EXPLANATORY MEMORANDUM TO

THE EDUCATION (EDUCATIONAL PROVISION FOR IMPROVING BEHAVIOUR) (APPLICATION TO ACADEMIES AND PUPIL REFERRAL UNITS AND MINOR AMENDMENTS) REGULATIONS 2026

2026 No. 558

1. Introduction

1.1 This Explanatory Memorandum has been prepared by The Department for Education and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee.

2. Declaration

2.1 Minister Olivia Bailey MP, the Minister for Early Education at the Department for Education can confirm this Explanatory Memorandum meets the required standard.

2.2 Sophie Taylor, Director of Educational Engagement, Access and Wellbeing Unit, at The Department for Education confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Nicola Paranjothi at the Department for Education can be contacted by email at the following address with any queries regarding the instrument: school.exclusions@education.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Education (Educational Provision for Improving Behaviour) (Application to Academies and Pupil Referral Units and Minor Amendments) Regulations 2026 ('The Amendment Regulations 2026') applies Section 29A of the Education Act 2002 and the Education (Educational Provision for Improving Behaviour) Regulations 2010[1] ('the 2010 Regulations') (made under it) to academy schools, Alternative Provision (AP) academies and Pupil Referral Units (PRUs), with appropriate modifications, so that the same statutory safeguards apply in those settings as they do in maintained schools following Royal Assent of the Children's Wellbeing and School Act 2026.

4.2 The Amendment Regulations 2026 also modifies the references made in the 2010 Regulations to include the correct terms, 'proprietors' of academy schools, 'principals' of academy schools, AP academies, 'management committee's' of PRUs. The term, 'statement of special educational needs' has also been updated to the current term, Education, Health and Care (EHC) plans. In addition, these Regulations set out transitional arrangements to ensure that any relevant placements arranged by academy schools and AP academies before this instrument came into force, going forwards, operate in line with the updated framework.

[1] https://www.legislation.gov.uk/uksi/2010/1156/made

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) applies to maintained schools, academy schools, alternative provision academies and PRUs in England.

5. Policy Context

What is being done and why?

5.1 Off-site direction is when a governing body of a maintained school requires a pupil to attend another education setting to improve their behaviour. The 2010 Regulations describe who must be notified when off-site direction is used, and how it must be kept under review. The purpose is to provide safeguards to ensure off-site direction is exercised reasonably, so that pupils are not required to be out of school any longer than is necessary to improve their behaviour. Currently, proprietors of academy schools and AP academy schools alongside management committees of PRUs cannot use off-site direction, as the legislation does not apply to them.

5.2 Section 29A of the Education Act 2002, was introduced by the Education and Skills Act 2008. This existing legislation only applies to maintained schools, which have the statutory power to direct pupils off-site to an alternative setting (including mainstream and AP schools) for the purpose of receiving education intended to improve their behaviour. Section 29A does not currently apply to academy schools, AP academies and PRUs who can instead arrange off-site provision for similar purposes under their general powers.

5.3 The Department for Education's (the Department) position is that off-site direction can facilitate early support for pupils who are at risk of suspension or permanent exclusion to improve their behaviour. The Department is clear that, depending on the individual needs and circumstances of the pupil, off-site direction into alternative provision can be full-time or a combination of part-time support in alternative provision and continued mainstream education.

5.4 Governing bodies of maintained schools directing a pupil off-site for education to improve behaviour should have regard to both the statutory Suspension and Permanent Exclusion guidance[2] (Exclusion guidance) and the Arranging Alternative Provision guidance[3] (AP guidance), both of which makes clear that any use of AP should be based on an understanding of the support a child or young person needs to improve their behaviour, as well as any Special Educational Needs and Disability or health needs.

5.5 The Amendment Regulations 2026, places academy schools, AP academies and PRUs on the same statutory footing, and ensures these school types are subject to the same controls around the use of off-site direction, and subject to the same statutory requirements in terms of how pupils move around the school system. In doing so, the amendment supports wider efforts to consistently safeguard pupils and promote educational outcomes, ensuring similar scrutiny and transparency and guarding against misconduct or malpractice.

