EXPLANATORY MEMORANDUM TO

THE EDUCATION (STUDENT INFORMATION) (ENGLAND) REGULATIONS 2015

2015 No. 1567

AND

THE EDUCATION (SCHOOL PERFORMANCE INFORMATION) (ENGLAND) (AMENDMENT) REGULATIONS 2015

2015 No. 1566

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 instruments

2.1 The Education (Student Information) (England) Regulations 2015 ("the Student Information Regulations") prescribe the range of student information which may be shared on key stage 4 and 16-19 students and the persons and categories of person with whom the information can be shared under section 253A of the Apprenticeships, Skills, Children and Learning Act 2009 ("the 2009 Act"). They also prescribe the circumstances in which student information can be shared.

2.2 These Regulations will broaden the range of student information that can be published in the school and college performance tables and support the planned reforms to how the Department for Education holds 16-19 education providers to account for their performance. This will provide a more comprehensive picture of the achievements of learning providers against national standards.

2.3 The Education (School Performance Information) (Amendment) Regulations 2015 ("the School Performance Regulations") amend the Education (School Performance Information) (England) Regulations 2007 ("the 2007 Regulations") to make consequential amendments to extend the information schools are required to provide for 16, 17 or 18 year olds. The 2007 Regulations require the governing body of schools to provide to the Secretary of State (on written request) information on advanced level 3 qualifications, such as A levels for 16 to 18 year olds. These amendments require schools to provide additional information on qualifications below level 3, such as GCSEs, and courses of study (leading to regulated qualifications) information and other learning activity for 16, 17 or 18 year olds. The School Performance Regulations also update the special educational needs information which schools must provide to the Secretary of State in respect of 14 to 16 year old pupils (those in the fourth key stage).

2.4 The School Performance Regulations support the Department's planned reforms by broadening the range of information that can be published in the school and college

performance tables in line with sharing information on students as set out in the Student Information Regulations.

2.5 These instruments will come into force on 1st September 2015, being the start of the autumn academic term.

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

3.1 None.

4. Legislative Context

4.1 Section 79 of the Small Business, Enterprise and Employment Act ("the 2015 Act") inserts a new section 253A into the 2009 Act. Section 253A enables persons in England and Wales to share "student information" with a range of other persons. "Student information" is defined as information relating to an individual who is seeking or has sought to obtain, or has obtained, a "regulated qualification" or a "relevant qualification". Student information may only be shared in prescribed circumstances and if it falls within a prescribed description. In addition, a person in England and in Wales may share with prescribed persons or prescribed categories of person (in addition to the Secretary of State and an information collator in England, and Welsh Ministers and an information collator in Wales).

4.2 The Student Information Regulations prescribe, in relation to England only,-

- the circumstances;
- the types of information by reference to two stages (key stage 4, and in relation to 16-19 study programmes); and
- the persons and categories of person

with whom student information may be shared.

Information received under section 253A must not be published in any form that identifies individuals.

4.3 The School Performance Regulations amend the 2007 Regulations to require schools to provide the following additional information to the Secretary of State: (i) updated special educational needs information in respect of pupils in the fourth key stage; and (ii) on qualifications below level 3 and on courses of study (leading to regulated qualifications), in relation to pupils aged between 16, 17 or 18.

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5. Territorial Extent and Application

5.1 These instruments apply to England.

6. European Convention on Human Rights

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

7. Policy background

7.1 Access to student data is important for analysis, accountability and improvement. The performance tables provide parents and students with a reliable source of comparative information on the achievements of individual schools and FE colleges. In addition, the performance indicators and the underlying data support the accountability system for those institutions from self-evaluation through to informing Ofsted inspections. The information also enables research for the purpose of improving the education and well-being of young people.

7.2 The Government are introducing changes to 16-18 performance tables to support the accountability system and monitor performance of post 16 provision. The 16-19 accountability system will extend the coverage of the post-16 performance tables to provide a clearer and more comprehensive picture of provider performance. The ambition is to report results for more qualifications and providers. A set of headline and additional measures will be reported to include information on retention, destinations, and achievements in work-based learning (eg. apprenticeships) and for the first time qualifications below level 3 particularly to incentivise providers to deliver English and maths GCSE. The Government will also report on the performance of other learning providers, such as training providers. The majority of these changes are planned to be implemented in the 2016 performance tables (published in January 2017) and are referred to as the 16-19 Accountability reforms.

7.3 The production of high quality performance tables relies on the collection of student and pupil information and the ability to share it back with a range of schools and providers. The performance tables production processes will now be supported by an express gateway which provides for the sharing of student information between a range of persons. Whilst we have a gateway in place which requires schools to provide individual pupil information to the Secretary of State and to a prescribed person, we do not have comparable provision for sharing of student information by other learning providers. Such provision is necessary to create a level playing field for all providers. The Student Information Regulations will allow a broader collection and sharing back of student information, to reform the 16-18 performance tables, and the School Performance Regulations will perform a similar function for pupil data.

