EXPLANATORY MEMORANDUM TO

THE EDUCATION (INDIVIDUAL PUPIL INFORMATION) (PRESCRIBED PERSONS) (ENGLAND) (AMENDMENT) REGULATIONS 2013

2013 No. 1193

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

This instrument amends the Education (Individual Pupil Information) (Prescribed Persons) (England) Regulations 2009 ("the Regulations"). The Regulations prescribe the persons and categories of persons who can exchange information relating to individual pupils. We are amending them so that this information can be shared with religious bodies for schools designated as having a religious character and persons 'who, *for the purpose of promoting the education or well-being of children in England, are conducting research and analysis, producing statistics, or providing information advice and guidance and who require individual pupil information for this purpose*.

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

None.

4. Legislative Context

The Regulations provide the legislative framework for the exchange of information relating to individual pupils. They prescribe the persons and categories of persons who may provide and receive this information.

5. Territorial Extent and Application

This instrument applies to England.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Department for Education are committed to greater transparency and increased accountability and would like to open up access to information about individual pupils to:

7.1.1 Religious bodies for schools designated as having a religious character. Providing these bodies with access to information about individual pupils attending their schools will allow these organisations to monitor the performance of their schools in an efficient and effective way; and

7.1.2 Persons undertaking wider research not directly related to *educational achievement* but which benefits children.

7.2 The existing Regulations do not currently provide for these beneficial uses of the data. Amending the Regulations will:

7.2.1 Support increased school and teacher accountability by giving the relevant religious bodies the means to look at the performance of individual pupils attending their schools in greater depth; and

7.2.2 Enable the use of the data where this will benefit children for wider research such as socio-economic analysis, or research into equality issues, including disability, gender or race.

8. Consultation outcome

8.1 The Department has undertaken a formal public consultation in relation to these changes. The Department has also discussed the amendment relating to Religious bodies with Ofsted and the relevant religious bodies themselves.

8.2 The public consultation was announced by the Secretary of State in Parliament on November 6th 2012 and ran until December 18th 2012. The consultation document was publicly available on the Department's website and steps were taken to increase awareness by alerting a wide range of stakeholders including data providers and users, other government departments and other key organisations including the Information Commissioner's Office, the National Statistician, the UK Statistics Authority, bodies representing teachers, schools and colleges and children and families.

8.3 The amendment proposed in the consultation was to broaden the sharing of data from '*persons conducting research into the educational achievement of pupils'* to persons '*conducting research, or providing information, advice and guidance, or data based products and services for the purpose of promoting the education or well-being of children in England and who require individual pupil information for that purpose.'*

8.4 The consultation generated 95 responses from a wide group including researchers, diocesan groups, local authorities, voluntary sector / not for profit organisations, government organisations, commercial organisations, open data and privacy organisations, parents, teachers and teaching unions.

8.5 The majority of consultation respondents (74%) were supportive of the proposals to amend the regulations and the use of individual pupil data for a wider range of purposes for the promotion of education generally (as opposed to just educational achievement), and children's well-being. The majority of respondents were

supportive, subject to appropriate safeguards [See 8.9], and identified potential wider opportunities to use the data relating education, health and disability, transport and population and migration.

8.6 Support for the proposals was particularly strong from researchers, diocesan groups, local authorities and voluntary sector / not for profit organisations. Respondents also believe that opening up access to the data for a wider range of purposes will help reduce burdens on schools, provide better value for money and improve the quality of analysis and research.

8.7 22% of respondents did not support the proposed amendments. The main opposition came from teachers, parents and transparency/privacy organisations who expressed concerns about data protection and privacy believing that the proposals would result in the misuse of the data. Concern was also expressed about the potential use of data by media and commercial organisations, on the basis that these organisations would be more likely to misuse the data.

8.8 We have carefully considered these concerns and have revised our originally planned amendments to the Regulations in light of them. It is no longer the Department's intention that individual pupil information may be shared in order to produce data-based products and services – only to produce research, analysis and statistics or information, advice and guidance for the purpose of promoting education or children's well-being.

8.9 Stringent safeguards are in place to ensure that pupils' rights to privacy are protected. Any person requesting access to individual pupil level data will be subject to a robust approvals process and will be expected to sign an agreement to the effect that they will not use any data to identify individual pupils, and that they will not publish data in a form which enables individual pupils to be identified. Upon receipt of any personal data, individuals and organisations become subject to the requirements of the Data Protection Act 1998, and must comply with all of the requirements in the Act. Applicants for individual pupil data must provide the Department with evidence that they have appropriate data security arrangements and that everyone who will access the data will comply with the relevant terms and conditions. We believe these arrangements are sufficient to safeguard the data and we are not aware of anyone who has breached these terms.

9. Guidance

Since these Regulations merely prescribe persons and categories of person, there is no relevant guidance on their application. The Department has published a formal response to the public consultation on the Department's web site www.education.gov.uk/consultations/ and will also amend the relevant privacy notice to bring these new provisions to stakeholders' attention.

10. Impact

A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities, voluntary bodies or the public sector.

11. Regulating small business

The legislation does not regulate small business.

12. Monitoring & review

The Department continually reviews its data sharing policies and processes which includes the list of persons and categories of person who may be prescribed to exchange individual pupil information. There is no specific monitoring and review of these Regulations planned.

13. Contact

Paul Sinclair at the Department for Education, Tel: 01325 735434 or email: paul.sinclair@education.gsi.gov.uk, can answer any queries regarding the instrument.