EXPLANATORY MEMORANDUM TO

THE EDUCATION (SCHOOL PERFORMANCE INFORMATION) (ENGLAND) (AMENDMENT) REGULATIONS 2012

2012 No. 1274

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 These Regulations amend the Education (School Performance Information) (England) Regulations 2007 ("the 2007 Regulations") to make an addition to the data that schools are required to return to prescribed persons, namely the local authority and the National Data Collection Agency (a body appointed by the Secretary of State for this purpose). The phonics screening check is a new national curriculum assessment that will be administered in schools to pupils in Year 1 for the first time in June 2012. As currently drafted, the 2007 Regulations require schools to return the data on pupils' performance in national curriculum assessments only at the end of Key Stage 1. The phonics screening check takes place in Year 1, half way through Key Stage 1, and so an amendment is needed to cover these results.

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

3.1 None.

4. Legislative Context

4.1 The Government has recently introduced a screening check for pupils at the end of Year 1 in Key Stage 1 (the pupils will be aged 5 or 6), to assess their ability to decode and read words using phonics (see S.I. 2011/3057). Phonics is a method of teaching reading and spelling that teaches pupils to associate sounds in the spoken language (phonemes) and their corresponding letter or letter combinations (graphemes). The key stages in relation to the National Curriculum are set out in section 82 of the Education Act 2002 ("the 2002 Act").

4.2 Schools may voluntarily provide the results of the check to the Secretary of State but the amendment made by these Regulations will make it compulsory for them to provide information. An obligation is already imposed on Academies via their funding agreements.

4.3 Schools will provide data to local authorities which will then pass it to the Secretary of State using the COLLECT system, the Department's centralised data collection tool which schools use to return other Key Stage National Curriculum Assessment results data. Certain schools will also provide data to the National Data Collection Agency by submitting their pupils' marksheets from the check to

the National Data Collection Agency. The National Data Collection Agency will pass the information about pupils' results to the Secretary of State.

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 Maintained schools and Academies with pupils in Year 1 will administer the first phonics screening check in June 2012 (see S.I. 2011/3057). The Department wishes to collect the results of this check namely the mark between 0 to 40 and whether a pupil took the assessment and met the standard, took the assessment but did not meet the standard, was absent, did not take the assessment or had left the school (this information is set out in the "Assessment and Reporting Arrangements Year 1 Phonics Screening Check" (referred to in this document as "the Phonics ARA"). The Department also wishes to collect additional data from randomly picked sample schools namely, in relation to each pupil who was assessed and in relation to each word, whether the pupil attempted to read the word and, if so, whether the pupil read the word correctly or incorrectly. This is to enable the Department to assess whether particular words are causing problems and, if so, to modify the assessment for the future.

7.2 Whilst schools may voluntarily provide this information, there are data protection issues and schools may consider that they cannot provide the information if there is no statutory obligation to do so. In order to ensure that the Department has a robust data set we consider it is necessary to place a statutory duty on schools, which will apply to the first phonics screening check in June 2012. Schools will be required to pass information on the results of the check to local authorities and the sample schools will be required to pass the additional information to the National Data Collection Agency.

7.3 Schools are already aware that they will be expected to submit information on the results of the check as this was made clear in the Phonics ARA, which was published in January 2012. That document also states that sample schools will be expected to provide additional information and that schools chosen to be in the sample would be informed in writing. Letters to those schools will be sent shortly.

7.4 We are conscious that the timing of these amendments does not meet the commitment to the Merits Committee not to bring into force new regulations requiring action by schools other than at the beginning of the academic year in which they need to be put into effect. But, for the above reasons, we consider that there are exceptional circumstances for doing so in this instance.

8. Consultation outcome

8.1 A public consultation was held from November 2010 to February 2011 on the purpose, content, structure and administration of the phonics screening check. The consultation attracted over 1,000 responses (65% from teachers or head teachers, the remainder from parents and other members of the public). Many respondents were in favour of a check which identified pupils needing extra help with their literacy skills.

8.2 There were specific consultation questions in relation to the use of data from the screening check. These questions covered whether the results should be reported to parents, and whether the results should be included in RAISEOnline, a management information system used by schools, local authorities and Ofsted. The majority of respondents did not think that the results should be used in RAISEOnline, but the Department confirmed its intention to use the data in this way in its response to the public consultation. As a significant minority of respondents to the consultation noted, using the data in RAISEOnline will allow schools to analyse and compare their pupils' responses, and will give Ofsted valuable information to help them assess the performance of schools. This should help to improve the teaching of early reading.

8.3 In response to the consultation the Government confirmed that the results from the check would not be published in school Performance Tables. This followed 88% of consultation respondents agreeing that using data in this way would not be appropriate.

9. Guidance

9.1 Schools have been made aware of the new screening check from November 2010 via extensive media coverage and direct electronic communication (email, messages on the Department for Education website).

9.2 The Phonics ARA was published in January 2012 by the Secretary of State (under article 9 of the Education (National Curriculum) (Key Stage 1 Assessment Arrangements) (England) Order 2004 (S.I. 2004/ 2783)) and issued to all schools with pupils in Year 1. The Phonics ARA is a statutory document containing provisions supplementary to those in the 2004 Order. It explains to schools their statutory responsibilities for carrying out the check, and provides detailed instructions and guidance. The Phonics ARA is also available electronically.

9.3 The Phonics ARA sets out the data that schools are expected to provide to the Secretary of State, and sets out the mechanism by which they can do so (via the COLLECT system, already used for Key Stage 1 Assessment data returns).

9.4 Further communication to schools is scheduled before the check takes place for the first time in week beginning 18 June 2012.

10. Impact

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

10.2 Local authorities have received funding intended to cover their work in relation to co-ordinating the collection of the data from schools.

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring & review

12.1 The intended effect is that all pupils who need extra help with the mechanics of reading will received that support, and phonics teaching will improve in schools. The Department intends to commission an independent evaluation on the impact of the phonics screening check on schools. The Department will also conduct a process evaluation to ensure the implementation of the check is appropriate and manageable for schools.

13. Contact

Phil Elks at the Department for Education (tel: 020 7340 7011or email: phil.elks@education.gsi.gov.uk) can answer any queries regarding the instrument.