

EXPLANATORY MEMORANDUM TO
THE SCHOOL DISCIPLINE (PUPIL EXCLUSIONS AND REVIEWS) (ENGLAND)
(CORONAVIRUS) (AMENDMENT) (NO. 2) REGULATIONS 2021

2021 No. 953

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 (No. 2) 2021”) amend the School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012 (“the 2012 Regulations”). They extend the effect of certain, time-limited coronavirus-related provisions, including enabling certain meetings, at which school exclusions will be considered, to be held by remote access where certain conditions apply.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 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 The School Discipline (England) (Coronavirus) (Pupil Exclusions and Reviews) (Amendment) Regulations 2020 (“the First Amendment Regulations 2020”) inserted coronavirus-related provisions into the 2012 regulations. They provided that, in relation to a ‘relevant exclusion’, defined as an exclusion occurring from 1 June to 24 September 2020, responsible bodies and independent review panels could hold meetings remotely in certain circumstances. They also extended deadlines for certain procedural steps in relation to relevant exclusions. Those deadlines were extended by 10 school days or, if that extended deadline could not be met for a reason related to coronavirus, for as long as reasonably necessary. They also extended by 10 school

days the time limit for parents (or pupils, if 18 or above) to request an independent review of the responsible body's decision not to reinstate an excluded pupil (a 'reinstatement decision'), (from 15 to 25 school days).

- 6.3 Due to the continued disruption arising from coronavirus (COVID-19), following the expiry date of the First Amendment Regulations 2020 on 24 September 2020, new regulations were introduced, the School Discipline (England) (Coronavirus) (Pupil Exclusions and Reviews) (Amendment) (No. 2) Regulations 2020 ("the Extension Regulations 2020"). They extended, until 24 March 2021, the provisions for meetings of responsible bodies and independent review panels to take place virtually, where certain conditions were met, and continued the extended time frame to make an application for an independent review. Considering the need to ensure reinstatement decisions were made promptly, the Extension Regulations 2020 did not fully extend the changes to deadlines made by the First Amendment Regulations 2020. They provided that, in relation to a relevant exclusion occurring in the period from 25 September 2020 to 24 March 2021, if a responsible body or independent review panel had not been able to meet in person or virtually within the normal timescales, the time limit would be extended for only such period as is reasonably necessary for a reason related to coronavirus (COVID-19), rather than the 10 school days permitted by the First Amendment Regulations.
- 6.4 Following the expiration of the Extension Regulations 2020 on 24 March 2021, new temporary regulations were introduced, the School Discipline (Pupil Exclusions and Reviews) (England) (Coronavirus) (Amendment) Regulations 2021 ("the Extension Regulations 2021"). The Extension Regulations 2021 extended the effects of the Extension Regulations 2020 by amending the definition of 'relevant exclusion' to cover exclusions occurring up until 24 September 2021.
- 6.5 These Extension Regulations (No. 2) 2021 will come into force on 25 September 2021 and amend the definition of 'relevant exclusion' to cover exclusions occurring during the period starting on 25 September 2021 and ending with 24 March 2022. The provisions relating to virtual meetings and those relating to extending time limits for meetings by such period as is reasonably necessary that were extended by the Extension Regulations 2021 will apply to exclusions occurring up to and including 24 March 2022.
- 6.6 These regulations do not extend the provision allowing for an extended time frame for parents (or pupils, if 18 or above) to request an independent review of the responsible body's reinstatement decision. Rather, the application window reverts to the original statutory timeframe of 15 school days contained in the 2012 regulations.
- 6.7 Guidance¹ has been published to help those involved understand which rules apply in the relevant circumstances.

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. Under the 2012 regulations, the responsible bodies of maintained schools, academies and pupil

¹ <https://www.gov.uk/government/publications/school-exclusion/changes-to-the-school-exclusion-process-during-the-coronavirus-outbreak>

referral units must meet to consider permanent exclusions, and fixed period exclusions in some circumstances, so that they can decide whether 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 as originally made.

- 7.2 Early in 2020, 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 First Amendment Regulations 2020 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 did this by making provision for meetings of responsible bodies and IRPs to be held virtually where it was not reasonably practicable for the meeting to be held in person due to coronavirus (COVID-19) and where several conditions were met; by granting time extensions, where it had not been reasonably practicable to meet in person due to coronavirus (COVID-19) and the conditions for a virtual meeting had not been met within the normal time limit; and by extending the application window for an independent review by 10 school days.
- 7.3 These arrangements initially affected exclusions occurring from 1 June 2020 to 24 September 2020. The Extension Regulations 2020 extended most of those arrangements to also affect exclusions occurring from 25 September 2020 to 24 March 2021, but removed the extension of 10 school days that were added to timescales for decisions to be made about whether a pupil should be reinstated and instead, allowed the time limit to be extended only when it has not been reasonably practicable for the meeting to be held in person due to coronavirus with different provisions as to deadlines for meetings.² The Extension Regulations 2021 extended the provisions of the Extension Regulations 2020 to apply during the period beginning on 25 March 2021 until 24 September 2021.
- 7.4 The Extension Regulations 2021 included a provision requiring the Secretary of State to review their effectiveness. The Department has considered scientific advice from Public Health England, official statistics on exclusions, and current Government advice to the general public, schools, local authorities, and parents. We have also considered the views of stakeholders across the education sector including (but not limited to) teachers, governors, unions, local authorities, and stakeholders representing parents and pupils.
- 7.5 In broad terms, stakeholders are supportive of the policy that is given through the Extension Regulations (No. 2) 2021 as they have been about the Extension Regulations 2021. There has been a consensus that, for some families, virtual meetings can increase participation and we have heard that virtual meetings of both

