EXPLANATORY MEMORANDUM TO

THE EDUCATION (SCHOOL PERFORMANCE INFORMATION) (ENGLAND) (CORONAVIRUS) (AMENDMENT) REGULATIONS 2021

2021 No. 932

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Education ("the Department") and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The instrument amends the Education (School Performance Information) (England) Regulations 2007 ("the 2007 Regulations") to change the definition of "reporting school year" for the 2021-22 school year to ensure that the results of the exceptional phonics assessment taken in the autumn term of the 2021-22 school year are reported to the local authority. Further explanation is provided in section 7, under the policy background.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The instrument amends the 2007 Regulations, which include provision about the duties on schools to provide certain information, including the results of national curriculum assessments at Key Stage 1[1], to the local authority or to the Secretary of State (regulation 5 and Schedule 1). Under article 5A of the Education (National

[1] Key stage 1: the two years of schooling when pupils are aged between 5 and 7 (years 1 and 2).

Curriculum) (Key Stage 1 Assessment Arrangements) (England) Order 2004[2] ("the 2004 Order"), schools are required to assess children in phonics using the PSC.

6.2 The Education (National Curriculum Assessment Arrangements, Attainment Targets and Programmes of Study) and (Pupil Information and School Performance Information) (Amendment) (England) Regulations 2020 ("the 2020 Regulations") amended the definition in the 2007 Regulations of the "reporting school year" for a phonics assessment taken in the 2020-21 school year to mean "the year in which the assessment is taken" rather than the year preceding the information publication. This was done to make provision for the reporting of the results from the PSC for year 2 pupils in the 2020/21 academic year. This instrument extends the provisions made in the 2020 Regulations for one further year.

7. Policy background

What is being done and why?

7.1 The phonics screening check (PSC) is an assessment for children in Year 1, and for pupils in Year 2 who did not take the check or did not meet the required standard in year 1. It aims to understand how well a child has learned phonic decoding to an age-appropriate standard, and to identify students who may need additional support.

7.2 In those normal circumstances, the PSC is taken in the summer term of Year 1 (or Year 2 if the standard was not met) and the results of the PSC are published at a local authority and national level.

7.3 Following the cancellation of the summer 2021 primary assessments due to the coronavirus (COVID-19) pandemic, the Government decided to run a Year 2 PSC in the autumn term of the 2021/22 school year in place of the cancelled June 2021 Year 1 PSC, to ensure that year 2 pupils who need support in learning to decode using phonics are not missed.

7.4 As per the arrangement for the 2020/21 academic year, schools will be required to report to the department, via a data return to their local authority, the results of the 2021/22 autumn term assessment of year 2 pupils. This data will not be published at the national and local level, given the ongoing disruption caused by the coronavirus (COVID-19 pandemic) and will instead be used solely for the purpose of determining which year 2 pupils have not met the required standard, require further support, and will need to take the check again in June 2022. The Department therefore requires an amendment to the definition of the 'reporting school year' to reflect this.

7.5 Ordinarily, the definition of "reporting school year" in regulation 2 of the 2007 Regulations provides that schools are only required to report the results of an assessment ("information") to the local authority "in the school year immediately preceding the school year in which information provided to the Secretary of State is to be published by him or, as the case may be, by the authority" i.e., if results are to be published in the 2022-23 school year, schools are required to provide information to local authorities in the 2021-22 school year.

7.6 The approach the Department took in respect of the same situation in 2020 was to amend the definition of the 'reporting school year' in relation to phonics assessments for 2020-21 which enabled the successful reporting of results for the 2020 autumn

[2] www.legislation.gov.uk/uksi/2004/2783/contents

phonics check despite the absence of published results. This instrument extends this amended definition to include the 2021-22 school year.

7.7 The making of these Regulations falls outside the usual practice of providing schools with at least one term's notice. The changes have arisen because of the need to consider and adapt the current policy as a result of coronavirus (COVID-19) impacts. It was not possible to provide schools with at least one full term's notice of the change to the regulations due to the need to develop and consult on the policy options and proximity of the decision taken to the start of the 2020/21 school year. To mitigate this, the Standards and Testing Agency (STA) informed schools of the statutory requirement to administer a Phonics Screening Check (PSC) for all pupils turning 7 (year 2) in the 2021/22 academic year and report the results to the local authority, effective from September 2021.

7.8 Separately, STA approached the Department's Star Chamber Scrutiny Board (SCSB) to request their input on data collection. SCSB is made up of representatives of schools and local authorities and which helps review all Department for Education data collections relating to children's services, schools and families. SCSB members agreed with the proposed approach that the School Performance Information Regulations enact.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There are no plans to consolidate the 2007 Regulations.

10. Consultation outcome

10.1 In accordance with section 408(5) of the Education Act 1996, before making changes to the 2007 Regulations, there is an obligation for the Secretary of State to consult any persons "with whom consultation…appears desirable."

10.2 The Department conducted a consultation on the 2021 School Performance Information Regulations in line with this requirement. The proposed changes were summarised via letter and stakeholders were given from 24 June to 01 July 2021 to respond. Those consulted included the Office of Qualifications and Examinations Regulation (Ofqual), National Association of Head Teachers (NAHT), Association of School and College Leaders (ASCL). None of the organisations consulted raised any concerns about the legislation and were content for the Department to proceed.

11. Guidance

11.1 The Department has published guidance for schools[3] on the phonics screening check in autumn 2021. This includes information about data collection requirements for schools. It has also published guidance for local authorities[4] on their duties in this respect.

[3] www.gov.uk/government/publications/key-stage-1-administering-the-phonics-screening-check-to-year-2-pupils/administering-the-phonics-screening-check-to-year-2-pupils-in-the-2021-autumn-term
[4] www.gov.uk/government/publications/phonics-screening-check-data-collection-2021-guide

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because there is no anticipated impact on businesses.

13. Regulating small business

13.1 The 2007 Regulations, and therefore, the changes being made, do not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The instrument does not include a statutory review clause. The changes being made only relate to information about assessments taken in the 2021/22 school year.

15. Contact

15.1 Umu Lamina at the Department for Education, email: umu.lamina@education.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Colin Watson, Interim Chief Executive at the Standards and Testing Agency in the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

15.3 Nick Gibb MP, Minister of State for School Standards at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.