

EXPLANATORY MEMORANDUM TO

THE EDUCATION (INDIVIDUAL PUPIL INFORMATION) (PRESCRIBED PERSONS) (AMENDMENT) (ENGLAND) REGULATIONS 2009

2009 No. 213

1. This explanatory memorandum has been prepared by the Department for Children, Schools and Families (DCSF) and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The Education (Individual Pupil Information) (Prescribed Persons) Regulations 1999 (“the Principal Regulations”) provide that a local authority (“LA”) can access individual pupil information collected through the School Census for a pupil if it is the relevant LA for that pupil, (that is the local authority which has or did have responsibility for that pupil), but they do not expressly provide for access to information by a LA which is not certain whether it is responsible for a pupil and is seeking to determine this by reference to the pupil’s information. This amendment will ensure that a LA can access information about any pupil where it has reasonable grounds to believe that it may be the relevant LA for that pupil.
 - 2.2 If the LA ascertains that it is responsible for that pupil it will be the relevant LA for the purposes of the Principal Regulations and can therefore continue to access information about the pupil. If, on the other hand, the LA establishes that it is not responsible for a pupil, it will not have power to continue to access that pupil’s information.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None
4. **Legislative Context**
 - 4.1 This instrument is made under section 537A of the Education Act 1996 (“the 1996 Act”), which enables the Secretary of State to collect and share individual pupil information.
 - 4.2 The Principal Regulations, which are amended by this instrument, are made under sections 537A(4) and (5) of the 1996 Act and prescribe which persons may be provided with individual pupil information collected by the Secretary of State through the School Census.
 - 4.3 The Principal Regulations enable the Secretary of State to allow LAs to access individual pupil information for pupils for whom they are the

“relevant LA”. A LA is the “relevant LA” for pupils who are or were registered at a school maintained by that LA; pupils whose special educational needs (SEN) the LA is responsible for providing for under Part IV of the 1996 Act; pupils who are ‘looked after’ by the LA; and pupils who are or were registered at a non-maintained school situated in that LA’s area.

4.4 This instrument amends the Principal Regulations to ensure that a LA may access individual pupil information about a pupil where it has reasonable grounds to believe it may be the relevant LA and needs to ascertain whether that is the case.

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

7.1 Individual Pupil Information collected through the School Census is made available to schools and LAs by DCSF through a website (“the website”) which provides secure access for nominated users to a limited subset of the information collected. A maximum of 3 users per LA must be nominated to DCSF by the Director of Children’s Services. Schools and LAs can access the following information on pupils for whom they are responsible: Unique Pupil Number (“UPN”); name; date of birth; gender; ethnicity; eligibility for free school meals; whether the pupil receives SEN provision; pupil’s first language; postcode; whether the pupil is ‘Gifted and Talented’, whether the pupil is looked after by a LA and the pupil’s national curriculum year. Attainment information on pupils, such as Key Stage results, is matched with pupils’ other information, and can also be accessed through the website.

7.2 Schools and LAs need to access the information on the website when a new pupil arrives at a school, or in a LA area, in order to enable them to provide appropriate and continuous education and other provision for that pupil and to fulfil their various statutory duties in respect of that pupil. In normal circumstances a pupil’s previous school must forward the pupil’s records to the new school, and there is a statutory process in place to facilitate this. However, this will not always assist, for example where the previous school does not know where the pupil has moved to, or where there is a significant delay in the records being sent. This can be particularly problematic in the case of vulnerable children, such as those with SEN or highly mobile children, who often need help the most.

7.3 The website contains a search facility which is only available to LAs. Sometimes neither the school nor the LA has detailed information about the pupil; perhaps the name or date of birth used on the website is incomplete, or

inaccurate. This can result in the LA needing to do a search to find the information about a pupil they are responsible for.

7.4 Where the LA is searching for information about a pupil, the website's search facility provides a list of possible matches and a limited amount of identifying data for each of those pupils, including date of birth and UPN. The LA will therefore access some information about pupils for whom they are not the relevant LA for the purposes of the Principal Regulations. However, this access is necessary and can sometimes be the only way to find information about vulnerable children in a reasonable timeframe. This amendment will clarify that a LA can carry out an effective search for a pupil, even when it has minimal information about the child. The amendment is limited so that once a LA no longer has reasonable grounds to believe that it is responsible for a pupil, it will not have power to continue to access that pupil's information. There are also controls within the design of the database which limit the information available to users and restrict their use of the information. The pupil information that users can access from a search result is a limited subset of the full information on that pupil and the pupil's full record is protected by further security measures and monitored by DCSF.

Consolidation

7.5 As the amendment made by this instrument does not constitute a major redrafting of the Principal Regulations, the decision has been taken not to consolidate the relevant legislation on this occasion. This will be kept under review and consideration given again if further amendment is required.

8. Consultation outcome

There has been a consultation in respect of this amendment with the Information About Children, Education and Schools group which is a formal consultative group which meets on a termly basis. The members are representatives of LAs. No further consultation has been undertaken because this is a technical amendment to clarify that the access described above is permitted within appropriate limits and thus does not represent an added burden on LAs or an extension to the current arrangements.

9. Guidance

DCSF will be issuing guidance to LAs when this instrument comes into force to explain the effect of the amendment and the conditions on access to pupil data.

10. Impact

10.1 This instrument has no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is minimal.

10.3 An Impact Assessment has not been prepared for this instrument as the impact will be minimal.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

The outcome will be subject to internal review after 12 months and the legislation may be amended accordingly.

13. Contact

Mark Phillips at the Department for Children, Schools and Families Tel: 020 79257357 or email: Mark.Phillips@dcsf.gsi.gov.uk can answer any queries regarding the instrument.