EXPLANATORY MEMORANDUM TO

THE EDUCATION (SCHOOL PERFORMANCE INFORMATION) (ENGLAND) (AMENDMENT) REGULATIONS 2009

2009 No. 646

1. This explanatory memorandum has been prepared by 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. Purpose of the instrument

2.1 These Regulations amend the Education (School Performance Information) (England) Regulations 2007 ("the principal regulations"). They remove the requirement for schools to provide the Secretary of State with the results of teacher assessment in non-core subjects at Key Stage 3. They also remove the requirement for schools to provide results of National Curriculum tests at Key Stage 3 (since these tests have been abolished).

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

3.1 None

4. Legislative Context

4.1 These regulations amend the Education (School Performance Information) (England) Regulations 2007, which prescribe information that is to be provided by schools to the National Data Collection Agency, the external marking agency and the Secretary of State. As a result of the abolition of Key Stage 3 National Curriculum tests, there can no longer be a requirement for the results of those tests to be reported and these regulations remove that requirement.

4.2 These regulations also remove the requirement for schools to report the results of teacher assessments in non-core subjects at Key Stage 3 as part of an exercise to reduce statutory burdens on schools.

5. Territorial Extent and Application

5.1 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 At the end of key stage 3, teachers produce an assessment of each eligible pupil in core and non-core subjects. The core subjects are English, mathematics and science and the eight non-core subjects are history, geography, art and design, design and technology, information and communication technology, modern foreign languages, music and physical education.

7.2 The assessment data are provided electronically to the National Data Collection Agency, on behalf of the Qualifications and Curriculum Authority, and then to the Secretary of State.

7.3 As part of the Department's drive to reduce burdens on the front line, Ministers have agreed to cease the central collection from schools of the key stage 3 teacher assessment data in the non-core subjects. In accordance with The Education (National Curriculum) (Key Stage 3 Assessment Arrangements) (England) Order 2003, the duty on schools to provide key stage 3 teacher assessment data for the core subjects will remain, as will the duty to make the assessments in the non-core subjects and report them to parents.

7.4 The Education (National Curriculum) (Key Stage 3 Assessment Arrangements) (England) (Amendment) Order 2008 (S.I. 2008/3081) revoked the requirement for pupils to undertake National Curriculum tests at the end of Key Stage 3 in the core subjects. Consequentially there is no longer assessment data to be collected in respect of those tests and these regulations remove the requirement to provide that information.

- ***Consolidation***

7.5 The principal regulations have been previously amended. The abolition of Key Stage 3 testing only came into effect in December 2008. Because of the need to make these consequential amendments to the principal regulations before the end of the academic year 2008/9, there has not been an opportunity to consolidate the principal regulations. It is anticipated that any further amendment required to the regulations will result in consolidation.

8. Consultation outcome

8.1 The abolition of National Curriculum tests at Key Stage 3 has meant a consequential removal of the requirement to set targets for attainment in those tests and therefore the publication of the results. Proposals for changes to assessment arrangements were developed as a result of ongoing consultation with a range of stakeholders, and in response to the Select Committee's report on Testing and Assessment in May 2008. Further consideration of the assessment system will be taken over the coming months by an Expert Group on Assessment, appointed by the Secretary of State for Children, Schools and Families, who will continue to take into account the views of a range of stakeholders.

8.2 The attached Annex contains collated third party responses received immediately after the announcement, mainly welcoming the move to abolish the tests from unions, the QCA, and the Opposition.

9. Guidance

9.1 Schools and LAs have been alerted to the change in the Key Stage 3 teacher assessment data collection arrangements via the Assessment and Reporting Arrangements handbook, published in October 2008. DCSF also wrote to all schools and local authorities in October 2008 informing them of changes to the Key Stage 3 assessment arrangements.

10. Impact

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

10.2 The impact on the public sector will be a reduction in the burden of data collection in schools and local authorities.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The abolition of National Curriculum testing for 14 year olds and, therefore, the publication of resulting data, are part of wider changes to strengthen school accountability to parents and the public, raise school standards, and reform pupil testing and assessment. A new expert group on assessment, made up of Headteachers and education professionals, will advise on the details of the new arrangements. The expert group will provide a report to the Secretary of State for Children, Schools and Families, having started work in October 2008, and concluding by February 2009.

12.2 The DCSF and Ofsted are currently jointly consulting on the use of a new School Report Card (as part of strengthening accountability). This consultation opened on 8 December 2008 and closed on 3 March 2009 feeding into a Departmental White Paper. More in depth consultation will continue throughout the summer of 2009 with the introduction of pilots throughout 2009 and until spring 2011.

