

**EXPLANATORY MEMORANDUM TO**  
**THE EDUCATION (PUPIL REGISTRATION) (ENGLAND) (AMENDMENT)**  
**REGULATIONS 2011**

**2011 No.1625**

**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 changes will require maintained boarding schools and Academy boarding schools to delete a pupil’s name from the admissions register where their boarding fees remain unpaid at the end of the school term for which they were due to be paid.

**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 (“the 1996 Act”) requires the proprietor of a school (which in relation to a community, foundation or voluntary school, will be the governing body of the school) to maintain a register of all pupils at the school<sup>1</sup>.

4.2. Section 434(3) of the 1996 Act provides the power to make Regulations to prescribe the grounds on which the name of the pupil must be deleted from the school register. Section 434(3)(b) sets out that the name of a pupil must not be deleted from the register otherwise than on one of the prescribed grounds.

4.3. Regulation 8(1) of the 2006 Regulations sets out the grounds upon which the name of a pupil of compulsory school age must be deleted from the admission register. Regulation 2(2) of these Regulations inserts a new ground for deletion under regulation 8(1), where payment for the boarding fees remains unpaid by the pupil’s parent at the end of the term to which the fees apply. The new ground for deletion will apply to boarders who attend a maintained boarding school or an Academy boarding 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.

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<sup>1</sup> The section applies to maintained schools, non-maintained special schools and independent schools (including Academies).

## 7. Policy background

- What is being done and why
- 7.1. The State Boarding Schools Association contacted the Department in June 2010 raising a concern, that the Pupil Registration Regulations do not allow maintained or Academy boarding schools to remove the name of a pupil from the admissions register where their parents have not paid their boarding fees. The concern is that this omission could open the possibility of parents applying for a boarding place at a maintained or Academy boarding school, paying the boarding fees in advance as required by their contract with the school, then subsequently defaulting on the boarding fees. As the school is not able to remove the pupil from the roll for non-payment of fees, parents would then be able to request that the pupil's place is transferred to a day place. Schools have a finite number of school places available, and having to change a boarding place into a day place would, in particular with popular/oversubscribed boarding schools, reduce the number of boarding places available to those who want/need one and cause financial loss to the school both in lost boarding fees and the administrative burden of having to deal with such a situation.
  - 7.2. To address this problem we are adding a new ground for deletion in regulation 8(1) which will require maintained and Academy boarding schools to delete the names of pupils of compulsory school age from the school register where their boarding fees are due to be paid by the parent and remain unpaid by the end of the term to which the fees applied.
  - 7.3. In the case of a maintained boarding school, the local authority has a statutory duty to consider whether there is a case for remission or payment of the boarding fees, under section 458 of the 1996 Act. In particular, section 458(4) and (5) of the 1996 Act require the local authority to remit all or part of the charges if the local authority are satisfied that otherwise the payment of the charges would involve financial hardship to the parent of the pupil concerned.
  - 7.4. The Department wants to achieve parity between the maintained sector and Academies, as a large number of maintained boarding schools are converting to Academies. The Department has therefore introduced an amendment in the Education Bill that will place a new duty on local authorities to consider the case for remission or payment of boarding fees for pupils at Academies.
  - 7.5. We will also make clear in supporting guidance that where it has become apparent that the parent is not able/going to pay the boarding fee, but before the grounds for removing the pupil's name from the register are met, the school or Academy should consider:
    - whether the parents/carers have been informed of any charitable or other voluntary sector assistance or benefits that may be available to help meet the cost of boarding fees;
    - whether removal from the school register would result in any significant detrimental effect on the pupil's education and whether this can be mitigated, for example by arranging with the local authority to have them transferred to a school closer to home; and,

- contacting the relevant Local Authority and the parents/carers, at an early stage, to facilitate school transfer.

- Consolidation

7.6. The Department will consider consolidation of the amendments in future years where necessary.

## **8. Consultation Outcome**

8.1. As outlined in paragraph 7.1 the Department believes that this change to the Pupil Registration Regulations will benefit maintained and Academy boarding schools which is why we are bringing them into effect for the start of the new school year in September 2011. In view of the timeframes, we ran a shortened consultation period, from 7 to 21 March 2011 about this change, and a number of other changes that were not taken forward. The consultation sought responses from members of the Department's Education Forum - a forum for representatives of relevant trade unions, professional organisations and employers - and Ofsted. The change was also discussed with the Department's Star Chamber Scrutiny Board, made up of representatives of individual schools and local authorities. Given the need to get this change made, so as to be of benefit to boarding schools and Academies, at short notice and in time for the start of the next academic year we did not consult with individual parents, schools or local authorities.

8.2. We received two responses relating to this regulation change, from the Association of School and College Leaders (ASCL) and Ofsted, both in support of the change. We also consulted with the Principal at Wymondham College, representing the Management Committee of the State Boarding Schools Association, giving them the opportunity to comment on the draft and taking their comments into account when making the amendment.

## **9. Guidance**

9.1. The Department will produce a clear and concise update of the current guidance to explain the impact of the change, which will be published shortly after the Regulations have been laid in Parliament and no later than the start of the new academic year.

## **10. Impact**

10.1. There is no impact on the private (businesses) or civil society (charities and voluntary organisations) sectors in terms of noticeably increasing or decreasing their burdens. Requiring maintained boarding schools and Academy boarding schools (some of which are in these sectors) to remove pupils from their register if fees are unpaid, will enable them to make better use of their facilities and maximise their income, but the regulations are not deregulatory as they do not affect existing burdens.

10.2. There is no impact on the frontline public sector, as the policy does not impose any new recurring information obligations, and nor does it increase the

sector's administrative or policy burdens by £5 million (Equivalent Annual Costs) or more.

10.3. An Impact Assessment has not therefore been prepared for this instrument.

## **11. Regulating small business**

11.1. The legislation does not apply to small business.

## **12. Monitoring & review**

12.1. 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 Performance Tables. The published data will be reviewed on a continual basis and will feed in to the Department's ongoing strategy to reduce burdens on schools and remove unnecessary bureaucracy.

## **13. Contact**

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