrangements.
- 7.11 Lastly, the Extension Regulations 2020 also keep the application window within which a parent (or adult pupil) can apply for an independent review at 25 school days. As previously, this change has been made in case parents or pupils cannot, due to illness or disruption related to the pandemic, apply for a review within the normal 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 may need it.
- 7.12 It is still uncertain how long the disruption caused by coronavirus (COVID-19) will affect schools, families and local authorities. The Extension Regulations 2020 include a requirement for the Secretary of State to review their effectiveness during the period ending with 24 March 2021. This process will ensure that the measures are working effectively and that they (and the guidance provided) are appropriate to the evolving circumstances. Unless further legislation is necessary, the normal arrangements will apply to all exclusions occurring on or after 25 March 2021.

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<sup>5</sup> The 2012 Regulations state only that a responsible body will not be relieved of the duty to take steps in order to decide whether or not the pupil should be reinstated because those steps have not been taken within the timescales set out in those regulations (as amended). They do not say when such steps must be taken, and do not specify what should happen if a deadline for an IRP is missed.

<sup>6</sup> See, for example, the Department’s advice on school governance at the following link:

<https://www.gov.uk/government/publications/school-governance-update/school-governance-update-march-2020>

<sup>7</sup> Such as the public health measures set out in the first section of the Departmental guidance ‘Guidance for full opening: schools’, which apply to all schools. They can be found at the following link:

<https://www.gov.uk/government/publications/actions-for-schools-during-the-coronavirus-outbreak/guidance-for-full-opening-schools>

## **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.

## **10. Consultation outcome**

- 10.1 There is no statutory requirement for the Department to consult on the Extension Regulations 2020. However, officials have engaged with a wide variety of stakeholders while reviewing the effectiveness of the June Amendment Regulations, the outcome of which is summarised in paragraphs 7.3 – 7.5. Stakeholders have been broadly supportive of the June Amendment Regulations and have supported the extension of the temporary arrangements to exclusions that occur after 24 September in some form. This consultation has informed the development of the present Regulations and updates to our statutory guidance.

## **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 There is no, or no significant, impact on business, charities or voluntary bodies. 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 the Extension Regulations 2020 during the period ending with 24 March 2021.
- 14.2 The Department for Education will continue to monitor the impact of the Extension Regulations 2020 and the continued impact of coronavirus (COVID-19) on scrutiny processes related to exclusions. Further amendments to regulations may be made 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 at the Department for Education, Rt Hon Nick Gibb MP, can confirm that this Explanatory Memorandum meets the required standard.