EXPLANATORY MEMORANDUM TO

THE EDUCATION (SCHOOL PERFORMANCE INFORMATION) (ENGLAND) (AMENDMENT) REGULATIONS 2013

2013 No. 1759

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 change the date by which schools are required to return end of Key Stage 2 and 3 data to the Secretary of State. Currently, schools must return the data by 13 July: this is being changed to "on or before the last Friday in June".

2.2 The Regulations also make a number of minor amendments to the 2007 Regulations, to reflect current practice.

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

3.1 None.

4. Legislative Context

4.1 Following the recommendation from the 2011 Bew Review of testing, assessment and accountability at Key Stage 2, the Government is committed to attaching increased importance to teacher assessment in English composition at Key Stage 2. Lord Bew suggested that this might be achieved by ensuring teacher assessment judgments are made and reported BEFORE test results are known. National Curriculum test week takes place in May each year (it was the week commencing 13 May in 2013). These Regulations therefore require schools to submit teacher assessment data "on or before the last Friday in June", before test results are returned to schools (the date for return of results in 2013 was 9 July).

4.2 In making this change, we have identified some other areas of the 2007 Regulations in need of revision to reflect current practice. These Regulations therefore seek to achieve the amendments outlined in paragraphs 4.3 and 4.4 below.

4.3 At Key Stage 2: enable some schools to submit teacher assessment data to the local authority for forwarding to the Department, where the authority has indicated that it will undertake this function on behalf of its schools; and confirm the current practice that at the end of Key Stage 2, schools should submit teacher assessment levels for each attainment target level in English, maths and science, and overall subject levels.

4.4 At Key Stage 1: change the definition of "the Document", and delete reference to "the Phonics Document", as from 2013 there is one Assessment and Reporting

Arrangements document covering all Key Stage 1 assessments; require academies to report Key Stage 1 teacher assessment data to the local authority; and clarify that teacher assessment data must be reported by the end of "the assessment term".

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 Lord Bew's independent review of testing, assessment and accountability at Key Stage 2 made a number of recommendations to improve the current system. Lord Bew recognised the importance of teacher assessment, recommending that teacher assessment levels should be published alongside test results. He recommended that schools should submit summative teacher assessment judgements ahead of receiving the test results, which would put greater emphasis on teacher assessment.

7.2 Lord Bew considered that collecting teacher assessment results earlier would encourage primary schools to pass them up to secondary schools earlier, to inform planning for the Year 7 intake and to target teaching and learning more effectively. This would help to improve the quality and timing of the information available to secondary schools.

7.3 We are aware that some schools await the results of the end of Key Stage tests in order to inform their teacher assessment judgments: these schools may be unwilling to provide the information in advance, 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 summer 2014 assessment round. Schools will be required to pass teacher assessment data to the Secretary of State (where appropriate, via the local authority) on or before the last Friday in June.

7.4 The new timetable was introduced for the 2013 assessment round, but without putting in place a statutory duty to submit data by the specified date. Schools were made aware of the new date by which they should submit teacher assessment data in the 2013 Key Stage 2 Assessment and Reporting Arrangements document, published in September 2012. This approach was taken because the changes to the timetable were contingent on changes to the Key Stage 1 and 2 Assessment Arrangements Orders, which were themselves dependent on Ministerial decisions regarding the new reporting arrangements for the English tests and calculation of standards, which were subject to several months of negotiation with the main teacher unions.

7.5 The laying of these Regulations, to come into force from 1 September 2013, meets 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, and to give schools a term's lead in time.

8. Consultation outcome

8.1 A public consultation was held from 9 April to 20 May 2013 on the draft Statutory Instrument. The consultation attracted only 14 responses, of which five were out of scope (either blank, or containing irrelevant material). The consultation asked simply whether respondent agreed that the Regulations as drafted adequately reflected the policy intent. 100% of respondents agreed that this was the case. Although several respondents took the opportunity to express their discontent with the assessment system in general, none voiced opposition to the requirement to report teacher assessment data earlier than in the past.

9. Guidance

9.1 Schools are already aware of the requirement to submit teacher assessment data early. Lord Bew published his final report of the Review in June 2011, and the Government published its response, accepting all the recommendations in full, in July 2011. Both reports were freely available to the public and attracted extensive media coverage and direct electronic communication (email, messages on the Department for Education website).

9.2 The Key Stage 2 Assessment and Reporting Arrangements document (ARA) for 2013 was published in September 2012 by the Secretary of State (under article 9 of the Education (National Curriculum) (Key Stage 2 Assessment Arrangements) (England) Order 2004 (S.I. 2004/ 2783)) and issued to all schools with pupils at the end of Key Stage 2. The ARA is a statutory document containing provisions supplementary to those in the 2004 Order. It explains to schools their statutory responsibilities for carrying out assessment, and provides detailed instructions and guidance. The ARA is also available electronically.

9.3 The 2013 ARA sets out the data that schools are expected to provide to the Secretary of State, and the mechanism by which they can do so. It includes reference to the impending statutory requirement for schools to submit teacher assessment data by a specified date.

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

12.1 The intended effect is that the requirement for schools to submit teacher assessment data to the Department earlier than usual will give increased importance to the professional judgment of teachers (as they will not be able to base the data on test results). We will continue to publish teacher assessment data alongside test results at Key Stage 2. Schools have welcomed the move to an increased emphasis on the place of teacher assessment alongside testing within the accountability system.

12.2 Given the absence of any strong reaction to the impending changes we do not anticipate any difficulties. However we will continue to monitor the effect on schools, largely by noting issues raised in correspondence reviewing if any evidence emerges of a widespread problem.

13. Contact

Sue White at the Department for Education (tel: 020 7340 7189 or email: sue.white@education.gsi.gov.uk) can answer any queries regarding the instrument.