EXPLANATORY MEMORANDUM TO

THE EDUCATION (INFORMATION ABOUT INDIVIDUAL PUPILS) (ENGLAND) (AMENDMENT) REGULATIONS 2022

2022 No. 599

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 The instrument enables the collection of additional information about children in schools who are particularly vulnerable. These Regulations provide the legislative underpinning for the School Census collection, which is the Department's primary source of pupil level information from schools in England.

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 Education (Information About Individual Pupils) (England) Regulations 2013 ("the 2013 Regulations") set out the data about individual pupils that the governing bodies or proprietors of schools in England (or in the case of Pupil Referral Units, the responsible local authority) 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 specify that schools must provide additional information in the School Census.

7. Policy background

What is being done and why?

7.1 The School Census collects information about individual pupils and information about schools. The individual pupil information collected from schools is used by the Department's policy divisions, other government departments, local authorities, external agencies and educational researchers. Analysis of individual pupil records

supports the drive to raise standards, the accurate targeting of funding and the monitoring and development of policy.

7.2 These Regulations amend the requirements to provide data about individual pupils in three ways.

7.3 Firstly, they expand the information currently collected in relation to children in state care (whether in England and Wales or elsewhere), to capture specifically whether such a child has been adopted outside of England or Wales. This will ensure visibility of these pupils is raised and they are provided with the same level of tailored support as those adopted within England and Wales. It is also intended that this new information will be included in the pupil premium calculations. Pupil premium is additional funding to improve education outcomes for disadvantaged pupils in schools in England. Evidence shows that disadvantaged children generally face additional challenges in reaching their potential at school and often do not perform as well as other pupils.

7.4 Secondly, the Regulations will require the provision of information about whether a pupil is, to the knowledge of the school, a young carer and who has identified the pupil as such. This question will raise the visibility of young carers in the school system and will also enable us to obtain evidence on the young carer population, including evidence on attendance and absenteeism, educational progress and attainment in order to improve educational support for these pupils.

7.5 Finally, the Regulations mandate the collection of two sets of data which are currently provided voluntarily and which will enable the Department to understand why and how pupils are being placed solely on the school roll of Pupil Referral Units and Alternative Provision Academies; and why and how schools are placing pupils in education provision outside of/other than at the school.

7.6 The Department's Statutory Guidance for Alternative Provision defines alternative provision as education arranged by local authorities for pupils who, because of exclusion, illness, or other reasons, would not otherwise receive suitable education. It also includes support and education for pupils arranged by schools including: for pupils receiving targeted support in their mainstream school; for pupils being directed by schools to off-site provision to improve their behaviour; and provision for pupils who are suspended from school.

7.7 We estimate that around 50,000 of the most disadvantaged and vulnerable children and young people in the education system are supported and educated in alternative provision every year, with over 80 per cent having been identified with special educational needs and disabilities (SEND). Their educational and longer-term outcomes are generally very poor: less than 5 per cent of alternative provision pupils achieve grades 9-4 in GCSE English and maths, compared to 66 per cent in state-funded mainstream schools; and only 55 per cent move to a successful post-16 destination, compared to 94 per cent of state-funded mainstream school pupils.

7.8 In the 2021/22 School Census, the Department introduced two new voluntary sets of data on alternative provision placements.

7.9 However, as voluntary data items are not widely returned, only a mandatory collection of this information will provide the comprehensive evidence base from all schools that will be needed to support and inform the implementation and evaluation of the Government's proposed alternative provision reforms.

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 are no plans to consolidate the 2013 Regulations.

10. Consultation outcome

10.1 As has been the established practice when amending the Regulations underpinning the census collections, no formal consultation process has taken place in relation to these changes. However, consultations have taken place with the Department's Star Chamber Scrutiny Board, and the providers of management information systems to schools and local authorities.

10.2 The Star Chamber Scrutiny Board have approved the changes to the school census, including the addition of new data items.

10.3 The Star Chamber Scrutiny Board helps to assess all Department 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 timed 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.

10.4 The providers of management information systems to schools 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.

10.5 The Information Commissioner's Office (ICO) was also informed of these changes and Data Protection Impact Assessments shared.

11. Guidance

11.1 Guidance for schools and local authorities on how to complete the School Census collection is reviewed termly. Schools and local authorities are made aware of any changes for the next academic year via the School Census guidance. We published the 2022 to 2023 guidance in April 2022 to reflect the changes to the 2022 to 2023 academic years' School Census collections. The guidance details the new data being collected and how schools and local authorities should respond. Changes to collections are also highlighted in data collection email bulletins.

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.

13. Regulating small business

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

14. Monitoring & review

14.1 The effectiveness of the requirement on schools to provide this new information will be subject to an internal review after 12 months and the legislation may be amended accordingly.

15. Contact

15.1 Paul Hirst at the Department for Education, email: paul.hirst@education.gov.uk can be contacted with any queries regarding the instrument.

15.2 Jamie James, Deputy Director for Data Operations Division, at the Department of Education can confirm that this Explanatory Memorandum meets the required standard.

15.3 Robin Walker MP, Minister of State for School Standards at the Department of Education can confirm that this Explanatory Memorandum meets the required standard.