EXPLANATORY MEMORANDUM TO

THE SCHOOL DISCIPLINE (PUPIL EXCLUSIONS AND REVIEWS) (ENGLAND) (AMENDMENT) REGULATIONS 2022

2022 No. 788

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 These regulations introduce new requirements for sharing data on exclusions. They add social workers and Virtual School Heads (if a pupil has one) to the list of parties to be informed of an exclusion and included in the different stages of the exclusion process and require head teachers[1] to inform their local authorities immediately of all fixed-term exclusions, regardless of duration. The changes will provide local authorities, social workers and Virtual School Heads with the necessary information to assess and respond, where relevant, to the safeguarding needs of an excluded pupil efficiently and effectively.

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 School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012 ("the 2012 Regulations") make provision in relation to the power of head teachers of maintained schools, teachers in charge of pupil referral units (PRUs) and principals of Academy schools and alternative provision Academies in England, to exclude pupils under section 51A of the Education Act 2002; and in relation to the procedures for responsible bodies and independent review panels to consider whether excluded pupils should be reinstated.

6.2 The 2012 Regulations require head teachers to inform local authorities 'without delay' of any permanent exclusion or a fixed-term exclusion that results in a pupil being

[1] All references to head teachers are also applicable to teachers in charge of pupil referral units and principals of Academy schools.

excluded for more than five school days in the term or missing a public examination or national curriculum test. Head teachers must inform local authorities termly of any other fixed-term exclusions along with the reason for and duration of any fixed-term exclusion.

6.3 These regulations will come into force on 1st September 2022.

7. Policy background

What is being done and why?

7.1 The 2012 Regulations set out the process which must be followed in maintained schools, pupil referral units, Academy schools and alternative provision Academies in relation to an exclusion of a pupil. This includes who must be informed of the decision to exclude a pupil and of other relevant decisions throughout the exclusion process, including parents and carers, governing boards and local authorities, and the timescales in which this must be carried out.

7.2 The Children in Need Review (2019) ("the Children in Need Review") and The Timpson Review of School Exclusions (2019) ("the Timpson Review") both examined the role of sharing data on exclusions and its importance for safeguarding purposes.

7.3 The Children in Need Review examined the evidence base for children's social care and our understanding of action to promote the educational outcomes of Looked-After Children[2] and care leavers, for whom the state is a corporate parent. The review revealed their experiences, the impact this has on educational outcomes, and what is effective in improving these, including the involvement of social workers and Virtual School Heads[3] in the exclusion process.

7.4 The Timpson Review demonstrated widespread good practice in support for excluded pupils and in the use of fixed-term exclusions and permanent exclusions. However, it also identified variation in practice across different schools, local authorities, and certain groups of children. It found that 78% of pupils permanently excluded either had special educational needs (SEN), were classified as "in need"[4] or economically disadvantaged and, after controlling for other factors, that some ethnic groups, such as Black Caribbean pupils, experienced higher rates of exclusion. The review made a range of recommendations to ensure that every exclusion is lawful, reasonable, and fair. These included ensuring that, for children with a social worker, their social worker is informed and consulted when they are excluded from school and involved in any processes for challenging, reconsidering or reviewing the decision to exclude; and that data on exclusions is shared in real-time with those responsible for safeguarding so they can assess and address any safeguarding concerns such as involvement in crime.

[2] Under the Children Act 1989, a child is legally defined as 'looked after' by a local authority if he or she: gets accommodation from the local authority for a continuous period of more than 24 hours; is subject to a care order (to put the child into the care of the local authority); is subject to a placement order (to put the child up for adoption).

[3] Virtual school heads (VSHs) are in charge of promoting the educational achievement of all the children looked after by the local authority they work for.

[4] This refers to children who are classified as a Child in Need, which includes looked after children, children on a Child Protection Plan and children on a Children in Need Plan.

7.5 Both reviews found that to promote safety and stability for all children it is crucial that information is shared between social care and schools – particularly where this could affect changes in education such as a school exclusion.

7.6 Since agreeing the majority of the Timpson Review recommendations in principle, the government has been pursuing an ambitious programme of work on school behaviour across the school system. In particular, we are investing £10 million in behaviour hubs which enable schools and multi-academy trusts with exemplary behaviour cultures and practices to work in partnership with those that want to improve their behaviour culture; reforming the Early Career Framework to entitle all early career teachers to two years of professional development in 5 core areas including behaviour management; clamping down on off-rolling[5] and, between February and March 2022, we consulted on revised guidance on Behaviour in Schools and the statutory guidance on Suspension and Permanent exclusion, so that head teachers have the information they need to use these sanctions properly and proportionately.

