EXPLANATORY MEMORANDUM TO

THE EDUCATION (PUPIL INFORMATION AND SCHOOL PERFORMANCE INFORMATION) (ENGLAND) (AMENDMENT) REGULATIONS 2023

2023 No. 380

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument amends the requirements for schools to report on information regarding the end of Key Stage 1[1] national curriculum assessments to reflect the fact that, from the 2023/24 academic year onwards, the end of Key Stage 1 national curriculum assessments will be non-statutory and schools will no longer need to report their results. The Reception Baseline Assessment (RBA) will replace the end of Key Stage 1 assessments as the baseline for cohort level progress measures at the end of Key Stage 2, so that progress measures cover the whole of primary school.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 This instrument amends the Education (Pupil Information) (England) Regulations 2005 ("the Pupil Information Regulations") to change the requirement for schools to report and share results of the end of Key Stage 1 assessments from the 2023/24 academic year. This removes the requirement for schools to include information on the results of end of Key Stage 1 assessments in the head teacher's annual report. It also removes the requirement to transfer information about the pupil's Key Stage 1 assessment results through the common transfer file when they move to another school.

[1] Key stage 1: the two years of schooling when pupils are aged between 5 and 7 (Years 1 and 2).

6.2 This instrument also amends the Education (School Performance Information) (England) Regulations 2007 ("the School Performance Information Regulations") to remove the requirement for schools to report the end of Key Stage 1 assessment results to local authorities from the 2023/24 academic year.

6.3 These amendments are a consequence of changes to The Education (National Curriculum) (Key Stage 1 Assessment Arrangements) (England) Order 2004 ("the Order"), which are being made by The Education (National Curriculum) (Key Stage 1 Assessment Arrangements) (England) (Amendment) Order 2023 (the "Amending Order"), made alongside this instrument. The Order specifies the assessment arrangements of pupils at maintained schools in England for Key Stage 1. The Amending Order will amend the Order to remove the statutory requirements relating to end of Key Stage 1 assessments from the 2023/24 academic year.

7. Policy background

What is being done and why?

7.1 The end of Key Stage 1 national curriculum assessments consist of teacher assessments of English reading, English writing, English grammar, punctuation and spelling, mathematics and science. The English reading and mathematics teacher assessment judgments are informed by statutory tests in those subjects, while an optional test of English grammar, punctuation and spelling is also available to schools to inform teacher assessments in that subject. Results of the statutory assessments are used as the current baseline for primary progress measures calculated at the end of Key Stage 2.

7.2 In the 2017 consultation on primary assessment, a majority of the consultation responses demonstrated support for moving the baseline for primary progress measures to Reception, rather than the end of Key Stage 1 (56% agreeing that it was best to move to a baseline assessment in Reception and only 28% disagreeing). Those in favour pointed to the benefit of progress measures for accountability purposes rather than pure attainment measures, as being a fairer way to evaluate school performance, particularly for schools in challenging circumstances and that credit should be given to schools for the progress made in Reception, and Years 1 and 2. Following this, the Department introduced the Reception Baseline Assessment (RBA). The RBA provides the baseline for cohort level progress measures at the end of primary school and became statutory from September 2021.

7.3 Ministers stated in the response to the 2017 consultation on primary assessment that they intended to make the end of Key Stage 1 assessments non-statutory once the RBA was fully established, that is when the first cohorts reaching the end of Key Stage 1 had a statutory RBA. The RBA will replace the end of Key Stage 1 assessments as the baseline for primary progress measures at the end of Key Stage 2, ensuring that the workload associated with assessment remains proportionate, and that progress measures cover the whole of primary school, including the first three years which are not included if end of Key Stage 1 assessments are used as the baseline.

7.4 Implementation of the RBA is complete, and the first progress measures using it as the baseline will be calculated when the first cohort with a statutory RBA reach the end of Key Stage 2 in 2028.

7.5 The Standards and Testing Agency intends to continue to develop and supply materials for optional, non-statutory end of Key Stage 1 tests from the 2023/24

academic year. These will include optional tests of English reading, English grammar, punctuation and spelling and mathematics. The aim of the optional assessments is to give schools access to test papers to inform classroom practice and help them to understand where their pupils need additional support as they transition into Key Stage 2. While the Government will encourage schools to administer the tests, there will be no requirement on schools to administer these or to report results to parents or local authorities.

7.6 The Standards and Testing Agency will continue to develop the optional assessments to the same standards as in previous years. There will therefore continue to be a statutory requirement for selected schools to participate in the trialling of the tests. The trials involve a randomly selected, nationally representative sample of schools. Each year, around 50 schools will participate in item validation trials for each subject, and around 250 schools will participate in technical pre-test trials. Each selected school trials only one subject in any one year, and most trials should last no longer than two and a half hours. Trials are a vital part of the national curriculum test development process. They help to ensure that the questions are appropriate and fair, that tests are valid and reliable, and that they help to set and maintain standards. They do not test the pupils' abilities and are not a test of the school; they test only the materials in development. Testing the optional assessment materials will not create any additional work for schools compared to the current requirements, and will enable the Standards and Testing Agency to produce robust and consistent test papers for schools to utilise if they choose.

7.7 The phonics screening check (PSC) administered in Key Stage 1 will remain a statutory requirement. This is a short, light-touch assessment, to confirm whether individual pupils have learnt phonic decoding to an expected standard, so that those who need help can be identified and supported by the school.

Explanations

What did any law do before the changes to be made by this instrument?

