EXPLANATORY MEMORANDUM TO

THE EDUCATION (CORONAVIRUS, REMOTE EDUCATION INFORMATION) (ENGLAND) (AMENDMENT) REGULATIONS 2021

2021 No. 122

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.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument imposes a requirement on schools in the public sector, as well as independent schools with state-funded pupils, to publish information regarding the provision of remote education on their school website (or, in the absence of a school website, to provide information in accordance with the alternative arrangements set out in these Regulations) so that parents, carers and pupils can better understand what their school's remote education provision entails.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 These Regulations will come into force on 12 February 2021, seven days after their laying date.

3.2 That coming into force date has been chosen to ensure that the details of schools' remote education are available for parents as soon possible, given the increased and now extended reliance that families will have on remote education while restrictions on attendance remain in place. Additional pupils and students will return to on-site education on 8 March 2021 at the earliest and given the significant role parents play in remote education it is critical that parents are informed as to their child's remote education provision as soon as possible, and that the legal responsibility of schools to make this information available is clear.

3.3 These Regulations do not require schools to do anything additional to that which has already been requested of them in guidance. Stakeholders were informed of the expectation that they publish this information on their website through an update to the guidance for remote education published on 3 December 2020. They were expected, under that guidance, to have done this by the 25 January 2021. By making these regulations come into force sooner and ahead of the February half-term, we can provide the necessary legal clarity to ensure, as far as possible and as quickly as possible, that parents have information on remote education.

3.4 The Department has progressed these Regulations as swiftly as possible in the context of finalising the expectations in guidance for remote education provision, and the need to engage key stakeholders on those expectations.

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)

3.5 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 The Coronavirus Act 2020 Provision of Remote Education (England) Temporary Continuity Direction ('the Direction') came into force on 22 October 2020 and imposes a duty on schools to provide remote education for state-funded, school-age children whose attendance at school would be contrary to government guidance or law relating to the incidence or transmission of coronavirus (COVID-19).

6.2 The Direction requires schools to have regard to any guidance given by the Secretary of State for Education relating to the provision of remote education. Such guidance was first published on 2 July 2020 and set out a number of expectations regarding the provision of remote education (see Actions for schools during the coronavirus outbreak guidance). This guidance was updated on 3 December 2020 to include an expectation for schools to publish by 25 January 2021 information on their remote education offer.

6.3 This instrument amends the Schools Information (England) Regulations 2008 ('the 2008 Regulations') and the Education (Independent School) Standards Regulations 2014 ('the 2014 Regulations') to make that expectation a statutory requirement for the categories of school to which the Direction applies (other than maintained nursery schools).

6.4 The 2008 Regulations prescribe information that must be published by local authorities and schools. Part 4 of those Regulations prescribes information to be published by governing bodies on either the school's website or, where there is no website maintained for the school, a website the address and details of which are made known to parents.

6.5 The 2014 Regulations set out the Independent School Standards ("the standards") to which independent educational institutions which are independent schools will be inspected under Part 4 of the Education and Skills Act 2008 ("the 2008 Act"). Part 6 of the schedule to those Regulations sets out the standard on the provision of information, requiring certain information to be provided or made available to parents of pupils and parents of prospective pupils.

7. Policy background

What is being done and why?

7.1 These Regulations place a requirement on schools to publish information about how they are complying with the requirement in the Direction to provide remote education on their website (or, in the absence of a school website, provide information in accordance with the alternative arrangements set out in these Regulations). Under the amendments made by these Regulations, schools will be required to publish this information from the date that the Regulations come into force: 12 February 2021. The Regulations expire on 31 August 2021 which will ensure information on remote education is available for the duration of the academic year.

7.2 Remote education is now an essential component in the delivery of the school curriculum for state-funded, school-age children who can no longer physically attend school when to do so would be contrary to government guidance or law relating to the incidence or transmission of coronavirus (COVID-19).

7.3 The Department expects schools to provide proportionate information on websites for parents, Ofsted and local authorities that is relevant to current circumstances. It is essential that parents and pupils are clear about the remote education that will be provided by their school, and how the school expects them to engage with that remote education.

7.4 Schools setting out the details of their remote education curriculum and expectations on their websites, as many are doing already, will make sure parents have key information about schools' plans for ensuring pupils receive high quality remote education. The Department already requires schools to publish information about the in-school curriculum; these Regulations update existing legislation to reflect the context of the pandemic and will provide greater equivalence between remote teaching and in-school curriculum. The 'remote education expectations', as set out in the non-statutory guidance, Actions for schools during the coronavirus outbreak, previously set out an expectation that specified schools would publish this information. This instrument now makes it a legal requirement to do so. This instrument requires no additional information to be published on specified school websites than that already expected in the guidance.

7.5 The Department has published a suggested template for schools to use in providing this information, helping to streamline the process for teachers and leaders and supporting them to meet the duty.

7.6 These Regulations apply to the types of schools mentioned below, and place obligations in relation to all state-funded pupils registered at the school who are of compulsory school age, and reception children (under that age) who are taught in a class with children of compulsory school age.

7.7 These regulations apply to the same types of schools as those to which the Direction applies. They are as follows:

a) a community school,
b) a foundation school,
c) a voluntary school,
d) a pupil referral unit,
e) a non-maintained special school,

f) an academy school,

g) an alternative provision academy,

h) a fee-paying independent school where the school has pupils whose places are paid for by public funds.

7.8 Under the amendments made by these Regulations, where the school has a school website, the school must publish the information on that website. Where the school does not have a school website, the schools must either publish the information on an alternative website and make the address and details known to parents or simply ensure the information is provided to parents, depending on whether the regulations to which the school is subject are the 2008 Regulations or the 2014 Regulations.

7.9 These Regulations also amend the definition of "non-maintained special school" in the 2008 Regulations to bring that in line with the definition in the Education Act 1996.

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.

10.2 The Department consulted with a variety of stakeholders to develop and refine the policy set out in guidance, which expects schools to publish remote education information. These included the Recovery Advisory Group (RAG), Ofsted, the Association of School and College Leaders (ASCL) and Teaching Schools Council (TSC). The response was that the policy was helpful in providing clarity for parents and others and that many schools were doing this anyway. There were some who were keen not to overburden school leaders but were supportive of our mitigating action of providing an optional template to support schools.

10.3 We have consulted specifically on these Regulations with ASCL and the National Association of Head Teachers (NAHT) on these Regulations. They were in agreement that the rationale for updating school information regulations for the current context holds, noting that this does not place additional burdens on schools.

11. Guidance

11.1 Guidance is provided and is available here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/952443/210114_School_national_restrictions_guidance_FINAL_14012021.pdf

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 The impact on the public sector is on schools, the types of which are set out in paragraph 7.7.

12.3 An Impact Assessment has not been prepared for this instrument because it is subject to the public authority and 12 months exception rule and is not required.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 There is no statutory review clause included in these Regulations, but it is the Department's intention to monitor these Regulations and keep them under review.

15. Contact

15.1 Sarah Balmer at the Department for Education email: sarah.balmer@education.gov.uk can be contacted with any queries regarding the instrument.

15.2 Richard Vaughan, Deputy Director for Qualifications, Curriculum and Extra-Curricular (QCEC) Directorate at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rt Hon Nick Gibb MP at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.