7.7 In response to the data-sharing recommendations made in both reviews, the Department for Education ("the Department") assessed ways to improve data-sharing on exclusions, and consequently the ability of safeguarding agencies to identify when excluded pupils may require support, in relation to who is informed of an exclusion and when this is carried out. The consultation on the *Suspension and Permanent Exclusion* guidance ("Exclusions guidance") specifically covered the Timpson Review recommendation that, if a pupil has a social worker, that the social worker is informed if the pupil is excluded and involved in the process. The Department also committed to making it a legal obligation for head teachers to share data on all fixed-term exclusions, regardless of duration, without delay as part of work with the Government's Crime and Justice Task Force.[6]

7.8 When considering the inclusion of social workers and Virtual School Heads within the exclusions process, the Department considered longstanding national trends outlined in the Timpson Review, which showed that particular groups of children are more likely to be excluded from school such as children who are looked-after and children in need. These groups of children are more likely to face barriers to education because of their complex circumstances which means they are more likely to need the help and support of multi-agencies. This cohort of children face multiple and overlapping disadvantages and the cumulative impact of these experiences can affect their attendance, learning, behaviour, and wellbeing.

7.9 When considering the importance of data-sharing on fixed-term exclusions between schools, local authorities and other relevant persons, it was deemed crucial for notification and data to be shared in a timely manner so that any appropriate safeguarding interventions were delivered. This was highlighted within the Timpson Review, which stipulated that sharing information is key to ensure joint working is effective. Similarly, the Serious violence: new legal duty to support multi-agency action consultation in 2019, with regards to placing a duty on public bodies including schools to raise concerns about children at risk of becoming involved in serious

[5] Off-rolling, as defined by Ofsted, is the practice of removing a pupil from the school roll without using a permanent exclusion, when the removal is primarily in the best interests of the school, rather than the best interests of the pupil. This includes pressuring a parent to remove their child from the school.

[6] The Prime Minister's Crime and Justice Taskforce (CJTF) was established in 2021 to consider matters relating to the prevention of crime and the effectiveness of the Criminal Justice System, including combating drug misuse.

violence, highlighted the importance of multi-agency data-sharing for safeguarding purposes and provides an important foundation for effective partnership working.

7.10 These two exclusions data-sharing measures were explored with stakeholders through roundtables or as part of the 2022 consultation on the revised Exclusions guidance. Responses through these forums revealed overall agreement with the proposed measures and their aims to promote safety and stability for all children in calm, safe and supportive school environments (further detail on the consultation outcome is included in section 10).

7.11 In laying these regulations, the Department acknowledges that it is not complying with the convention of providing a full academic term's notice ahead of changes coming into force. Following the publication of the Timpson Review in 2019, the Department agreed to the majority of its recommendations, including those around data-sharing, and announced its intention to consult on these measures in May 2019. The consultation on the revised Exclusions guidance was launched in February 2022 and covered notification of social workers and Virtual Schools Heads. The impact of breaching the term's notice commitment will therefore have been mitigated by the fact that schools and other relevant parties will have been on notice for a number of months of the Department's proposals relating to these changes. To respond to pupils' safeguarding needs quickly the Government's Crime and Justice Task Force Schools recommended making it a legal obligation for head teachers to share data on all fixed-term exclusions, regardless of duration, without delay from September 2022 and the Department consulted on this informally through roundtables with key stakeholders between February and May 2022 and informed local authorities of this potential change in May 2022. The consultation and laying of the regulations has been delayed as a result of the coronavirus (COVID-19) pandemic. A further delay could prevent local authorities and others with safeguarding responsibilities from supporting vulnerable children when they are excluded.

7.12 ***Explanations***

Including and informing social workers and Virtual School Heads throughout the exclusions process

7.13 The 2012 Regulations ensure parents and carers are informed of a decision to exclude and are able to make representations at governing board exclusion review meetings and independent review panel meetings. The current regulations do not however, include, where relevant, any requirement to inform or involve the pupil's social worker and if a child is looked-after, the Virtual School Head, so there is no formal mechanism to ensure they are made aware that a child with whom they are involved has been excluded.

7.14 The amendments being made to the 2012 Regulations by these regulations ensure social workers and Virtual School Heads, where a pupil has one, are informed of the exclusion and included in the process at an early stage, as recommended in the Children in Need Review. Embedding this multi-agency approach will enable them to evaluate and, where necessary, adjust the risk and care package for those on a Child in Need or Child Protection Plan in a timely way. Social workers and Virtual School Heads must also be informed and invited to governing board reviews and Independent Review Panels and given the opportunity to share important information about the pupil's experiences and wellbeing. As their attendance at those meetings is not a legal

obligation, social workers and Virtual School Heads can assess whether or not to attend these reviews, including in relation to the pupil's needs and their own capacity.