7.8 The Pupil Information Regulations require governing bodies and head teachers to provide information about pupil attainment. This included providing information about the end of Key Stage 1 assessment results in the head teacher's annual report. It also included transferring information about the pupil's Key Stage 1 assessment results when they move to another school through the common transfer file. The common transfer file is the mechanism by which schools transfer statutory pupil data to a subsequent school when a pupil leaves.

7.9 The School Performance Information Regulations cover what information about school performance should be collected and published. This included the requirement for governing bodies of schools to provide local authorities with information about the end of Key Stage 1 assessment results.

Why is it being changed?

7.10 This instrument is necessary because the end of Key Stage 1 assessments will be non-statutory from the 2023/24 academic year. Consequently, legislative changes are needed to remove the current requirements to provide and publish information about the end of Key Stage 1 assessments in the ways outlined in the Pupil Information Regulations and School Performance Information Regulations from the 2023/24 academic year.

7.11 This instrument will remove several requirements from the 2023/24 academic year onwards. A head teacher's annual report will not be required to contain the results of end of Key Stage 1 assessments. Information on end of Key Stage 1 assessments will not be required to be included in common transfer files for pupils who reach the end of KS1 from the 2023/24 academic year onwards. Governing bodies will no longer be required to provide local authorities with information on end of Key Stage 1 assessments.

7.12 Information on end of Key Stage 1 assessment results should still be included in the common transfer files for pupils who reached the end of Key Stage 1 prior to the 2023/24 academic year and took part in the statutory end of Key Stage 1 assessments.

7.13 This instrument will also make minor technical and consequential amendments including removing a redundant definition and certain spent provisions related to the coronavirus (COVID-19) pandemic. This is because they are no longer relevant to the aims of the regulations.

What will it now do?

7.14 The Pupil Information Regulations and the School Performance Information Regulations will continue to require other information to be recorded and provided on pupil attainment and school performance. For the Pupil Information Regulations, this will include the requirement for schools to provide an annual report to parents on pupil attainment, and to transfer a pupil's common transfer file to the new school when the pupil changes school. For the School Performance Information Regulations, schools will still be required to provide information including pupils' marks for the phonics screening check (PSC) which takes place during Key Stage 1.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There are no plans to consolidate the Pupil Information Regulations and the School Performance Information Regulations.

10. Consultation outcome

10.1 Section 408(5) of the Education Act 1996 requires the Secretary of State to consult persons with whom consultation appears to her to be desirable in respect of the regulations being amended.

10.2 The Department conducted a consultation over 18 working days on the proposed changes to the Pupil Information Regulations and the School Performance Information regulations, alongside the changes to the Order to remove the statutory requirement to administer end of Key Stage 1 assessments.

10.3 The proposed changes were summarised via letter and stakeholders were given from 25 January 2023 to 17 February 2023 to respond. Those consulted included the Office of Qualifications and Examinations Regulation (Ofqual), Office for Standards in Education, Children's Services and Skills (Ofsted), teacher and school leader unions, the Confederation of Schools Trusts and the Local Government Association.

10.4 Respondents either expressed support for making the assessments non-statutory, or reported that they had no comment. Those who supported the changes expressed that

they would bring benefits through a reduced volume of high-stakes assessments, and that the assessments had previously led to negative impacts on teacher workloads and the breadth of curriculum. Some respondents raised concerns around the continued requirement under the Order for schools to participate in trialling to enable the Standards and Testing Agency to produce optional tests, and asked that the Department ensure that trialling is proportionate or optional. One respondent asked that the Department announce that the provision of new optional tests will cease after a certain period such that there is no ongoing requirement for trialling. There were also concerns from some that tests would become "statutory in practice", and respondents asked the Department to clearly communicate to schools and others that the tests will be optional.

10.5 The Department has made an indefinite commitment to the provision of optional tests to help to inform classroom practice. Trialling of test content is required to ensure that tests are developed to the same standard as previous years and to ensure new test content each year. The Department will continue to ensure a proportionate approach, only trialling materials for subjects and key stages where there is a clear need, as outlined in paragraph 7.6. The trialling agency makes every effort to minimise the impact of the trial on each school's workload. An administrator brings the materials into the school, administers the trial at Key Stage 2, or supports the class teacher to administer the trial at Key Stage 1, and then takes the materials away for marking. As with all public policy this will be kept under review. The optional nature of the tests will be communicated to schools and other relevant stakeholders.

11. Guidance

11.1 The Department for Education will continue to provide guidance to schools regarding the information they are required to report from the 2023/24 academic year. This will include, but is not limited to, guidance on the requirements for what should be reported to parents in head teachers' annual reports regarding national curriculum assessments. It will also include guidance on the information which should be reported in the common transfer file, and guidance on the information schools must provide to local authorities following the phonics screening check. This guidance will continue to be available on an ongoing basis.

11.2 The Standards and Testing Agency will provide formal guidance for schools regarding the optional end of KS1 assessments, which will be available from the 2023/24 academic year, in autumn 2023. This is in line with when guidance is usually published on end of Key Stage 1 assessments, and will contain information relevant to the administration of the tests for schools to get the most useful results.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because there is no anticipated impact on businesses.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The instrument does not include a statutory review clause. The impact of these changes on stakeholders and assessment policy will be monitored and reviewed on an ongoing basis.

15. Contact

15.1 Fiona Blackwood at the Department for Education, email: fiona.blackwood@education.gov.uk can be contacted with any queries regarding the instrument.

15.2 Kate Moore, Deputy Director for Assessment Operations and Services, at the Standards and Testing Agency can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rt Hon Nick Gibb MP, Minister of State for Schools at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.