

## EXPLANATORY MEMORANDUM TO

### THE SCHOOL DISCIPLINE (PUPIL EXCLUSIONS AND REVIEWS) (ENGLAND) (AMENDMENT AND TRANSITIONAL PROVISION) (NO. 2) REGULATIONS 2023

2023 No. 882

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by The Department for Education and is laid before Parliament by Command of His Majesty.
- 1.2 This Memorandum contains information for the Joint Committee on Statutory Instruments.

#### 2. Purpose of the instrument

- 2.1 This instrument corrects some minor inadvertent drafting errors in the School Discipline (Pupil Exclusions and Reviews) (England) (Amendment and Transitional Provision) Regulations 2023<sup>1</sup>(S.I. 2023/571) (“the principal amending Regulations”), which amend the School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012 (S.I. 2012/1033) (“the 2012 Regulations”); the corrections will take effect from 31 August, before the principal amending Regulations come into force, to ensure that the amendments to the 2012 Regulations take effect in their intended form. The principal amending Regulations amend procedures in the 2012 Regulations relating to pupil exclusions from maintained schools, pupil referral units and Academy schools and alternative provision Academies in England; they also contain free-standing transitional provisions.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 This instrument includes provision to correct errors identified by the Joint Committee on Statutory Instruments (“JCSI”) in its forty-fourth report of Session 2022-23. It also includes provision to correct a minor error highlighted by the JCSI in an email dated 29 June 2023. Finally, it corrects two minor errors which have come to light in the process of drafting this instrument.

#### 4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) 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.

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<sup>1</sup> [The School Discipline \(Pupil Exclusions and Reviews\) \(England\) \(Amendment and Transitional Provision\) Regulations 2023 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

## **6. Legislative Context**

- 6.1 The 2012 Regulations make provision in relation to the power of head teachers of maintained schools, teachers in charge of pupil referral units and principals of Academy schools and alternative provision Academies in England, to exclude pupils under section 51A of the Education Act 2002 (exclusion of pupils: England); and in relation to the procedures for governing boards and Independent Review Panels to consider whether excluded pupils should be reinstated.
- 6.2 The principal amending Regulations make provision in relation to exclusions that take place on or after 1st September 2023. They allow for the cancellation of school exclusions in circumstances where a governing board has not yet considered reinstatement of the pupil and specified requirements are met. They also make provision for the use of remote meetings for governing boards and Independent Review Panels in certain circumstances; and set out transitional arrangements for exclusions that took place before the coming into force of the principal amending Regulations.
- 6.3 This instrument corrects some inadvertent references to “governing body” (which is the responsible body for a maintained school) in provisions within the principal amending Regulations that should instead refer to the “management committee” (in relation to a pupil referral unit), the “proprietor” (in relation to an Academy) or the “arranging authority” (in relation to a review panel). It also inserts three words (“using remote access”) that were inadvertently left out of one provision to ensure consistency with corresponding provisions elsewhere in the instrument. In addition, in a few places, a singular or plural form of wording is substituted as appropriate for consistency; and the instrument corrects two inaccurate cross references within the transitional provisions of the principal amending Regulations. For one of these corrected cross references, it inserts the word “to” to correct the drafting of the principal amending Regulations. Finally, it deletes the repeated use of the words “relation to”. The corrections do not change the intended meaning of the principal amending Regulations in any way, but rather ensure that the changes made by the principal amending Regulations will take effect in the way that was intended at the time when they were made.
- 6.4 Following consultation with the SI Registrar, the free issue procedure has been applied and this instrument is being issued free of charge to all known recipients of the principal amending Regulations. This is because the sole purpose of this instrument is to correct minor drafting errors in the principal amending Regulations.

## **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. The principal amending Regulations make changes to the 2012 Regulations in relation to remote meetings and the cancellation of exclusion decisions; they also include some free-standing transitional provisions to cover exclusions that occur before 1st September 2023 where the consideration or review of the exclusion has not yet been completed.
- 7.2 This instrument corrects minor inadvertent drafting errors in the principal amending Regulations, in advance of the principal amending Regulations coming into force.

This ensures that the changes made to the 2012 Regulations by the principal amending Regulations take effect in the way that was intended at the time when the principal amending Regulations were made.

- 7.3 The updated “[Exclusion Guidance](#)” on suspensions and permanent exclusions that accompanies the principal amending Regulations is not affected by the corrections that are being made by this instrument.

## **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 the 2012 Regulations at this time.

## **10. Consultation outcome**

- 10.1 These are correcting Regulations and have therefore not been subject to consultation.
- 10.2 The principal amending Regulations were informed by recommendations from the [Timpson Review](#), [Children in Need Review](#) and feedback to the Department’s 8-week online public consultation on updates to the Exclusion Guidance<sup>2</sup>.

## **11. Guidance**

- 11.1 Guidance to accompany the principal amending Regulations is available at [School suspensions and permanent exclusions - GOV.UK \(www.gov.uk\)](#).

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument as its sole purpose is to correct minor drafting errors in the principal amending Regulations which do not change the purpose or intended effect of the principal amending Regulations in any way.

## **13. Regulating small business**

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

## **14. Monitoring & review**

- 14.1 The instrument does not include a statutory review clause. Monitoring and reviewing the effect of the principal amending Regulations on the 2012 Regulations will be conducted through routine engagement with key stakeholders and the wider programme of the Department for Education’s work.

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<sup>2</sup> [Consultation on Revised Behaviour in Schools Guidance and Suspension and Permanent Exclusion Guidance - Department for Education - Citizen Space](#)

**15. Contact**

- 15.1 Rohini Krishnamurthy at the Department for Education, email: school.exclusions@education.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Heidi Holmes and Sachin Shah, Deputy Directors for Behaviour, Exclusions and School Food, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Minister of State for Schools at the Department for Education, Rt Hon Nick Gibb MP, can confirm that this Explanatory Memorandum meets the required standard.