Requiring head teachers, teachers in charge and principals to inform local authorities of all fixed-term exclusions immediately

7.15 The 2012 Regulations currently require head teachers, teachers in charge and principals to inform local authorities 'without delay' of any permanent exclusion or a fixed-term exclusion that results in a pupil being excluded for more than five school days in the term or missing a public examination or national curriculum test. They must inform local authorities termly of any other fixed-term exclusions along with the reason for and duration of any fixed-term exclusion. This exception for shorter fixed-term exclusions may mean that local authorities and safeguarding agencies are unaware at the time if a pupil is out of school because of one or multiple shorter fixed-term exclusions.

7.16 These regulations will require schools to immediately share data with local authorities on all fixed-term exclusions, in addition to data already shared on exclusions, ensuring local authorities receive real-time data on all fixed-term exclusions regardless of their length. This will provide local authorities with the necessary information to work with relevant safeguarding agencies to assess and respond, where relevant, to the safeguarding needs of an excluded pupil efficiently and effectively.

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 is no plan to consolidate.

10. Consultation outcome

10.1 The changes made by these regulations are informed by recommendations from the Timpson Review, Children in Need Review and feedback through roundtables with key stakeholders and through the Department's 8-week online public consultation on revisions to the Exclusions guidance. The consultation survey, conducted through the Citizen Space platform, ran from the 3rd February 2022 to the 31st March 2022 and received 824 responses from head teachers, teachers, governors, parents, schools, local authorities and other interested parties. Further information was gathered through a survey with secondary schools in 22 serious violence hotspot areas in England on their data-sharing practices. The government response to the consultation on the *Suspension and Permanent Exclusion* guidance, as well as the revised *Behaviour in Schools* guidance, can be accessed here.

10.2 There were high levels of agreement in our online survey with the proposal that social workers and Virtual School Heads should be informed throughout the exclusion process and included where possible: 83% of survey respondents agreed that social workers should be included and 90% agreed to this in relation to Virtual School Heads.

10.3 The proposal to require head teachers to inform local authorities of all fixed-term exclusions immediately was informally consulted on during roundtables with key stakeholders and through a dedicated survey for secondary schools in 22 violent

hotspot areas in May 2022. This measure received high levels of support from all those consulted, including head teachers, social workers, and local authority representatives, and from the Star Chamber Scrutiny Board[7] which reviews and controls data collection proposals emerging from the Department.

11. Guidance

11.1 The *Suspension and Permanent Exclusion* guidance has been amended to reflect the changes to the regulations and is available at www.gov.uk/government/publications/school-exclusion

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 on state-funded schools, local authorities and those with safeguarding responsibilities for excluded pupils. The majority of schools in serious violence hotspot areas who responded to the Department's dedicated survey on sharing real-time data on fixed-term exclusions confirmed they already share, or intend to share, this information immediately with their local authorities. Schools and local authorities will already have systems in place to share information about longer fixed-term exclusions and permanent exclusions routinely, and data on shorter exclusions is already required to be shared on a termly basis. Therefore, we expect there will be minimal additional burden in sharing and receiving data on shorter fixed-term exclusions.

12.3 Local authorities and those with safeguarding responsibilities, including social workers and Virtual School Heads, will have more ready access to information on a pupil's exclusion to be able to assess and respond to their safeguarding needs throughout the exclusion process. These regulations do not impose any requirement on social workers and Virtual School Heads to attend governing board reviews and Independent Review Panels but allow them to do so should they consider this appropriate in order to share relevant information.

12.4 As these regulations relate to local authorities and state-funded schools and there is no, or no significant, impact on business, charities, voluntary bodies or the public sector, an Impact Assessment has not been prepared. 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.

13. Regulating small business

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

14. Monitoring & review

14.1 Monitoring and reviewing this legislation will be conducted through routine engagement with key stakeholders and the wider programme of work set out in the Schools White Paper "Opportunity for all: strong schools with great teachers for your child" and SEND review: right support, right place, right time". We will routinely discuss the impact of these changes with schools, local authorities and other relevant

[7] Star Chamber Scrutiny Board - GOV.UK (www.gov.uk)

stakeholders to understand and monitor their effectiveness, ensuring the policy objective has been achieved.

15. Contact

15.1 Alison Marmont at the Department for Education, email: school.exclusions@education.gov.uk can be contacted with any queries regarding the instrument.

15.2 Sophie Taylor, Deputy Director for Vulnerable Children Strategy and Educational Engagement Directorate, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Parliamentary Under Secretary of State (Minister for the School System) at the Department for Education, Baroness Diana Barran, can confirm that this Explanatory Memorandum meets the required standard.