

EXPLANATORY MEMORANDUM TO
THE EDUCATION (PUPIL REGISTRATION) (ENGLAND) REGULATIONS 2010
2010 No.1725

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 amend the Education (Pupil Registration) (England) Regulations 2006 (S.I. 2006/1751) (“the 2006 Regulations”). The Regulations prescribe a new exceptional circumstance under which a pupil may be marked as unable to attend on the school attendance register.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1. None.
4. **Legislative Context**
 - 4.1. Section 434 of the Education Act 1996 requires the proprietor of the school (which will generally be the governing body of the school) to maintain a register of all pupils at the school. The maintenance and contents of the register is governed by the sections 434(1) - (4) and 551(1) of the Education Act 1996 and the 2006 Regulations.
 - 4.2. Regulation 4 of the 2006 Regulations requires the proprietor to maintain both an admission register and an attendance register (unless all the pupils at the school are boarders). Regulation 6 prescribes the contents of the attendance register. Regulation 6(1) requires that each pupil must be marked on the attendance register each morning and afternoon as either present, absent, attending an approved educational activity or unable to attend due to exceptional circumstances. Regulation 6(5) defines the exceptional circumstances in which a pupil may be marked as unable to attend as where:
 - (a) the school site, or part of it, is closed due to unavoidable cause at a time when pupils are due to attend; or
 - (b) where transport normally provided for that pupil by the school or the local authority is unavailable, and the pupil does not live within walking distance of the school.
 - 4.3. The Regulations amend regulation 6(5) to prescribe a further exceptional circumstance under which a pupil may be marked on the attendance register as unable to attend. This is where there has been widespread disruption to travel, as a result of a local or national emergency, which has prevented the pupil from attending school.

5. Territorial Extent and Application

5.1. This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

7.1. All schools are required by the 2006 Regulations to keep two registers of pupils at the school: the admissions register, which records the personal details of every pupil at the school, and the attendance register, which records every pupil's attendance at school. Both the admissions register and the attendance register are important tools in safeguarding children's welfare.

7.2. Schools must take the attendance register at the start of each morning session and during each afternoon session that they are open. The register must record, for each session, whether every pupil was present; absent; present at an approved educational activity; or, unable to attend due to exceptional circumstances. It must also record, for all pupils between the ages of 5 and 16, whether the absence was authorised or not. This information is recorded in the attendance register by different codes. The Department has published guidance on the use of the codes in "Absence and Attendance Codes: guidance for Schools and Local Authorities" ("the Guidance").

7.3. The use of the codes when completing the school register enables schools to accurately and consistently record pupils' absence and attendance. They also enable the collection of statistics through the School Census system are published on a termly basis at local authority level and annually as part of the schools achievement and attainment tables. The data helps schools, local authorities and the Government to gain a greater understanding of absenteeism and the reasons for absence. The Regulations apply to all schools, but data is not collected from independent schools and they are not required to use the codes.

7.4. As described in paragraph 4.2 above, regulation 6(5) presently sets out two different circumstances under which a pupil may be marked as unable to attend school. The Guidance issued to schools gives examples of the types of situations which are intended to be covered. If the pupil is marked on the register as unable to attend under regulation 6(5), then the pupil's absence is not counted in the school absence statistics.

7.5. As the 2006 Regulations currently stand, where a school closes for an unavoidable reason, such as flooding or heavy snow, pupils' absence is not counted in the school's absence statistics. However, where a school remains open, any pupil who is not able to get in due to disruption to travel caused by exceptional circumstances is counted as absent - with the absence showing against the school's statistics. The only exception to this is where transport to school that is provided by the school or local authority is not available.

7.6. Last winter's very heavy snow falls meant that a significant number of schools

who struggled to stay open had a large number of pupils who were recorded as absent, as they were unable to travel to school. Although absence data for the period are not due to be published until July it is clear that these absences will have had a negative impact on the absence statistics of those schools which stayed open. The Department has received numerous enquiries from schools, local authorities and the teacher unions about the recording of pupils' absence, highlighting the fact that as the 2006 Regulations currently stand there is a perverse incentive for schools to close in these circumstances.

- 7.7. These Regulations amend regulation 6(5) of the 2006 Regulations to include circumstances where pupils are unable get to school because of an emergency, either at local or national level, which has led to widespread disruption to travel and this has prevented the pupil from attending school. The intention is to capture situations such as extreme weather conditions, flooding, natural disaster, or disruption to the supply of fuel, which may prevent the pupil from attending school, but for which the school should not be penalised in terms of their absence statistics.
- 7.8. The Department intends to update the Guidance. It is intended that headteachers should exercise their judgment about when a local or national emergency has arisen, using the published guidance which will provide examples of the types of emergency which are intended to fall within the new definition.
- 7.9. This change impacts on the way attendance statistics from maintained schools will be collated.
- 7.10. The 2006 Regulations are currently undergoing a wider review which may result in more radical changes/simplification to help reduce burdens on schools. It is planned to implement any changes in time for the start of the academic year 2011/2012. However, we consider that it is nonetheless necessary to make these changes in time for the academic year 2010/2011, as it will remove the existing perverse incentive on schools to close in the situations described above.

8. Consultation Outcome

- 8.1. The Department received many queries about this issue from both schools and teacher unions, in particular the Association of School and College Leaders, who set out a strong case for a change to be made to the 2006 Regulations. The Department has also noted that the recent volcanic ash cloud caused much travel disruption this year and prevented many children from returning to schools in time after the Easter break. The Regulations will therefore come into force at the beginning of September 2010, and so will be in place in time to accommodate any possible travel disruption at the end of the summer holidays due to the return of the volcanic ash cloud, and in time for the coming winter.
- 8.2. Because of the need to have the new definition in place in time for the new academic year we ran a shortened consultation period, from 7 to 28 June 2010. The consultation sought responses from the key stakeholders affected by the change i.e. teacher trade unions and schools, local authorities and parental

representative bodies – a total of thirteen organisations.

- 8.3. We received four substantive responses, from the ASCL (the lead advocate for the change); NASUWT; Parent Governors Representative Network; and Ofsted, all of whom support the change to the regulations.

9. Guidance

- 9.1. The Department will update the current Guidance to explain the impact of the change in time for the start of the new academic year.

10. Impact

- 10.1. There is no impact on business, charities or voluntary bodies. Attendance data is not collected from independent schools and they are not required to use the codes.
- 10.2. The impact on the public sector is minimal. There are no cost implications. The change will affect the absence code which schools will use to record pupil absences in the attendance register.
- 10.3. An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1. The legislation does not apply to small business.

12. Monitoring & review

- 12.1. As set out in paragraph 7.3, pupil absence data is collected through the School Census system and statistics are published on a termly basis at local authority level and annually as part of the schools Achievement and attainment tables. The data collected will be reviewed in July 2011, and the use of the exceptional circumstances absence code will be analysed then. The improved accuracy of the school attendance statistics will help the Government to gain a greater understanding of absenteeism and the reasons for absence.

13. Contact

- 13.1. Greg Midcalf at the Department for Education, Tel: 0207 340 7216 or e-mail: greg.midcalf@education.gsi.gov.uk can answer any queries regarding the instrument.