EXPLANATORY MEMORANDUM TO

THE EDUCATION (PROVISION OF FULL-TIME EDUCATION FOR EXCLUDED PUPILS) (ENGLAND) (AMENDMENT) REGULATIONS 2014

2014 No. 3216

1. This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

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

2. Purpose of the instrument

These Regulations make amendments with respect to the day from which, in certain cases, suitable full-time education must be provided for pupils of compulsory school age who have been excluded. When such a pupil is excluded on disciplinary grounds for a fixed period of more than five school days, the school's governing body (or local authority in relation to pupil referral units) must arrange for the pupil to be given suitable alternative full-time education. This education is to be provided no later than the sixth school day of the exclusion. However, in some cases, where a pupil was excluded for more than five days in total but through a succession of consecutive fixed periods comprising less than six school days each, the time when the duty to provide suitable alternative education was unclear and it was possible to construe each fixed period separately. To remove that uncertainty, this instrument amends the existing legislation to make it clear that consecutive periods of exclusion are to be treated as one period for the purpose of providing suitable alternative education, so that such education must be provided no later than the sixth school day of the exclusion, regardless of whether the pupil was excluded for one or more fixed periods.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

This instrument amends regulations 3(3) and 4(3)(b) of the Education (Provision of Full-Time Education for Excluded Pupils) (England) Regulations 2007 to provide that if a pupil is excluded for consecutive fixed periods of exclusion, the trigger point to provide suitable alternative education occurs on the sixth consecutive school day. This ensures that consecutive fixed periods of exclusion are considered as one continuous period for the purposes of making arrangements for the provision of suitable full-time education for excluded pupils by the governing body of a school or the local authority in relation to a pupil referral unit.

5. Territorial Extent and Application

This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

- What is being done and why

Since September 2007, schools and local authorities have been under a duty to arrange suitable full-time education from the sixth school day of a fixed period exclusion. In certain circumstances it may be appropriate for a head teacher to exclude a pupil for a further consecutive fixed period exclusion. Statutory guidance on exclusion indicates that this may occur in exceptional cases, usually where further evidence has come to light during the original fixed period. The use of consecutive fixed period exclusions is likely to be extremely rare. It is anticipated that in these exceptional circumstances, the vast majority of governing bodies (or local authorities) would ensure that arrangements to provide suitable full-time education are set up as soon as possible, so that the pupil is not absent from full-time education for more than five school days in total. This amendment ensures that such an outcome is reached and governing bodies of schools, and local authorities with respect to pupil referral units, must arrange for suitable full-time education to begin from the sixth school day of exclusion, regardless of whether this absence from school results from a single fixed-period exclusion or more than one consecutive fixed period exclusion.

The Department has clarified this in revised statutory guidance which will be published on the GOV. UK website and it will be announced to schools and local authorities through departmental communications. The vast majority of schools will be unaffected by this change as in practice it is likely that, in the rare circumstances where a school issues consecutive fixed period exclusions, suitable full-time education for the excluded pupil will be arranged very promptly. For this reason, we have introduced these regulations without providing the usual term's notice to schools.

- Consolidation

7.2 Not applicable.

8. Consultation outcome

The Department has not formally consulted on this change, as it is not expected to change what is already happening in practice but it is aimed at removing any potential ambiguity

in the exceptional circumstances described above where a pupil is excluded for consecutive fixed periods.

9. Guidance

Revised statutory guidance will be published on the GOV. UK website and will be announced to schools and local authorities through the Department for Education official communications. This guidance will apply when the regulations come into force.

10. Impact

An impact assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

The changes will be monitored through the usual contact which the Department for Education's Alternative Provision and Exclusion Team has with schools. The team will review correspondence relating to the instrument.

13. Contact

Shad Ohayon at the Department for Education (Tel: 020 7340 8241 or email: shad-carine.ohayon@education.gsi.gov.uk) can answer any queries about the instrument.