[2] https://assets.publishing.service.gov.uk/media/66be0d92c32366481ca4918a/Suspensions_and_permanent_exclusions_guidance.pdf

[3] https://assets.publishing.service.gov.uk/media/67a1ee367da1f1ac64e5fe2c/Arranging_Alternative_Provision_-_A_Guide_for_Local_Authorities_and_Schools.pdf

What was the previous policy, how is this different?

5.6 Previously, the Department stated academy schools and AP academies have a general power to direct their pupils off-site and that they should follow the statutory review process and notification requirements outlined in the statutory Exclusion guidance and AP guidance. This means Section 29A of the Education Act 2002 and the 2010 Regulations did not apply to academy schools, AP academies and PRUs which caused an inconsistency in legislation between maintained schools and academy schools.

6. Legislative and Legal Context

How has the law changed?

6.1 The Amendment Regulations 2026 extends the existing framework (which applies to governing bodies of maintained schools, when they direct a pupil off-site to temporarily improve their behaviour) to proprietors of academy schools and AP academies alongside management committees of PRUs. Academy schools, AP academies and PRUs will not be able to impose off-site directions under section 29A and when doing so, must adhere to the same statutory safeguards as maintained schools including:

- The requirement to notify local authorities of the imposition of an off-site direction where the pupil has an Education, Health and Care (EHC) plan.
- The requirement to explain the objectives of imposing the off-site direction in writing and for it to be kept under review.
- The parent of a pupil in an Academy, AP Academy or PRU would now be able to request a review meeting and attend it.

6.2 Proprietors (of academy schools and AP academies) and management committees (of PRUs) are the people or bodies responsible for the management and operation of the school. This role involves overseeing the school's governance, ensuring compliance with regulations, and making strategic decisions. As academy schools and AP academies have governance structures and leadership titles which are different to maintained schools, modifications have been made so that section 29A and the 2010 Regs read appropriately when being applied to academy schools and AP academies.

6.3 The Amendment Regulations 2026 also provide for management committees of PRUs. Extending the regulation to PRUs provides clarity, ensures legal certainty, and aligns the regulatory framework with established practice. It also ensures that pupils who are attending PRUs are afforded the same protections and safeguards as those in mainstream academy schools and alternative provision academies when off-site direction is used.

Transitional arrangements

6.4 The Amendment Regulations 2026 make transitional provision to address scenarios where a pupil of an Academy remains subject to a placement that was imposed before the regulations came into force. This is enabled by section 57(3) of the Children's Wellbeing and Schools Act 2026, in respect of Academy schools, and section 569(4) of the Education Act 1996, in respect of AP Academies.

6.5 The practical effect of this provision within the Amendment Regulations 2026 means that if a pupil from an academy school or AP academy is on a placement already due to an existing off-site direction, the review requirements will apply to that placement once the Regulations come into force. This ensures that statutory safeguards apply to existing academy placements.

6.6 This means that a review meeting would be organised by proprietors at an academy school and AP academy to discuss the pupil's placement and that the statutory review process is followed as soon as reasonably practicable. This would also include the relevant person (the parent or the pupil if they are over 18 years old) and the local authority if a pupil has an EHC plan.

Consequential amendments

6.7 Amendments have been made to paragraph 18A of the Education (Information about Individual Pupils) (England) Regulations 2013, to reflect section 29A and the 2010 Regs being applied to academy schools, AP academies and PRUs. Academy schools and AP academies will also be required to continue supplying the required information in respect of any existing placements that were made under the previous general powers, until those placements end.

6.8 Amendments have been made to the Health and Social Care Act 2012 (Continuity of Information: Interpretation) Regulations 2015, to paragraph (aa) of the Schedule, to exclude persons acting under Section 29A of the Education Act 2002 from being a 'relevant health or adult social care commissioner or provider' under the Health and Social Care Act 2012 if they are a proprietor of an Academy school or alternative provision Academy, or the management committee of a PRU under section 29A of the Education Act 2002.

6.9 The term 'governing body of a school' has been changed to 'governing body of a maintained school' for consistency.

Correctional changes

6.10 A correction has been made to amend references to a statement of special educational needs. Most references to statements of special educational needs in the 2010 Regulations were amended by the Special Educational Needs (Consequential Amendments to Subordinate Legislation) Order 2014 so that they now refer to Education Health and Care (EHC) plans.

