EXPLANATORY MEMORANDUM TO

THE EDUCATION (PUPIL INFORMATION) (ENGLAND) (CORONAVIRUS) (AMENDMENT) REGULATIONS 2021

2021 No. 482

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Education ("the Department") and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The instrument amends the Education (Pupil Information) (England) Regulations 2005[1] ("the 2005 Regulations") to relieve head teachers of maintained schools of their obligations to include in their annual report to parents and adult pupils for the school year 2020/21 ("the current school year") information on a pupil's attendance in the current school year and on certain information connected to assessment and attainment at Key Stages 1 and 2. This amendment addresses the impact of the coronavirus (COVID-19) outbreak on pupils' attendance in the current school year, as well as the lack of assessment information following the cancellation of statutory assessments for Key Stage 1 and 2 pupils in the current school year.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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)

3.2 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 instrument amends the 2005 Regulations which contain provision about the duties on maintained schools to keep certain records and produce certain reports including head teachers' annual reports (regulation 6 and Schedule 1), head teachers' reports to

[1] http://www.legislation.gov.uk/uksi/2005/1437/contents/made

school leavers (regulation 8) and information to be provided to a school to which a registered pupil of a maintained school transfers (regulation 9 and Schedule 2).

6.2 In particular regulation 6 of, and Schedule 1 to, the 2005 Regulations require head teachers of maintained schools to provide an annual report in respect of every registered pupil at the school to their parents, or where the report relates to an adult pupil, to that pupil, other than where the 2005 Regulations require a school leaver's report to be provided. Annual reports must be provided prior to the end of the summer term of every school year.

6.3 Schedule 1 to the 2005 Regulations sets out what information needs to be included in an annual report. Amongst other things, an annual report needs to contain information regarding the pupil's attendance record, the results of any Key Stage 1 or Key Stage 2 statutory assessments taken by the pupil during the school year, and certain results, assessment and attainment information, and comparative information, if the pupil is at the end of Key Stage 1 or 2.

6.4 The Education (National Curriculum) (Key Stage 2 Assessment Arrangements) (England) Order 2003[2] and the Education (National Curriculum) (Key Stage 1 Assessment Arrangements) (England) Order 2004[3] create requirements for certain assessments, checks and tests to be carried out for pupils at Key Stage 1 and Key Stage 2. The Education (National Curriculum) (Key Stages 1 and 2 Assessment Arrangements) (England) (Coronavirus) (Amendment) Order 2021[4] ("the 2021 Order") abolishes those requirements for the summer term of the current school year.

7. Policy background

What is being done and why?

7.1 The coronavirus (COVID-19) outbreak has had a significant impact on pupils' school attendance. Rising infection rates in late 2020 and the decision to suspend mandatory attendance in early 2021 means that attendance figures in the current school year are unlikely to be comparable with previous years and between local areas. Reporting attendance figures in the head teacher's annual report in the usual way this year, particularly for the period when schools limited attendance to only some pupils during early 2021 and attendance was not mandatory for those pupils, could present a confusing picture about attendance levels. Attendance levels in 2020-21 would also not reflect the remote education many pupils received. Therefore, the instrument removes the requirement on head teachers to report attendance figures from the current school year in annual reports. Making this change will not prevent staff at schools from raising any concerns they have about a pupil's attendance with the child's parents. We will advise in non statutory guidance that schools provide a general assessment of attendance and participation in remote education in reports.

7.2 This change mirrors the change made in the 2019-20 academic year. It also aligns with broader changes that the Department has made to ensure that there is flexibility in the school attendance system so parents and pupils are not unduly penalised for their child's non-attendance. Other key changes include the creation of a new category of non-attendance, where the pupil is prevented from attending school due to

[2] http://www.legislation.gov.uk/uksi/2003/1038/contents/made
[3] http://www.legislation.gov.uk/uksi/2004/2783/contents/made
[4] http://www.legislation.gov.uk/uksi/2020/436/contents/made

following certain public health advice relating to coronavirus (COVID-19)[5], and the temporary disapplication of section 444(1) and (1A) of the Education Act 1996[6], which means that parents will not be penalised for failing to secure their child's regular attendance at school. In addition, no absence data from the Autumn and Spring term in the current school year will be published in the Department's school and college performance tables (with a decision on the Summer term yet to be taken).

