EXPLANATORY MEMORANDUM TO

THE EDUCATION (PUPIL INFORMATION AND SCHOOL PERFORMANCE INFORMATION) (MISCELLANEOUS AMENDMENTS) (ENGLAND) REGULATIONS 2013

2013 No. 3212

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

2.1 The Regulations also amend the Education (Pupil Information) (England) Regulations 2005 ("the 2005 Regulations") to remove the requirement on schools to include assessment information in reports to parents or records transferred to another school at the end of key stage 3.

2.2 These Regulations amend the Education (School Performance Information) (England) Regulations 2007 ("the 2007 Regulations") to remove the requirement on schools to report assessment information to the local authority or the Secretary of State at the end of key stage 3.

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

3.1 None.

4. Legislative Context

4.1 The National Curriculum (Exceptions for First, Second, Third and Fourth Key Stages) (England) Regulations 2013 (SI 2013/1487) ("the 2013 Regulations") came into force on 1 September 2013. These Regulations serve to disapply the National Curriculum in relation to attainment targets, programmes of study and assessment arrangements for the core and foundation subjects at key stage 3 in 2013-14.

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5. Territorial Extent and Application

5.1 These Regulations apply in relation to England.

6. European Convention on Human Rights

6.1 As these Regulations are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1 In preparation for the introduction of the new national curriculum from September 2014. Ministers have decided to disapply the existing national curriculum in 2013-14, subject to certain exceptions. The disapplication took effect from 1 September 2013 via the 2013 Regulations.

7.2 For key stage 3, the 2013 Regulations have disapplied the programmes of study, the attainment targets and the assessment arrangements, in relation to the core and other foundation subjects, for 2013-14. As a result, requirements linked to them, such as the provision of key stage 3 assessment information, are no longer necessary.

7.3 In essence, these Regulations represent a tidying-up exercise in two ways: (i) they will make it clear to all schools that their reporting obligations no longer extend to the provision of key stage 3 assessment information; and (ii) if schools nevertheless choose to continue key stage 3 assessments (notwithstanding the 2013 (disapplication) Regulations), they will not be required to report on them (as they would have done if the 2005 and 2007 Regulations had remained in their current form). These are consequential amendments we omitted to make at the time of amending the 2007 Regulations earlier in 2013, via the Education (School Performance Information)(England)(Amendment) Regulations 2013 (SI 2013/1759).

7.4 As a result of omitting to make the amendments earlier, the laying of these Regulations will not meet the commitment to the Scrutiny Committee of not bringing into force new regulations which require action by schools, other than at the beginning of the academic year in which they need to be put into effect and with a term's lead in time for schools. It will not be feasible to delay the date when the Regulations come into force, as the assessment arrangements at key stage 3 are disapplied for one year only.

7.5 However, the changes are consequential to the 2013 Regulations, and schools are already aware that they do not need to undertake key stage 3 teacher assessment in 2013/14. Moreover, the changes in these Regulations will not affect schools until the end of the summer term (July 2014) when reporting to the Secretary of State and to parents is normally required.

8. Consultation outcome

8.1 A consultation in accordance with s408(5) Education Act 1996 was not deemed necessary given that the Department held a public consultation on the 2013 Regulations concerning the substantive issues around the disapplication of the National Curriculum (for one month from 3 May 2013). These Regulations are more technical in nature and represent a direct follow-on from the primary decision to disapply the National Curriculum and then implement it via the 2013 Regulations. The amendments made by these Regulations also fall within the

ambit of the consultation conducted in relation to the 2013 Regulations, as they are consequential upon the changes made by those Regulations.

8.2 The consultation[1] on the draft 2013 regulations attracted 24 responses. Of these, 3 respondents supported the regulations, 11 did not support them and 10 expressed no preference. Those who disagreed were commenting on the policy, rather than the drafting of the regulations.

8.3 Respondents who agreed with the regulations believed that disapplication of the elements set out in the consultation would allow schools and teachers more time to prepare and plan for the introduction of the new curriculum.

8.4 Respondents who disagreed with the proposal expressed the view that this could lead to a disruption of the flow of pupils' education, and also concerns around how Ofsted will measure progress if parts of the curriculum are disapplied. There were also concerns raised by responses from the teaching unions that the timescale for disapplication and the introduction of the new curriculum is too short for schools to react.

9. Guidance

9.1 Schools have been made aware of the disapplication of the programmes of study, attainment targets and assessment arrangements via departmental communications (message to schools 14 October 2013).

9.2 The Standards and Testing Agency (STA) does not plan to publish a Key Stage 3 Teacher Assessment and Reporting Arrangements (TARA) guidance document this year. STA has placed a message on its data collection system to advise any schools attempting to submit key stage 3 data to the department that this is no longer required.

10. Impact

10.1 There will be no direct impact on business, charities or voluntary bodies.

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring & review

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1 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/207531/Disapplication_consultation_report.pdf

12.1 The amendments apply to the academic year 2013/14 only. Both the 2005 and the 2007 Regulations are being reviewed further in the light of extensive changes to the National Curriculum from 2014/15.

13. Contact

Fiona Lee at the Department for Education (tel: 020 7340 7317 or email: fiona.lee@education.gsi.gov.uk) can answer any queries regarding the instrument.