# EXPLANATORY MEMORANDUM TO THE

# THE EDUCATION ACT 1996 (ELECTRONIC COMMUNICATIONS) ORDER 2004

## 2004 No. 2521

**1.** This explanatory memorandum has been prepared by the Department for Education and Skills and is laid before Parliament by Command of Her Majesty.

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

**Description**

**3.** The Order facilitates the service of orders, notices and documents under the Education Act 1996 by electronic means. Through making provision for parental consent to electronic service the Order puts beyond doubt that electronic communications can be used as an alternative to the physical means of service listed as options in the Act (delivering to a person, leaving it at the last known address, or sending by prepaid letter). Consent to electronic service must be 'in writing'. Guidance will make clear, in line with interpretation of the law, that parents can fulfil the requirement for consent in writing by electronic means such as email if that suits them better.

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

**4.** None.

**Legislative Background**

**5.** The provisions for service of orders etc in section 572 of the Education Act 1996 are permissive rather than restrictive in that service 'may' (rather than 'must') be by the means listed above. The section can therefore be interpreted to indicate that electronic service is already lawful under the Act. The provision was however consolidated from the Education Act 1944 and it is unclear that online or electronic communications as we know them today would have fallen within the scope of the intention of Parliament at the time of enactment. Consultation with the education service in 2002 revealed that many authorities responsible for service of notice regarded the provision as restrictive and this, coupled in particular with the absence of any provision to ensure that parents are not mis-served notice electronically (for example to an out-of-date or infrequently checked email address), has formed the case for amendment to provide for parental consent to being served electronically, and thereby to clarify that electronic service is lawful.

**6.** The vires for the amendment are contained in sections 8 and 9 of the Electronic Communications Act 2000.

**Extent**

**7.** The Order applies to England and Wales.

**8.** Relevant parts of a number of Acts (listed in the Explanatory Note) are construed as one with the Education Act 1996 and therefore the provisions inserted by this Order apply to documents required or authorised to be served or given by those Acts.

**European Convention on Human Rights**

**9.** The Order gives parents an additional right to consent to or decline being served electronically. The Secretary of State for Education and Skills, Charles Clarke, has taken the view that the provisions of the Education Act 1996 (Electronic Communications) Order 2004 are compatible with the Convention rights.

**Policy Background**

**10.** The amendment is also in fulfilment of a Government commitment to remove legal barriers to electronic service delivery by 2005. Guidance to local education authorities and schools will be

issued before the Order comes into force to help them with considerations such as the scope of the amendment, circumstances in which electronic service may be beneficial, means of electronic service, advice on securing parental consent, and on record keeping.

**Impact**

**11.** A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on businesses, charities or voluntary bodies. In terms of the public sector, the effect of the instrument will be to simplify the process of serving statutory notice, while safeguarding the interest of parents (some of whom may be infrequent users of electronic communications).

**Contacts**

**12.** Andrew Partridge at the Department for Education and Skills can answer any queries regarding this instrument.

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