EXPLANATORY MEMORANDUM TO

THE EDUCATION (PUPIL INFORMATION) (ENGLAND) (AMENDMENT) REGULATIONS 2008

2008 No. 1747

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

2. Description

2.1 These regulations relate to pupil information, in particular information included in the common transfer file (CTF) which is the file of information that follows a pupil who moves to another school. The regulations deal with 3 main areas : P scale data, pupil referral units and miscellaneous pupil information. In addition to the CTF information, these regulations also make some miscellaneous provision in relation to pupil information.

P scale data

2.2 These regulations will require schools to include information about teacher assessments of the attainment of pupils with special educational needs working below national curriculum level 1 based on the P level attainment targets in their annual report to parents and in the common transfer file (CTF) sent to a new school when a pupil transfers.

Pupil referral units

2.3 They will also provide for the management committees of pupil referral units to take over from local authorities the responsibility for sending pupils' CTF to the mainstream or special school they next attend. They also impose a duty on the governing bodies of schools to send the CTF to the management committee of a pupil referral unit to which a pupil has transferred or where they are dual registered. Dual registration is where a pupil remains on the roll of a mainstream school but also attends and is registered at a pupil referral unit.

2.4 A further measure restricts the duty of the teacher in charge of a pupil referral unit to provide an annual report to the parents of those pupils who are in the final year of compulsory education.

Miscellaneous pupil information

2.5 These regulations will require schools, where they hold it, to include the pupil's Unique Learner Number ("ULN" - a unique number assigned to each pupil by the Learner Registration Service which is part of the Learning and Skills Council) as part of the information about a pupil which is sent to another school in the CTF when a pupil changes school.

2.6 They will also remove the requirement for schools to transfer the results of public examinations as part of that file as it is not technically possible to include that information at the present time.

2.7 In addition the regulations will remove the requirement to report Key Stage 1 test results for pupils involved in the piloting of the new Key Stage 1 assessment

arrangements in 2003/04 as those pupils were exempt from the requirement to take those tests and, if they did, the schools were exempt from reporting the test results.

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

3.1 None.

4. Legislative Background

P scale data

4.1 The Government has committed to extending the use of P scales to measure the attainment of pupils with special education needs several times, including in Excellence and Enjoyment: A strategy for primary schools (published in 2003), Assessment and Reporting Arrangements booklets for 2004 and Removing Barriers to Achievement – The Government's Strategy for SEN (2004). In the Government Response to the Education and Skills Select Committee Report on SEN (October 2006), the Government told the committee that it would make collection of P scale data mandatory for all children with SEN working below level 1 of the national curriculum. The Education (National Curriculum) (Attainment Targets and Programmes of Study) (England) (Amendment) Order 2007 (SI2007/2265) specified and gave legal effect (for the purpose of National Curriculum attainment targets) to the 'P level' attainment targets contained in the P level Document published by the Qualification and Curriculum Authority.

Pupil referral units

4.2 The Education (Pupil Referral Units) (Management Committees etc.) (England) Regulations 2007 (S.I. 2007/2978) make it a statutory requirement that local authorities establish management committees for their pupil referral units and provide for the transfer to management committees of some of the responsibilities that local authorities have previously undertaken. In this case, the functions relate to the duty to transfer information when a pupil transfers from a school to a pupil referral unit and vice versa.

Miscellaneous pupil information

4.3 The ULN is a personal 10-digit number allocated to learners by the Managing Information Across Partners (MIAP) programme's Learner Registration Service. It is applied for by the learner's centre when they embark on a 14-19 programme of study, including Diplomas, and will remain with the learner throughout their life – the intention being that in the future, for all learners in education and training, their ULN will link together all their learning experiences, exam results and qualifications. The learner's centre will require the ULN in order to access the learner's education and training record.

4.4 As part of a pilot study in 2003/4, the Foundation Stage and Key Stage 1 Assessment and Reporting Arrangements 2004 removed the requirement for pupils at participating schools to undergo formal testing at the end of Key Stage 1. This gave schools taking part in the trial of new assessment arrangements flexibility to opt out of the end of key stage 1 tests and just make teacher assessments. Additionally, where tests were administered, schools were not required to report the test results.

4.5 The existing requirement for schools to include the results of public examinations as part of the CTF cannot currently be satisfied because of the technical limitations of current systems.

5. Territorial Extent and Application

5.1 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

P scale data

7.1 The Education (National Curriculum) (Attainment Targets and Programmes of Study) (England) (Amendment) Order 2007 (SI 2007/2265) specified and gave legal effect (for the purpose of National Curriculum attainment targets) to the 'P level' attainment targets contained in the P level Document published by the Qualification and Curriculum Authority. Information on the background to this change is included in the explanatory memorandum for this legislation which is available at http://www.opsi.gov.uk/si/si2007/em/uksiem_20072265_en.pdf. Following the inclusion of the P level attainment targets into the National Curriculum, these regulations make sure schools share information about teacher assessments using the P levels with a pupil's parents and future school in the same way as they would other forms of national curriculum assessment.

