EXPLANATORY MEMORANDUM TO

THE RELATIONSHIPS EDUCATION, RELATIONSHIPS AND SEX EDUCATION AND HEALTH EDUCATION (ENGLAND) REGULATIONS 2019

2019 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.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The instrument gives effect to the duty imposed by section 34 of the Children and Social Work Act 2017 to make Relationships Education and Relationships and Sex Education compulsory in all schools; and exercising the power under section 35 to make the Health element of Personal, Social, Health and Economic education compulsory in schools other than independent schools.

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.

4. Extent and Territorial Application

4.1 The territorial extent of the instrument is England and Wales.

4.2 The instrument applies to England.

5. European Convention on Human Rights

5.1 The Minister of State for School Standards has made the following statement regarding Human Rights:

"In my view the provisions of the Relationships Education, Relationships and Sex Education and Health Education (England) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 The instrument is made under section 34 and 35 of the Children and Social Work Act 2017 and is subject to the affirmative resolution procedure.

7. Policy background

What is being done and why?

7.1 The Department is introducing new subjects for schools to include in their curriculum from September 2020. Schools will be required to teach all primary pupils Relationships Education, and all secondary pupils Relationships and Sex Education. Schools other than independent schools will also be required to teach primary and secondary pupils Health Education. In teaching the new subjects, schools must have regard to the statutory guidance issued pursuant to the measures introduced by the regulations: Relationships Education, Relationships and Sex Education, and Health Education.

7.2 In a Policy Statement issued in March 2017, the Secretary of State for Education confirmed the Government's ambition to support all young people to stay safe and prepare for life in modern Britain by making Relationships Education compulsory for primary pupils, Relationships and Sex Education (RSE) compulsory for secondary pupils and, subject to the outcome of a thorough engagement with stakeholders and a public consultation, to make the subject of Personal, Social, Health and Economic Education (PSHE) (or elements of it) compulsory in all schools. The government laid an amendment to the Children and Social Work Bill on 1 March 2017 which ultimately resulted in the enactment of sections 34 and 35 of the Children and Social Work Act 2017.

7.3 This decision followed previous confirmation that the Secretary of State was actively considering the case for further action on these subjects, including in September 2016 to the Education Select Committee, underlining the government's commitment to explore all options to drive improvement in this area of the curriculum.

7.4 There have been many calls for statutory sex education and/or PSHE from leading parent representative bodies such as Mumsnet and PTA UK. A YouGov poll in 2016 showed that 91% of parents believe all pupils should receive PSHE/sex education lessons to teach young people about the risks of sexting, as well as other issues such as contact from strangers online. A Barnardo's poll of 11-15 year olds also showed that 74% believed that children would be safer if they had age appropriate classes on RSE. Many teaching unions have also called for the subjects to be made compulsory. It is clear, therefore, that parents and schools want them to be taught.

In deciding to make Relationships Education mandatory for all primary pupils, Relationships and Sex Education mandatory for all secondary pupils, and Health Education mandatory for all primary and secondary pupils in state-funded schools, the Government acknowledges that many schools are already teaching these subjects and in some cases doing so very well, but that it was important to ensure universal coverage for all pupils and improved quality.

7.5 The key aim of the policy is to support schools to deliver high-quality Relationships Education to all primary pupils, Relationships and Sex Education to all secondary pupils, and Health Education to all primary and secondary pupils (except those in independent schools) to ensure that young people are taught to stay safe and are prepared for life in modern Britain. Independent schools are already required to teach the subject of PSHE and will continue to adhere to the independent school standards, and in particular the standard which requires them to teach PSHE.

7.6 The new subjects will enable schools to address effectively issues such as internet safety and unhealthy relationships and ensure pupils are taught in an age-appropriate way about respectful and healthy relationships, including friendships and family relationships. As a result, we expect pupils at primary and secondary schools to have the necessary knowledge to help build healthy relationships, stay safe and become successful adults. The Government has published guidance which schools must have regard to in developing their lesson plans and in teaching the subjects.

