

EXPLANATORY MEMORANDUM TO
THE EDUCATION (INFORMATION ABOUT INDIVIDUAL PUPILS) (ENGLAND)
(AMENDMENT) REGULATIONS 2024

2024 No. 209

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Department for Education and is laid before Parliament by Command of His Majesty.

2. Declaration

- 2.1 Minister Hinds, Minister of State (Minister of State for Schools) at the Department for Education confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Simon Blake, Deputy Director for School Attendance and Corinne Richardson, Head of Data Engineering at the Department for Education confirms that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 James Boughen at the Department for Education can be contacted via email at Attendance.PMO@education.gov.uk with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

- 4.1 This instrument will mandate the provision of information by state-funded schools about whether a pupil has attended or not attended a school session, and other relevant information relating to the pupil.

Where does the legislation extend to, and apply?

- 4.2 The territorial extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England & Wales.
- 4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

- 5.1 This instrument mandates state-funded schools (except nursery schools) to provide specific pupil information on request by a date specified by the Secretary of State for Education. The requirement for schools to provide this information on request can be met by the school having an electronic management information system containing the required information that can be accessed at all times by the Department. For schools without a compatible management information system, an alternative method for providing the information will be established.

- 5.2 The Regulations will require schools to provide information about whether registered pupils have attended or not attended a school session. The Regulations will also require schools to provide other relevant information about a pupil. This information is: name; sex; national curriculum year group; date of birth; postcode of where the pupil normally resides; date of admission to the school; ethnicity; first language; current and former unique pupil number (UPN); leaving date; as well as information about whether the pupil has special educational needs (i.e has an education health and care plan or SEN support – and the primary and secondary SEN need); is in receipt of free school meals and is or was previously a looked after child.
- 5.3 The Regulations require the attendance and other information to be provided either as it stands at the time of collection or as it was at a previous point, depending on what the Department requests.
- 5.4 The COVID-19 pandemic caused unprecedented disruption to the education of young people, and non-attendance remains higher than before the pandemic. In Spring 2022, the Department introduced a pilot to collect, on a voluntary basis, daily pupil attendance data. High participation in this pilot (89% of all state funded schools as of February 2024) has allowed the Department to provide participating schools with secure reports to support them in monitoring pupil level attendance and putting in place interventions. Mandating this collection will extend this support to all state-funded schools in England except nursery schools.
- 5.5 Schools, local authorities, and academy trusts will have access to near real time data to understand any trends and potential risks from a pupil’s attendance pattern. It will help schools identify cohorts of pupils with higher levels of absence to develop specific strategies to support them.
- 5.6 The Department has robust safeguards and controls in place to ensure this data is handled securely and in accordance with relevant data protection regulations.
- 5.7 The rich data set can help inform decisions and actions of schools and responsible bodies to respond to pupil absence in a timely way. It can also allow safeguarding issues to be identified and support and intervention plans to be put in place for pupils or cohorts who are displaying worrying patterns of absence.
- 5.8 The instrument does not affect independent schools (other than Academies) or settings which do not typically provide education to children of compulsory school age (for example, nursery schools or post-16 institutions). This is consistent with the schools that are in scope for providing statutory information via the school census.

What was the previous policy, how is this different?

- 5.9 The Education (Information About Individual Pupils) (England) Regulations 2013 (“the 2013 Regulations”) currently require certain schools and local authorities to provide information on pupil attendance and other relevant information on a pupil within 14 days of receiving a request.
- 5.10 Before the pilot, the Department only routinely collected this data via the School Census collections on a termly or annual basis. This data is published in the School Census which gives a termly view, and the Child In Need Census, SSDA903 collection for “child looked after” and SEN2 Statutory Collection which is annual.
- 5.11 Collecting this data at this frequency creates a two-term lag between the data being collected and the data being published. As set out above, the parallel voluntary collection begun in 2022 gathers a sub-set of that data, focused on attendance, more frequently. Collecting this smaller set of data on a more frequent basis than termly or

annually will mean schools, trusts and local authorities have access to near real-time data and allow more timely interventions to reduce persistent absence and support vulnerable children.