13. Contact

13.1 Sue White at the Department for Children, Schools and Families. Tel: 020 7925 6286 or email: sue.white@dcsf.gsi.gov.uk can answer any Key Stage 3 National Curriculum and teacher assessment data queries regarding the instrument. Marian Quigley at the Department for Children, Schools and Families. Tel: 020 7340 7041 or email: marian.quigley@dcsf.gsi.gov.uk can answer any Key Stage 3 National Curriculum data collection queries regarding the instrument.

The Education (School Performance Information) (England) (Amendment) Regulations 2009

Annex

Third-party comment on testing announcement

Steve Munby, NCSL

Steve Munby, Chief Executive of National College for School Leadership

"The existing assessment system was, like the financial services system becoming too bloated and the decision to scrap key stage 3 tests is a victory for professionalism which will reduce the burden on heads and their schools and their students.

This is a brave move from a government that is listening to headteachers, parents, and pupils. The NCSL has backed the idea of the balanced score card for a long time and is delighted to see it on the table now. We hope school leaders themselves can be involved in helping to shape this,

Leaders in schools make a huge difference, especially when their skills can be unleashed to provide real leadership and to develop a curriculum and an approach to teaching and learning which suits the children and young people in their school.

Parents want to know how the school their children attend is performing but most of all they want their child to enjoy learning and to become a powerful and life-long learner.

These proposals go a significant way to addressing both of these issues and affirm that we don't have to sacrifice creativity in order to ensure accountability and to continue to raise attainment in schools."

John Dunford, ASCL

"Having advocated for many years a policy of intelligent accountability for schools, in particular the end of key stage 3 tests, I strongly welcome today's announcement. The proposals will make the testing regime more manageable and help to avoid a repetition of the chaos in summer 2008."

"As I wrote in an article in the Times Educational Supplement on 5 September, nobody will mourn the loss of key stage 3 tests or league tables of their results. This is not weakening secondary school accountability, but re-focusing on results at ages 16 and 18, which directly impact on students' future prospects. By concentrating on what is most important, the accountability system will be strengthened and more widely respected."

"Similarly, primary schools will be held to account for pupils' overall achievement through the key stage 2 test. Although there should be a stronger element of teacher assessment built into this stage, it is right to maintain an externally validated element to key stage 2, not least because it forms the baseline for accountability of secondary schools."

"Assessment at the end of key stage 3 will now be part of the normal cycle of teacher assessment from 11 to 16. It will be for heads and teachers to decide on appropriate assessment arrangements and how to report progress to parents."

"ASCL will work with the government to ensure that the end of key stage 3 tests does not increase teacher workload. In fact, this has the potential to decrease workload, as the time consuming period of preparation and mock testing will end. Teachers and pupils will be able to

take full advantage of the increased flexibility recently introduced into the curriculum for 11 to 14 year-olds."

"Today's proposals will help to raise standards, combining greater scope for creativity with a stronger emphasis on the basics. The proposed functional skills tests will be an important component of this."

"I strongly welcome the consultation on a balanced scorecard to replace league tables of examination results. Schools do much more than prepare students for exams and there will be the opportunity to reflect more strongly the overall performance of the school. This is a move towards the intelligent accountability that ASCL has been arguing for over the last five years."

"I can see the advantages of a single overall grade in place of an examinations result percentage, which only tells part of the story of how good a school is, but the devil will be in the detail."

"The indicators used to make up the scorecard system must be carefully considered, in consultation with school leaders. A good school serving a challenging area must have as much chance of a high score as a good school serving a more affluent area. We look forward to detailed discussions with ministers and officials about the content and balance of the scorecard. In particular, for schools with sixth forms the proposed scorecard will need to align with the Framework for Excellence."

"This package comes after many years of patient lobbying by ASCL and will be seen by secondary school leaders as a welcome move to intelligent accountability and assessment that supports good learning."

Margaret Morrisey, Parents Outloud

Margaret Morrisey, of parents group Parents Outloud who used to work as an Ofsted lay inspector, said it was the "first sensible thing Mr Balls has done since becoming Schools Secretary".

She said: "He should now scrap the whole lot.

"We are teaching the children to take these tests and supposing that all children are the same."

Christine Blower, NUT

Christine Blower, acting general secretary of the National Union of Teachers, said the announcement was an "admission that the current testing system has failed".
She said: "For too long, English, mathematics and science teachers in secondary schools have found themselves skewing everything to enable their pupils to jump through a series of unnecessary hoops.