7.3 Changes made by the 2021 Order, also as a result of the coronavirus (COVID-19) outbreak, mean removing the requirement to report on certain statutory national curriculum assessments for pupils at Key Stage 1 and Key Stage 2, as well as assessments which are usually carried out for children performing below the standard of the national curriculum assessments. As these assessments have been cancelled in summer 2021, it will not be possible for head teachers to meet the current requirement to include either the outcomes of such assessments, or comparative information about the attainment of pupils of the same age in the school or nationally, in reports for the current school year. Therefore connected requirements in the 2005 Regulations are amended to relieve head teachers of the obligation to report in connection with these assessments. In turn, the definition of "comparative information" is amended because the assessments which would have otherwise been required of Key Stage 1 and Key Stage 2 pupils will not have taken place in the current school year.

7.4 Head teachers will still be required to provide information on pupils' progress and achievements in annual reports so that parents will continue to receive information about their children's education. The Department will issue updated guidance to support schools in producing this year's reports, which reflects the amendments.

7.5 The 2005 Regulations also require information on pupils' attendance and on certain information connected with attainment at Key Stages 1 and 2 to be provided within the common transfer file (CTF), the information that must be provided when a pupil moves from a maintained school to another school. These requirements are not being amended. Schools will continue to be required to include attendance information relating to the current school year in the CTF. While, as schools will be aware, attendance data for the current school year will not be comparable with previous years, it will still provide useful information that will help schools to understand and plan for the needs of pupils joining the school. Schools will not be able to provide information connected with attainment at Key Stages 1 and 2 for the current school year, although, it would be impractical to amend the software underpinning the CTF solely for this year. The data fields for this assessment data field will therefore remain. Updated guidance will be issued to schools clarifying how the relevant fields should be completed for the current school year.

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.

9. Consolidation

9.1 There are no plans to consolidate the 2005 Regulations.

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[5] The Education (Pupil Registration) (England) (Coronavirus) (Amendment) (No. 2) Regulations 2020 (legislation.gov.uk)

[6] https://www.gov.uk/government/publications/disapplication-notice-school-attendance-legislation-changes

10. Consultation outcome

10.1 In accordance with section 408(5) of the Education Act 1996, which requires the Secretary of State to consult persons with whom consultation appears to him to be desirable, the Department conducted a joint consultation on the 2021 KS1/KS2 Order and 2021 Pupil Information Regulations. The proposed changes were summarised via letter and stakeholders were given from 11 to 18 March 2021 to respond. Those consulted include the Office of Qualifications and Examinations Regulation (Ofqual), Office for Standards in Education, Children's Services and Skills (Ofsted), National Association of Head Teachers (NAHT), Association of School and College Leaders (ASCL), the National Education Union (NEU), NASUWT, Voice, the National Governance Association and Confederation of School Trusts, AEWM and NASWE[7] . All organisations who responded were supportive of the changes they were consulted upon. The unions who responded all argued that the Department should remove the requirement for year 2 pupils to take the PSC in 2021/22.

11. Guidance

11.1 The Department will be publishing guidance[8] for schools to advise them about the completion of annual reports in the current school year. The guidance will explain that legislation is planned to remove the requirement to include in annual reports attendance information relating to the current school year. The guidance will also advise that there is no requirement to include in annual reports assessment information in relation to assessments that have not been carried out in the current school year. The guidance will be updated as soon as possible to reflect the legislative changes being made. This will be done before the instrument comes into force.

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 not anticipated to be significant.

12.3 An Impact Assessment has not been prepared for this instrument because there is no anticipated impact on businesses.

13. Regulating small business

13.1 The 2005 Regulations, and therefore, the changes being made, do not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The instrument does not include a statutory review clause. The changes being made only relate to information about, or annual reports produced during, the current school year.

[7] AEWM is Association of Education Welfare Managers, who represent LA school attendance managers; NASWE is National Association for Support Workers in Education, who represent school-based attendance staff

[8] www.gov.uk/guidance/reporting-to-parents-at-the-end-of-key-stages-1-and-2; and www.gov.uk/guidance/school-reports-on-pupil-performance-guide-for-headteachers

15. Contact

15.1 Lesley Hollick at the Department for Education, email: Lesley.hollick @education.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Lesley Jones, Deputy Director for Governance, Intervention, Faith and Accountability Division, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

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