² Timescales for exclusions between 1 June and 24 September 2020 are described here: <https://www.gov.uk/government/publications/school-exclusion/changes-to-the-school-exclusion-process-during-the-coronavirus-outbreak>

responsible bodies and IRPs have been held with success. It ultimately continues to be a provision that is a helpful contingency measure should there be any further public health restrictions to limit the spread of coronavirus (COVID-19) that might make it difficult for meetings to be held in person within the normal timescales.

- 7.6 Feedback from stakeholders suggests that rates of exclusion are returning to pre-pandemic levels. 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. The majority of stakeholders agreed that the temporary arrangements should continue in some form for exclusions that occur after 24 September 2021.
- 7.7 The Extension Regulations (No. 2) 2021 extend provisions 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 we were reviewing the effectiveness of the Extension Regulations (No. 2) 2021, stakeholders confirmed meetings have been held in person where this has been deemed ‘reasonably practicable’.
- 7.8 The Extension Regulations (No. 2) 2021 also have the effect that if, in relation to an exclusion occurring from 25 September 2021 to 25 March 2022, 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 meeting will be extended by ‘such longer period as is reasonably necessary for a reason related to the incidence or transmission of coronavirus’. Stakeholders have told us that this is a useful measure to keep in place because it acts as a contingency measure for any future transmissions of coronavirus.
- 7.9 The Extension Regulations (No. 2) 2021 reinstate statutory timescales for parents (or an adult pupil) to apply for an independent review to 15 school days, removing, for ‘relevant’ exclusions that take place on or after 25 September 2021, the 10 school days extension that was introduced by the First Amendment Regulations 2020 (and extended by the Extension Regulations 2020 and the Extension Regulations 2021). Recent stakeholder feedback shows that parents and carers are not making use of the extension for IRP meetings which is why the Department has taken the decision to reinstate the original statutory timescales. We have also spoken to organisations that advocate for parents and carers who have not raised concerns regarding the reinstatement of statutory timescales. The 10 school day extension (as with the other coronavirus-related provisions) was only intended to apply for as long as the evidence showed that it was necessary.

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 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 (No. 2) 2021.
- 10.2 However, officials have engaged with a wide variety of stakeholders while reviewing the effectiveness of each of the extensions we have made to the coronavirus-related extensions. In respect of the Extension Regulations 2021, this is summarised in paragraphs 7.5 to 7.9 of this Explanatory Memorandum. Stakeholders were broadly supportive of the Extension Regulations 2021 and have supported the extension of virtual meetings for exclusions that occur on or after 25 September 2021 in some form. This consultation has informed the development of the present regulations and updates to our statutory guidance.

11. Guidance

- 11.1 The Statutory guidance, ‘Changes to the school exclusion process during the coronavirus (COVID-19) outbreak’ is provided and is available at <https://www.gov.uk/government/publications/school-exclusion/changes-to-the-school-exclusion-process-during-the-coronavirus-outbreak>
- 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. This guidance is available here: [School suspensions and permanent exclusions - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/school-suspensions-and-permanent-exclusions)

12. Impact

- 12.1 There is no, or no significant, impact on business, charities³ 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.
- 12.2 There is no significant impact on the public sector, however, 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.
- 12.3 An Impact Assessment has not been prepared for this instrument because there is no, or no significant, impact on business, charities or voluntary bodies.

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 their effectiveness during the period ending on 25 March 2022.
- 14.2 The Department for Education will continue to monitor the impact of the regulations and the continued impact of coronavirus (COVID-19) on scrutiny processes related to

³ Except to the extent that some responsible bodies are themselves charities. Impact on them is covered by the following sentence as part of the impact on the public sector.

exclusions. This includes revoking this Statutory Instrument sooner than 25 March 2022 if it is clear that these regulations are no longer needed.

15. Contact

- 15.1 Nicola Nadanakumaran, Senior Policy Advisor for Suspensions and Permanent Exclusions, at the Department for Education, email: school.exclusions@education.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Alasdair Duerden, Deputy Director for Behaviour, Attendance, Exclusions and Alternative Provision, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Minister of State for School Standards at the Department for Education, Rt Hon Nick Gibb MP, can confirm that this Explanatory Memorandum meets the required standard.