EXPLANATORY MEMORANDUM TO

THE EDUCATION (DISQUALIFICATION PROVISIONS: BANKRUPTCY AND MENTAL HEALTH) (ENGLAND) REGULATIONS

2006 No. [2198]

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

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

2. Description

2.1 The Education (Disqualification Provisions: Bankruptcy and Mental Health)(England) Regulations 2006 make provision for amendments to certain regulations made under education legislation relating to foundation bodies, school companies, school governance and new schools.

2.2 These amendments reflect changes made to the Enterprise Act 2002 and The Mental Health Act 1983.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

Bankruptcy Provisions

4.1 Currently, a person is disqualified from holding, or continuing to hold, various offices under education legislation if he has been adjudged bankrupt or sequestration of his estate has been awarded and he has not been discharged and the bankruptcy order has not been annulled or rescinded. The Enterprise Act 2002 contains provisions to reduce the stigma of bankruptcy specifically relating to the new civil regime of bankruptcy restriction orders which came into force on the 1st April 2004. This statutory instrument, therefore, seeks to make the provisions of education legislation which deal with the disqualification of persons from holding the various offices consistent with the Enterprise Act 2002 position.

Mental Health Provisions

4.2 Following a change to the Mental Health Act, the relevant paragraphs of the New Schools (General)(England) Regulations 2003 and the School

Governance (Constitution)(England) Regulations 2003 were amended in 2004 to refer to "a person detained under the Mental Health Act 1983" – thus omitting "liable to". For the sake of consistency, the disqualification provisions of the other three sets of regulations, namely, Education (Foundation Body) Regulations 2000, School Companies (Private Finance Initiative Companies) Regulations 2002 and School Companies Regulations 2002 are to be amended in line with this.

Changes

4.3 As a consequence of this statutory instrument, new paragraphs relating to the disqualification provisions of the –

(a) Education (Foundation Body) (England) Regulations 2000 (S.I. 2000/2872);
(b) School Companies Regulations 2002 (S.I. 2002/2978);
(c) School Companies (Private Finance Initiative Companies) Regulations 2002 (S.I. 2002/3177);
(d) School Governance (Constitution) (England) Regulations 2003 (S.I. 2003/348); and
(e) New Schools (General) (England) Regulations 2003 (S.I. 2003/1558).

are inserted to reflect the changes made to the Enterprise Act 2002 and the Mental Health Act 1983 as explained above.

5. Extent

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.

7. Policy background

7.1 Under current education legislation, a person who has been adjudged bankrupt or sequestration of his estate has been awarded and he has not been discharged and the bankruptcy order has not been annulled or rescinded is disqualified from holding or continuing to hold office as -

(a) a member of a foundation body,
(b) a school governor of a school;
(c) a temporary governor of a new school;
(d) a member of a school Private Finance Initiative (PFI) company; or
(e) a member of a school company

7.2 This instrument ensures that all persons who are in receipt of an bankruptcy restriction order or an interim order are similarly disqualified from

holding office or continuing to hold office in the bodies listed in 7.1 in England.

7.3 Under current education legislation persons who are liable to be detained under the Mental Health Act 1983 are disqualified from holding or continuing to hold office as –

(a) a member of a foundation body,
(b) a member of a school Private Finance Initiative (PFI) company; or
(c) a member of a school company

7.4 This instrument ensures that all persons who are detained under the Mental Health Act 1983 are disqualified from holding office or continuing to hold office in the bodies listed in 7.3 in England.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument since the statutory instrument will not impose any significant cost or increase in workload to schools or local education authorities.

8.2 There are no identifiable costs to the public sector.

9. Contact

9.1 **Geoffrey Friston** at the Department for Education and Skills Tel: 01325 391288 or e-mail: geoff.friston@dfes.gsi.gov.uk can answer any queries regarding the instrument.