6.11 A correction has been made to paragraph (bb) of the Schedule to the Health and Social Care Act 2012 (Continuity of Information: Interpretation) Regulations 2015 to change a typographical error from 'induction' to 'instruction'.

Why was this approach taken to change the law?

6.12 This is the only possible approach to make the necessary changes. We did consider whether the regulations should not be amended at all (which would be the only other option available), however, this would fail to address the inconsistencies between maintained schools, academy schools, AP academies and PRUs.

6.13 The Amendment Regulations 2026 will help to increase accountability for academy schools, AP academies and PRUs to create better scrutiny and transparency for these types of pupil movement.

7. Consultation

Summary of consultation outcome and methodology

7.1 A consultation was not undertaken in relation to this instrument as the changes ensure that the regulations apply consistently across all relevant settings. As the amendments were necessary to clarify the existing legal framework and ensure full compliance, they did not involve alterations in policy that would warrant public consultation.

8. Applicable Guidance

8.1 Statutory guidance on Suspension and Permanent Exclusion is provided and available at https://www.gov.uk/government/publications/school-exclusion

8.2 Statutory guidance on Arranging Alternative Provision is provided and available at https://www.gov.uk/government/publications/alternative-provision

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 this legislation does not apply to Independent Schools.

9.2 We also expect there will be a low level of impact on state-funded schools, local authorities and those with safeguarding responsibilities for excluded pupils.

9.3 The non-regulatory impact assessment, prepared for Clause 55 of the Children's Wellbeing and Schools Act 2026 has been reused for this instrument. The assessment remains up to date, and the relevant extracts have been relied upon for the purposes of these Regulations.

9.4 In line with Cabinet Office guidance, the Equality Impact Assessment prepared for Clause 55 of the Children's Wellbeing and Schools Act 2026 has been reused for this instrument. The assessment remains up to date, and the relevant extracts have been relied upon for the purposes of these Regulations.

Impact on businesses, charities and voluntary bodies

9.5 There is no, or no significant, impact on business, charities or voluntary bodies because this instrument does not directly impact these bodies.

9.6 The legislation does not impact small or micro businesses.

9.7 There is no, or no significant, impact on the public sector because academy schools and AP academies, already use off-site direction to improve pupil behaviour.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is routine. We will regularly discuss the impact of these changes with schools, local authorities and other relevant stakeholders to understand and monitor their effectiveness, ensuring the policy objective has been achieved.

10.2 We will continue to monitor issues and trends arising from wider stakeholders, general correspondence and casework to ensure we get a sense of what is happening on the ground and to help us monitor this measure effectively.

10.3 Using daily attendance data, officials will regularly review code D which is used when a pupil is to be registered at more than one school and code B when a pupil is directed off-site to unregistered provision (if it meets the definition of attending a place for an approved educational activity). Code D may only be used by either school for a session where the pupil is scheduled to attend the other school at which they are registered which can include off-site direction.

10.4 We will closely monitor related AP school census and school exclusion data publications, which will show any trends or changes in the way that pupils are

excluded from school, as it is likely this may also indicate changes in pupil movement trends. The school census collects exclusions information two terms in arrears.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument contains both new and correcting provisions. In accordance with paragraph 4.76 of the Statutory Instrument Practice, the Department has consulted with the Statutory Instrument Registrar. The Department has taken the decision to apply the procedure for free issue to all known recipients of The Special Educational Needs (Consequential Amendments to Subordinate Legislation) Order 2014 and The Health and Social Care Act 2012 (Continuity of Information: Interpretation) Regulations 2015.

11.2 Schools will not be provided with a full term's notice ahead of these Regulations coming into force. This is because the sector has been aware of the forthcoming changes since the Children's Wellbeing and Schools Act 2026 was introduced to Parliament on 17 December 2024. Consequently, the Department considers that all schools have had sufficient advance awareness of the policy intent and that a shorter implementation period is reasonable and proportionate in this context.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative procedure and does not amend primary legislation, no statement is required.

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").