8. Consultation outcome

8.1 In relation to the School Performance Regulations, section 408(5) of the Education Act 1996 (one of the powers under which these Regulations have been made) requires the Secretary of State to consult any persons with whom consultation appears to him to be desirable. The Secretary of State has exercised such discretion so as to not consult under

this section. This is because the Secretary of State has already consulted on the substance of the information sharing proposals (contained in the School Performance Regulations), in the following ways:

8.2 First, a public consultation took place from 12 September 2013 to 20 November 2013 on the proposed reforms to 16-19 Accountability. The outcome of the consultation (https://www.gov.uk/government/consultations/16-to-19-accountability-consultation) was to publish a broad range of measures and five key headline indicators in 16-18 performance tables.

8.3 As the Student Information Regulations relate to accountability reforms that were announced in March 2014 (https://www.gov.uk/government/consultations/16-to-19-accountability-consultation), a four week informal consultation has been carried out with stakeholders and the Welsh Government. The Department for Education published a draft of these Regulations on the performance tables website on 12 January 2015. Separately, feedback was requested from key stakeholders in the 16-19 education sector, such as Association of Colleges, Sixth Form College Association, Ofsted, Local Government Association, teaching unions, Ofqual, other Government Departments and awarding organisation, between 18 February and 13 March 2015. 32 organisations in total were consulted and eight responses were received. A draft copy of the regulations, explanatory notes along with a consultation questionnaire was sent to stakeholders. The questionnaire sought feedback on whether the regulations met the needs of stakeholders. It specifically sought comments on the scope of the Student Information Regulations, the circumstances in which student information can be shared and the organisations with whom information can be shared. It also asked stakeholders for their views on any equality impacts arising from the regulations. Overall, responses to the consultation were positive and most agreed with the scope of the Regulations, with two respondents requesting additional information. Where respondents asked for additional student information the Department assessed the rationale for doing so and concluded that this was unnecessary to meet the needs of the accountability system and would have created additional burdens on data providers.

8.4 Following the consultation, Ofqual, the Joint Council for Qualifications (JCQ) and awarding organisations have been included as prescribed persons as they presented robust operational reasons for requiring student information. Welsh persons with a pivitol role in education (Her Majesty's Chief Inspector of Education and Training in Wales and the Higher Education Funding Council for Wales) have also been included following feedback from the Welsh Government that this will support monitoring and assessment of education across borders.

8.5 The implementation of the changes also enables the sharing of attainment data for qualifications below level 3 and information on pupils' courses of study (leading to regulated qualifications), in relation to those aged 16, 17 or 18.

9. Guidance

9.1 Following consultation on the changes to the 16-19 accountability reforms, a technical document (https://www.gov.uk/government/publications/16-to-19-accountability-headline-measures-technical-guide) was published in October 2014 explaining the changes proposed to performance tables, with a further technical document due to be published later this autumn. The Department for Education publishes a Statement of Intent every year outlining the changes affecting performance tables which will be published in the summer term. In addition, as part of the 16-18 performance tables annual September Examinations and Results Checking Exercise, guidance on checking and amending student data and frequently asked questions are also provided. This will reflect the purpose of the checking exercise and the student information to be shared.

10. Impact

10.1 An Impact Assessment has not been prepared for these instruments, as data providers hold the student information and school performance information as a matter of course. There are no significant impacts on business, charities or voluntary bodies in extending the data sharing gateway. The results of the consultation also found no strong evidence of additional burdens or impacts on specific stakeholders.

11. Regulating small business

11.1 The School Performance Regulations do not apply to small businesses, since they are only concerned with schools.

11.2 The express information gateway (in section 253A of the 2009 Act), in relation to which the Student Information Regulations prescribe certain requirements, is permissive in nature only and thus facilitates the voluntary sharing of student information between educational providers and between such providers and the Secretary of State or an information collator. Given this, the Regulations will only regulate small business in a limited way.

12. Monitoring & review

12.1 The School Performance Regulations are not subject to the duty to include a review provision.

12.2 The changes set out in this instrument aim to reform the 16-19 accountability system and provide new and comprehensive performance information on school sixth forms to inform parents, help schools self evaluate and raise school standards.

12.3 The outcome will be subject to internal review after 12 months and the legislation may be amended accordingly.

12.4 The Student Information Regulations facilitate the voluntary sharing of student information, as provided for by the information gateway in new section 253A of the 2009 Act. Some of this sharing of student information already takes place and educational providers already hold the student information which they would share under the new section 253A gateway. Furthermore, the sharing under this gateway is in relation to educational information and only some of the sharing would take place between private entities or between a private entity and a public sector body. Thus, the additional impact on business of the Student Information Regulations is likely to be low and thus a review provision would be disproportionate and consequently is not appropriate.

13. Contact

Rebecca Briggs or Sheena Vinod at the Department for Education email: Rebecca.Briggs@education.gsi.gov.uk or Sheena.Vinod@education.gsi.gov.uk can answer any queries regarding the instrument.