EXPLANATORY MEMORANDUM TO

THE COASTING SCHOOLS (ENGLAND) REGULATIONS 2016

2016 No. [XXXX]

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 The Education and Adoption Act 2016 allows the Secretary of State to identify coasting schools for the first time. These are schools where, over time, pupils are not fulfilling their potential. The instrument defines what coasting means in relation to the performance of schools as published on gov.uk[1].

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 This entire instrument applies only to England.

3.3 The instrument applies only to England because it applies only to schools in England. The instrument does not have minor or consequential effects outside England.

3.4 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament and the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.

3.5 The Department has reached this view because it considers that the primary purpose of the instrument relates to education, which is within the devolved legislative competence of each of the three devolved legislatures; education is not within Schedule 5 to the Scotland Act 1998 and is not otherwise outside the legislative competence of the Scottish Parliament (see section 29 of that Act); education is not within Schedules 2 or 3 to the Northern Ireland Act 1998 and is not otherwise outside the legislative competence of the Northern Ireland Assembly (see section 6 of that Act); education is within paragraph 5 of Schedule 7 to the Government of Wales Act 2006 and is not within one of the exceptions listed in Schedule 7, nor is it otherwise outside the legislative competence of the National Assembly for Wales (see section 108 of that Act).

[1] https://www.compare-school-performance.service.gov.uk/download-data

4. Legislative Context

4.1 This instrument will allow the elements of the Education and Adoption Act 2016 that relate to coasting schools to be implemented by setting the definition of a coasting school. This will allow the Secretary of State to take action for the first time to support such schools to improve performance.

4.2 The Education and Adoption Act 2016 requires that the instrument is subject to affirmative resolution the first time it is made.

5. Extent and Territorial Application

5.1 The instrument extends to England and Wales.

5.2 The territorial application of this instrument is set out in Section 3 under "Other matters of interest to the House of Commons".

6. European Convention on Human Rights

6.1 The Minister of State for School Standards, Nick Gibb has made the following statement regarding Human Rights:

6.2 In my view the provisions of The Coasting Schools (England) Regulations 2016 are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1 The Education and Adoption Act 2016 (the Act) amends the Education and Inspections Act 2006 to require the Secretary of State to define "coasting" by regulations. This statutory instrument fulfils this requirement. The definition and the rationale behind it are set out in paragraphs 7.2 to 7.6 below. The Act also gives the Secretary of State power to challenge, support and take action in a coasting school. These powers are summarised in paragraphs 7.7 to 7.9.

The coasting definition

7.2 The Department consulted on how to define "coasting" in autumn 2015. The Government response published in March 2016 set out how regulations would be developed. This confirmed that the Department wants a clear and objective measure to define "coasting" so schools are in no doubt when they have fallen within the definition. We also want to recognise the variation in schools' intakes by considering the starting point of pupils rather than simply their attainment in determining how well a school helps its pupils achieve their potential. Coasting is not about isolated dips in performance, but about identifying and supporting those schools which over a number of years have consistently failed to stretch their pupils sufficiently.

7.3 Our coasting definition is, therefore, based on published performance data. It reflects accountability measures that schools already know and understand. It is based on the progress that pupils make in a school and considers a school's performance over three years.

7.4 In 2016, a primary school will be coasting if in 2014 and 2015, fewer than 85% of pupils achieved level 4 in reading, writing and mathematics and less than the national median achieved expected progress in reading, writing and mathematics **and** in 2016, fewer than 85% of pupils meet the new expected standard in reading, writing and

mathematics and the school's progress scores are below -2.5 in reading, below -3.5 in writing or below -2.5 in mathematics.

7.5 In 2016, a secondary school will be coasting if in 2014 and 2015, fewer than 60% of pupils achieved 5 A*-C at GCSE (including English and mathematics) and less than the national median achieved expected progress in English and mathematics **and** in 2016, the school's Progress 8 score is below -0.25.

7.6 This definition, with the exception of the thresholds for the 2016 progress scores, was published on gov.uk in June 2015. It informed much of the debate and scrutiny during the passage of the Education and Adoption Bill in the first session of this Parliament.

