EXPLANATORY MEMORANDUM TO

THE EDUCATION (NATIONAL CURRICULUM) (ATTAINMENT TARGETS AND PROGRAMMES OF STUDY) (ENGLAND) (AMENDMENT) ORDER 2007
2007 No. 2265

1. This explanatory memorandum has been prepared by the Department for Children, Schools and Families 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 This order specifies and gives legal effect (for the purpose of National Curriculum attainment targets) to the 'P level' attainment targets contained in the P level Document published by the Qualification and Curriculum Authority. The P levels are used to assess the attainment of pupils with Special Educational Needs (SEN) working below National Curriculum level 1. This will apply from the start of the 2007/08 academic year.

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

3.1 None.

4. Legislative Background

4.1 This Order and the P level Document will contribute to better understanding and communication of the performance and progress of pupils with SEN who do not reach Level 1 of the National Curriculum. The Government has committed to extending the use of P scales to measure the attainment of pupils with special education needs several times, including in Excellence and Enjoyment: A strategy for primary schools (published in 2003), Assessment and Reporting Arrangements booklets for 2004 and Removing Barriers to Achievement – The Government's Strategy for SEN (2004). Most recently, in the Government Response to the Education and Skills Select Committee Report on SEN (October 2006), the Government told the committee that it would make collection of P scale data mandatory for all children with SEN working below level 1 of the national curriculum.

5. Territorial Extent and Application

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 Schools have been obliged to record and submit attainment information on each pupil based on the attainment target levels set out in the National Curriculum since it was introduced. However, this information does not reflect the achievements of those with SEN who are working below level 1 of the National Curriculum. The Government recognises the need for schools and teachers to better understand and communicate the performance and progress of pupils with SEN and for this performance and progress to be considered as part of local and national policymaking to ensure it reflects the needs and abilities of those with SEN. Making the use of P scales a part of National Curriculum attainment targets and assessment will address this need and ensure that those pupils to whom they apply are considered with the same weight as other pupils working at level 1 and beyond.

7.2 The P Level performance descriptions (initially set out in Supporting the Target Setting Process in 1998) describe eight levels of attainment below level 1. These P Levels have been used widely by many schools and data has been collected from schools on a voluntary basis since 1999. 30,070 pupils with statements of SEN or receiving support at School Action Plus level had Severe Learning Difficulties as their primary type of need in January 2007

7.3 Pupils with a statement of SEN or at School Action Plus with Severe Learning Difficulties of Profound and Multiple Learning Difficulties as there type of need are the most likely to be assessed using the P Levels. In January 2007, 30,070 pupils listed Severe Learning Difficulties as their type of need and 8,670 with Profound and Multiple Learning Difficulties (from the Statistical First Release on *Special Educational Needs in England, January 2007* published by the Department for Education and Skills on 26 June 2007).

7.4 The Qualifications and Curriculum Authority (QCA) consulted on proposals to make P Levels part of the National Curriculum to be used in assessing the attainment of pupils with special educational needs working below Level 1 and also to make collection of P Level data mandatory. The consultation started on 7th September 2006 and lasted until 5 February 2007. Over 1,000 responses were received, of which 81% were in favour of the proposal. The largest number of responses came from local authorities (306) and special schools (283). Issues raised included concerns about including P scale results in performance tables. At this time, the Government does not intend to use P scale information as part of any Performance Tables or publish it below the level of local authorities. Some respondents indicated a perception that schools do not have to set targets for pupils working below level 1 of the national curriculum. There is, however, an existing requirement to set targets for pupil attainment in the final year of Key Stage 2 and Key Stage 3, and in the last year of compulsory schooling. Other comments focussed on training to support use of the P scales in mainstream schools and moderation of assessments. The QCA produced a DVD in 2005, which all LAs have received and many schools have requested, which covers these issues and we have plans in hand with the National Strategies, together with our SEN Advisers, to provide additional support to LAs to get these arrangements in place.

7.5 The Department for Children, Schools and Families consulted on the draft order to give legal effect to the P levels for the purposes of national curriculum attainment between 31 May and 2 July 2007. This consultation received 15 responses of which,

around half explicitly favoured the proposal. The concerns raised reflected those from the earlier QCA consultation and did not suggest any legal objections to the order.

7.4 The Department for Children, Schools and Families will write to Schools at the end of August to set out the new requirements and refer them to appropriate guidance on using the P scales and submitting data based on P scales that is published by the QCA. The available guidance includes booklets on *Planning, teaching and assessing the curriculum for pupils with learning difficulties* in each subject for which the P scales apply (available at http://www.nc.uk.net/ld/) and a DVD on *Using the P scales* which can be ordered from the QCA.

8. Impact

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

8.2 The impact on the public sector is that a minority of schools will be affected by the requirement to use P levels for pupils with Special Educational Needs working below level 1 of the National Curriculum. Many of these will have only a few pupils working at P levels. Those pupils should already be regularly monitored for progress because of the school based interventions in place to support their progress.

9. Contact

James Vance at the Department for Children, Schools and families Tel: 020 7273 1196 or e-mail: james.vance@dcsf.gsi.gov.uk can answer any queries regarding the instrument.