Pupil referral units

7.2 The intention behind the Education (Pupil Referral Units) (Management Committees etc.) (England) Regulations 2007 is that management committees will replicate as closely as possible for pupil referral units the role that governing bodies play for mainstream schools. One of the duties of governing bodies is to transfer information to other schools when pupils move and this same duty will be applied to management committees by these regulations. These Regulations provide that the governing bodies of schools will have a duty to send management committees the common transfer file of any pupils that leave to attend a pupil referral unit (or who are dual registered at both the school and the pupil referral unit) and impose the same duty in reverse on management committees of pupil referral units.

7.3 Ofsted has identified that a common problem affecting pupil referral units is that schools do not always send them a pupil's common transfer file and, when they do, there is often a delay in doing so. Pupil referral units need the information on pupils when they are admitted to ensure that they can provide education which is suitable to their needs. Requiring the governing bodies of school to send the common transfer file directly to the management committee of the unit should improve the transfer of information. Most management committees will have members who are representatives from schools, and those members will have a direct interest in both their school and the pupil referral unit.

7.4 The reason for the provision that the teacher in charge of a pupil referral unit has to provide parents with an annual report only where a pupil is in the last year of compulsory education, is that only these pupils are likely to be in a pupil referral unit long enough to warrant one. Younger pupils are usually in pupil referral units for short periods.

Miscellaneous pupil information

7.5 The reason for the introduction of Unique Learner Numbers is that a unique identifier is required for the administration of new 14-19 qualifications, including diplomas, for each learner and the existing identification numbers used for pupils are either not unique to every pupil or they are constrained by their enabling legislation to use for a particular purpose.

7.6 One of the provisions of the UPN (Unique Pupil Number), currently used as a unique identifier, is that it lapses when pupils leave schooling. Some new 14–19 qualifications, including Diplomas, do not have age or time limits and are awarded once the required constituent qualifications are achieved by a learner. Aggregation of results by the Diploma aggregation service (being developed by the QCA) therefore requires an identification number that remains with a learner beyond school-leaving age. There are also data protection issues as the UPN is constructed in a way that allows information about a learner to be gleaned from the number itself and therefore has a legal restriction as to who can see it.

7.7 The Unique Candidate Identifier (UCI), which is used for public examination registration, has problems with multiple allocation. Often students are allocated a new number at the start of each academic year – or are given a new number when transferring between schools. National Insurance numbers, NHS numbers and passport numbers are unsuitable because data protection legislation requires that these numbers are only used for their originally intended purpose. They are also unsuitable because not everyone who is eligible to undertake qualifications would have these numbers available to them.

7.8 The Foundation Stage and Key Stage 1 Assessment and Reporting Arrangements 2004 enabled the trial of new assessment arrangements for the end of key stage 1 whereby tests became optional and schools were allowed to make just teacher assessments. Following a successful pilot exercise these arrangements were extended to all schools at Key Stage 1 from the following year. These Regulations therefore remove the requirement to report test results for those pupils involved in the pilot exercise.

7.9 The Education (Pupil Information) (England) Regulations 2005 require schools to include the results of public examinations as part of the file transferred when a pupil changes school. Due to technical limitations, it has not been possible to implement that requirement to date, nor is it expected to be feasible in the foreseeable future, hence it is more appropriate to remove the requirement from the regulations.

Consultation

7.10 A full scale consultation on P scale data generally took place in relation to the main 2007 regulations referred to in paragraph 7.1 above. This consultation included the proposals for the changes made by these Regulations. Accordingly no separate consultation has taken place for the purpose of these Regulations. In the main consultation, when asked about whether it should be compulsory for all schools to provide P scales data on pupils working below National Curriculum levels, 81% of respondents agreed that it should, with detailed responses including the ability to track progress and transfer programmes of work when pupils move to a different school.

7.11 The provisions in these Regulations in relation to pupil referral units operate so as to include units in the general transfer of information process. Again, before the main regulations were made in 2007 (see paragraph 7.2 above), a full scale consultation

exercise took place. Reference to this is included in the explanatory memorandum for this legislation which is available at http://www.opsi.gov.uk/si/si2007/em/uksiem_20072978_en.pdf .

7.12 Finally, for the proposals in relation to miscellaneous pupil information, local authorities have been consulted on these proposals through the termly ICES (Information on Children, Education and Schools) forum and software suppliers have been consulted at meetings with the Department and through formal change control procedures.

7.13 Guidance notes for schools and local authorities, available to download from the Teachernet website, will be updated to incorporate these changes, as will the technical specifications for the suppliers of school management information systems.

8. Impact

8.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

P scale data

8.2 The impact on the public sector is that schools, which will already be performing teacher assessments of appropriate pupils using the P levels will be required to include the outcome of these assessments in their annual reports to parents and as part of the information that they pass on to the new school when a pupil transfers.

Pupil referral units

8.3 These regulations will not impose any additional burden on management committees; the Education (Pupil Referral Units) (Management Committees etc.) (England) Regulations 2007 already provide for the transfer of functions from local authorities to management committees and this is just one such function. Restricting the duty to provide an annual report to parents to those pupils in the last year of compulsory education will relieve burdens rather than imposing further ones.

Miscellaneous pupil information

8.4 The impact on the public sector is that schools, if they are already holding details of pupils' ULNs, will be required to include that information in the CTF when a pupil transfers to another school.

9. Contact

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