"The marking disaster of this year's tests has clearly been the last straw.

"A mixture of incompetence and an endemic shortage of markers must surely have propelled Ed Balls to take the view that at least part of the testing system was unsustainable."

"Now I would like him to understand that the whole testing system needs fundamental change.

"I call on Ed Balls to suspend all primary school tests and commission a comprehensive and independent review of testing and assessment, and to include fully all school communities in that review."

Mary Bousted, general secretary of the Association of Teachers and Lecturers (ATL)

"We are delighted the Government has had the sense to scrap key stage 3 tests in their current form and move towards greater use of teacher assessment.

"ATL has led the debate on testing, and has long called for a system that recognises teachers' expertise.

"The challenge now will be to get teacher assessments right so they allow teachers to teach a wide curriculum, rather than merely become test administrators."
But she said the Government should also scrap tests for 11-year-olds.

"We continue to hope the Government will eventually recognise the damaging impact of key stage 2 tests and consign them to the education bin alongside key stage 3 tests.

"We believe it is right to hold teachers and schools accountable for the education they provide, and these proposals should help achieve both high standards and a broader curriculum.

"The jury is out on how the Government will integrate pupil attainment, progression and wellbeing indicators into a single grade to replace the key stage 3 tests, and whether it will work.

"ATL will work with the Government, through the social partnership, to make sure the new measures benefit pupils and teachers and do not lead to excessive workloads."

Judith Bennett, National Governors Association

(BBC News 1633) Schools can test children themselves, don't need enormous national testing system that was inordinately expensive .. Get rid of all Sats? Would like to have seen end of KS2 as well, they become so high in people's consciousness, linked to league tables and pillorying people like headmasters over things they can't control .. Could end up with more tests? Would hope not. As long as league tables go. Schools have enough professionalism to judge where children are and what their progress is .. US-style report cards? We don't have anything like that, would like something that looks more broadly at what children achieve in school than just five As at GCSE. Something that shows more rounded progress.

Barry Sheerman, chairman of the Commons schools select committee

"I hope that with the abolition of these tests, teachers will have greater freedom to focus on personalised learning, as well as be able to offer children access to a balanced education.

"It is also good news that the government will review the current system of KS1 tests.

"Given our concerns about the single level tests, I am also pleased that the Government has said that more evidence is needed on single level tests at KS2 before proceeding nationally."

Ken Boston, chief executive of the Qualifications and Curriculum Authority
Welcomed the moves and said the decision to develop national sampling to check on pupil performance could provide a "very useful check" on how the system is doing.

Chris Keates, general secretary of the National Association of Schoolmasters Union of Women Teachers

"The sound of a deep collective sigh of relief will emanate from secondary schools across the country at the announcement."

But she warned that proposals to introduce a school report card would require careful thought. "Get it right and it could help to streamline school information systems, rationalise complex reporting systems and reduce bureaucratic burdens on teachers.

"Get it wrong and the response from schools will be fierce."

Michael Gove, Shadow Children's Secretary

Michael Gove welcomed Mr Ball's change of mind and said England had fallen behind in every external measure educational performance.

"We've argued for fewer national tests and more rigour and we want to work constructively to improve the assessment and qualifications regime."
(from BBC News 1636) Welcome spirit of what's been announced today. KS3 is weak link in chain, but also needs to be proper focus on those at risk falling behind .. Tories introduced these tests? We did introduce tests at certain age groups but have seen those tests narrowed to overstress one type of attainment .. Report cards? Intriguing and want to see more detail. They worked in NY and would be wrong to dismiss them but don't want another layer of bureaucracy .. Bipartisan approach? When govt does right thing we offer support. Balls may have been politically deaf to us today to make a point.

David Laws, Lib Dem children's spokesman

"I welcome the Government's complete U-turn.

"The Sats tests taken by 14-year-olds are not only a waste of time but have been highly unreliable over the last few years.

"This U-turn needs to be just the first move in restoring confidence in standards in English education and putting the needs of young people first instead of the current system of factory farming our children.

"Ed Balls needs to establish a genuinely independent Educational Standards Authority to sample pupil performance each year so that we really know what is happening to standards and that results are not being inflated by teaching to the test or the dumbing down of exams.

"It is important to retain testing at 11 years so that parents have real information about results in primary schools and that the focus is on giving young people the key skills they need to thrive in secondary education."