7.7 The first coasting schools will be identified after the 2016 performance tables have been published in December 2016 (primary) and January 2017 (secondary). These tables are based on robust revised data that has been subjected to a full school checking exercise. A final and small scale errata process follows the publication of the tables. This allows school to make any last requests for corrections. If a school no longer falls within the coasting definition based this process they will not be identified as coasting under these regualtions.

Supporting coasting schools to improve

7.8 Once a school has fallen within the coasting definition, Regional Schools Commissioners (RSCs) acting on behalf of the Secretary of State will engage the school to consider its wider context, and decide whether additional support is needed. RSCs, in discussion with the school and with the support and advice of their Headteacher Boards, will have discretion to decide on the specific course of action that will be taken. Intervention will not be automatic and the focus will be on helping schools to improve in order to drive up standards across the country.

7.9 An RSC may decide a school is supporting pupils well, or has a sufficient plan and the capacity to improve, and therefore no further support is required. Where they consider additional support is needed, for example from a National Leader of Education or a high performing local school, the RSC will work with the school to arrange this. In some cases, following discussions with the school, the RSC may consider that a more formal approach is required. For maintained schools, they may use the Secretary of State's power to require the school to accept additional support or to change the membership of its governing body. For academies, they may issue the academy trust with a warning notice setting out the improvement action required. The Department expects that only in a small minority of cases will RSCs use the Secretary of State's powers to direct a coasting maintained school to become an academy or to move a coasting academy to a new trust.

7.10 More detail about the processes that RSCs will follow and the factors they may consider in determining the appropriate support for schools identified as coasting is set out in the *Schools Causing Concern* guidance[2].

Consolidation

7.11 This is not applicable as the instrument does not amend another instrument.

[2] https://www.gov.uk/government/publications/schools-causing-concern--2

8. Consultation outcome

8.1 The Department ran an online public consultation from October to December 2015. This sought views on the proposed definition of coasting and on an illustrative version of this instrument. The Department received 332 responses to that consultation.

8.2 A range of views were expressed in the responses. There was wide support for the use of progress measures as the basis of the coasting definition, and where respondents were not opposed to the premise of identifying coasting schools, they generally agreed with the principles set out.

8.3 Some respondents were concerned that the coasting definition would identify disproportionately more schools in socio-economically deprived areas. From 2016, the coasting definition will use new progress measures. This will be a fairer measure of performance for schools with low attaining intakes or those in socio-economically deprived areas that are teaching their pupils well compared to others with the same starting point.

8.4 The full Government response to the consultation can be found on gov.uk.[3]

9. Guidance

9.1 The *Schools Causing Concern* guidance sets out the processes that RSCs, on behalf of the Secretary of State, will follow and the factors they may consider in determining the appropriate support for schools identified as coasting.

9.2 *Primary school accountability in 2016: A technical guide for primary maintained schools, academies and free schools*[4] and *Progress 8 measure in 2016, 2017, and 2018: Guide for maintained secondary schools, academies and free schools*[5] set out the technical details of the coasting definition.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The instrument has a minimal impact on the public sector. Although the legislation allows local authorities to take action in a coasting school that they maintain, the statutory *Schools Causing Concern* guidance makes clear that it will the Regional Schools Commissioners who predominantly take action when maintained schools are regarded as coasting. We do not, therefore, expect the additional power to be burdensome for local authorities. Identifying these schools will allow the resources and support available within the sector and outlined in section 7 to be targeted effectively at those schools that are failing to ensure pupils fulfil their potential.

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

11. Regulating small business

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

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[3] *Intervening in failing, underperforming and coasting schools: Government consultation response* March 2016 https://www.gov.uk/government/consultations/intervening-in-failing-underperforming-and-coasting-schools

[4] https://www.gov.uk/government/publications/primary-school-accountability

[5] https://www.gov.uk/government/publications/progress-8-school-performance-measure

12. Monitoring & review

12.1 The Department will internally review the coasting definition after the first coasting schools are identified and may amend the coasting definition accordingly in subsequent years.

13. Contact

13.1 Jane Vaughan at the Department for Education Telephone: 02073407325 or email: jane.vaughan@education.gov.uk can answer any queries regarding the instrument.