- 5.12 These Regulations will support state funded schools (with a compatible electronic management information system), trusts and local authorities view near real time data on pupils' attendance so they can understand fully patterns, risks, and issues for attendance. This will support a more timely and more targeted national and local level response to support the improvement of attendance and safeguarding for all pupils.

6. Legislative and Legal Context

How has the law changed?

- 6.1 The 2013 Regulations set out the data about individual pupils that the governing bodies or proprietors of state-funded schools in England must provide to the Secretary of State and local authorities. The 2013 Regulations provide the legislative underpinning for the School Census collection.
- 6.2 These Regulations amend the provisions of the 2013 Regulations to insert a new regulation 5A imposing an additional requirement on the proprietors of state-funded schools (except nursery schools) to provide certain information on all registered pupils on any specific date requested, in relation to whatever times are specified in the request. This requirement can be fulfilled by school's having an electronic management system containing the required information that can be accessed all times by the Department. A new Schedule 1A is inserted, setting out the information required.
- 6.3 Alongside this statutory instrument, we are, in parallel, replacing The Education (Pupil Registration) (England) Regulations 2006 to ensure that the legal framework for school attendance remains robust and fit for purpose by improving consistency and accuracy of information recorded in registers and enabling the right people to have access to data at the appropriate time.

Why was this approach taken to change the law?

- 6.4 The 2013 Regulations are already understood as the Regulations underpinning the collection of specific pupil information, including attendance data, via the Census collections. The intention of the instrument is to create a new similar (though narrower and more frequent) collection of individual pupil information and so amending these Regulations is the best possible route.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 Consultations have taken place with the Department's Star Chamber Scrutiny Board, the providers of management information systems to schools and local authorities, and the Information Commissioners Office.
- 7.2 The Star Chamber Scrutiny Board helps to assess all Departmental proposals for new, or revised, data collections relating to children and young people. It aims to ensure all new collections, or revisions to existing collections, are feasible, necessary, provide value for money and are designed in such a way as to add as small a burden to the frontline as possible. The group is formed from frontline local authority representatives involved in children's services data, including education, social care

and early years, plus serving head teachers from primary and secondary education. They have approved to the collection.

- 7.3 The providers of management information systems to schools and local authorities have also agreed to develop their systems to hold the required data and put in place functionality that allows schools to provide this data to the Department.
- 7.4 The Department has also been running this daily data collection as a voluntary collection first. Throughout this period, we have taken on board feedback, user research and queries from schools and local authorities, including on the data fields they require and the strong desire from Local Authorities to make the collection mandatory in order for them to fulfil their attendance duties and expectations.

8. Applicable Guidance

- 8.1 The Department's Working Together to Improve Attendance guidance will be updated to include all statutory duties on relevant bodies, including the duty on schools to provide pupil information.
- 8.2 Technical guidance on how to meet this duty via granting access to management information systems will be published in Spring 2024.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment has not been prepared for this instrument because there is no significant impact on business.

Impact on businesses, charities and voluntary bodies

- 9.2 There is no, or no significant, impact on business, charities or voluntary bodies.
- 9.3 There is no, or no significant, impact on the public sector because no new funding is required.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The approach to monitoring this legislation is that effect of the policy will be kept under review through regular sectoral engagement and action will be taken if any issues arise.
- 10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Minister Damien Hinds has made the following statement: 'This SIs does not make or amend regulatory provisions that relate to business activity (including voluntary or community bodies) and so does not require a review provision'.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Minister for Schools has made the following statement regarding Human Rights:

“In my view the provisions of the Education (Information About Individual Pupils) (England) (Amendment) Regulations 2024 are compatible with the Convention rights.”

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).