

**EXPLANATORY MEMORANDUM TO**  
**THE EDUCATION (PUPIL REGISTRATION) (ENGLAND) (CORONAVIRUS)**  
**(AMENDMENT) REGULATIONS 2021**

**2021 No. 852**

**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 This instrument makes provision for schools to continue to record when a pupil is not attending in circumstances relating to coronavirus (COVID-19). This category has existed since 24 August 2020 and is extended by this instrument with effect from 9 August 2021 so that it will apply during the 2021/22 academic 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 Not applicable.

**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 the negative resolution procedure and does not amend primary legislation, no statement is required.

**6. Legislative Context**

- 6.1 The proprietor of every school must ensure that a register of all pupils at the school is kept<sup>1</sup>. The register must be kept ‘in accordance with regulations’ and must contain ‘the prescribed particulars’ of each pupil. The relevant regulations specify that schools must keep an admission register and, except in a school in 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 makes changes to the provisions that govern how the attendance register must be kept<sup>2</sup>. Each pupil must be recorded as present, absent, ‘attending an

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<sup>1</sup> See section 434(1) of the Education Act 1996 and the Education (Pupil Registration) (England) Regulations 2006 (‘the 2006 Regulations’).

<sup>2</sup> The amendments are to regulation 6(5A) of the 2006 Regulations.

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. In August 2020, an additional recording category was introduced, ‘not attending in circumstances relating to coronavirus’, to enable schools to record this consistently and accurately<sup>3</sup>. If a pupil is not attending because of illness, this is recorded under a different category, including when the illness is COVID-19.

- 6.3 That new recording category only applies to school sessions that take place in the 2020/21 academic year. This instrument provides that the category will also apply to sessions in the 2021/22 academic year and provides that the effectiveness of this amendment is subject to review.
- 6.4 Currently, the category of ‘not attending in circumstances relating to coronavirus’ is defined partly by reference to guidance published by Public Health England<sup>4</sup>. Public Health England is due to be abolished and its relevant functions for these purposes will be taken over by the UK Health Security Agency (‘the UKHSA’) on 1 October. This instrument therefore also makes a minor change to cover guidance published by the UKHSA.

## **7. Policy background**

### *What is being done and why?*

- 7.1 The changes made in August 2020 to introduce a new recording category where pupils are not able to attend due to circumstances relating to COVID-19 were necessary in response to the pandemic. The category has been used during the 2020/21 academic year to record where pupils are unable to attend because they are self-isolating, quarantining after returning from abroad, have been advised to shield on account of being clinically extremely vulnerable, or because of a national lockdown. This instrument will ensure that schools can continue to record this using this same category in the 2021/22 academic year. This category does not apply where a pupil is not attending because they are unwell with COVID-19 (absence due to illness is recorded under a separate category).
- 7.2 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. The amendment made by this instrument will ensure a consistent approach.

### *Explanations*

#### *What did any law do before the changes to be made by this instrument?*

- 7.3 The existing provisions that enable schools to record when a pupil does not attend in circumstances related to coronavirus (COVID-19) only apply to the 2020/21 academic year.

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<sup>3</sup> Amendments were made to the 2006 Regulations by the Education (Pupil Registration) (England) (Coronavirus) (Amendment) (No.2) Regulations 2020 (“the 2020 Regulations”).

<sup>4</sup> See paragraph (5A)(b)(i) of regulation 6 of the 2006 Regulations.

Why is it being changed?

- 7.4 This category has been an effective way of enabling schools to record when pupils do not attend because of COVID-19 restrictions. It is necessary to retain this category as some pupils will still be required to self-isolate in the 2021/22 academic year.

What will it now do?

- 7.5 This instrument will ensure that schools are able to continue to record when pupils are not attending school in circumstances relating to COVID-19 in the 2021/22 academic year and that these are appropriately recorded. The category will continue to apply to all schools (except schools where all pupils are boarders). It recognises where pupils do not attend without unfairly categorising them as absent (which would negatively affect their school attendance record) because they are following public health guidance to shield, self-isolating or staying at home due to local restrictions. This category does not apply where a pupil is not attending because they are unwell with COVID-19 (pupils who are unable to attend due to illness are recorded under a separate category).
- 7.6 It will also ensure continuing consistency for all pupils in how these situations are recorded. This will help schools and local authorities to identify and understand the impact of COVID-19 on pupil groups with different characteristics, and to understand how much education a child has missed specifically because of COVID-19. This will help schools and local authorities to target their catch-up and recovery efforts most effectively. As above, this category also ensures that pupils' attendance records are not unfairly impacted by their compliance with public health advice. Missed sessions under this category do not count as an absence on the pupil's school attendance record. Removing this concern for a second academic year will also incentivise parental compliance with public health advice, which in turn will help limit the further transmission of COVID-19.

**8. European Union Withdrawal and Future Relationship**

- 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 The 2006 Regulations have been amended on nine occasions. We do not consider a consolidation to be appropriate at this time given that this is a minor 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 indicated our approach to school leaders and to local authority representative bodies as part of the policy making process and they raised no concerns about the regulations. They have asked us to update our accompanying guidance and reiterate our expectations about when this category ought to be used.

## **11. Guidance**

- 11.1 The Department will update non-statutory school attendance guidance<sup>5</sup> to reflect the changes 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 Impact Assessment has not been prepared for this instrument because no significant impact on business or on the public sector is foreseen.

## **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 an additional burden on schools. They require schools to continue to record when a pupil is not attending in circumstances relating to coronavirus for the 2021/22 academic year as part of discharging their existing duty to take the register at the beginning of the morning session and once during each afternoon session. We therefore do not expect any disproportionate impact on small businesses.

## **14. Monitoring & review**

- 14.1 We will continue to monitor the effectiveness of the recording of school attendance through ongoing consultation with stakeholders, including schools and local authorities. We will also monitor the use of this category of attendance through the collection of school census data.
- 14.2 This instrument includes a requirement to review the effectiveness of the changes being made.

## **15. Contact**

- 15.1 Monica Aldulaimi at the Department for Education, email: [Monica.Aldulaimi@education.gov.uk](mailto:Monica.Aldulaimi@education.gov.uk), can be contacted with any queries regarding the instrument.
- 15.2 Becky Benwell or Caroline Cane, Assistant Directors for School Attendance Unit, Behaviour, Attendance, Exclusion & Alternative Provision Division, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rt. Hon. Nick Gibb MP, Minister of State for School Standards at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

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<sup>5</sup> <https://www.gov.uk/government/publications/school-attendance/addendum-recording-attendance-in-relation-to-coronavirus-covid-19-during-the-2020-to-2021-academic-year>