7.7 Currently, when a school receives a parental request for their child to be excused from some or all of sex education, the school must comply with the request until the request is withdrawn. However, a right for parents to withdraw their child up to 18 years of age is no longer compatible with English case law or the European Convention on Human Rights. It is also clear that allowing parents to withdraw their child up to age 16 would not allow the child to opt in to sex education before the legal age of consent, to receive education designed to help them make good decisions and keep themselves safe and healthy before that point. The regulations therefore provide that a parent will have a right to request that their child be withdrawn from some or all of sex education which forms part of Relationships and Sex Education, and that the pupil must be so excused until the request is withdrawn, unless or to the extent that the head teacher considers that the pupil should not be so excused.

7.8 The statutory guidance states that, before granting any such request, it would be good practice for the head teacher to discuss the request with the parent and, as appropriate, with the child to ensure that their wishes are understood and to clarify the nature and purpose of the curriculum. Once those discussions have taken place, except in exceptional circumstances, the school should respect the parent's request to withdraw the child, up to and until three terms before the child turns 16. At that point, if the child wishes to receive sex education, they should be provided with it in one of those three terms. In line with the current position, there will be no right to withdraw from sex education taught in the science national curriculum.

7.9 While schools will be required to teach the new subjects from September 2020, they will be encouraged to follow the new guidance from September 2019. The existing requirement on maintained secondary schools, and encouragement on primary maintained schools and on academies to teach sex education and have regard to the current Sex and Relationship Education will remain in force until the new subjects become compulsory in September 2020.

8. European Union Withdrawal Act/Withdrawal of the United Kingdom from the European Union

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 This instrument makes amendments to a number of existing and separate pieces of primary and secondary legislation relating to the curriculum, so consolidation is not an option.

10. Consultation outcome

10.1 The Department for Education undertook a programme of stakeholder engagement and consultation to help shape the new relationships and sex education curriculum.

Between October 2017 and March 2018, the Department held a wide-ranging stakeholder engagement process, which included hosting round-table sessions with national and local groups representing interested parties such as parents, religious bodies, teachers and subject specialists as well as actively engaging with parliamentarians.

10.2 In addition, the Department conducted a Call for Evidence between December 2017 and February 2018 to seek views from adults (including parents; teachers; educational professionals and organisations) and young people on the content of the new subjects. There were 23,000 responses to the call for evidence.

10.3 The findings from the engagement process, including the call for evidence, informed the development of the draft regulations and guidance. The Department consulted on the draft regulations, guidance and regulatory impact assessment (RIA) from 19 July to 7 November. Over 40,000 responses were received. The outcome of this exercise supported the final drafting of the regulations, guidance and RIA, which are published.

10.4 Of the 4,788 participants who answered the questions on whether they agree or disagree that the draft regulations clearly set out the requirements on schools to teach the new subjects, there was an equal proportion of respondents who agree or strongly agree (37%) and disagree or strongly disagree (37%)

10.5 Many of the responses were in relation to the content of the guidance rather than the draft regulations. The consultation has not highlighted any specific issues with the technical drafting of the regulations. We have therefore decided not to make any changes of substance to the regulations.

10.6 The government response to the consultation is available via this link:

https://www.gov.uk/government/consultations/relationships-and-sex-education-and-health-education

11. Guidance

11.1 Under sections 34 and 35 of the Children and Social Work Act 2017, the Secretary of State has published guidance relating to the new subjects. Schools must have regard to the Secretary of State's guidance.

12. Impact

12.1 The impact on business, charities or voluntary bodies is estimated to be £4.6m, and this will apply to independent schools.

12.2 The impact on the public sector is estimated to be £29m and will apply to all state-funded schools - maintained schools, academies, pupil referral units and non-maintained special schools.

12.3 An Impact Assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses, ie independent schools.

13.2 To understand and minimise the impact of the requirements on small businesses, we have assessed the burden on schools, including independent schools, and consulted on our assessment. We have concluded that the cost burden on independent schools did not reach the threshold that would require specific government intervention.

14. Monitoring & review

14.1 The government has committed to review the guidance three years after they take effect and to regularly review them after that.

15. Contact

15.1 Maleck Boodoo at the Department for Education, telephone: 0207 340 8119 or email: maleck.boodoo@education.gov.uk can answer any queries regarding the instrument.