EXPLANATORY MEMORANDUM TO

THE NATIONAL CHILD MEASUREMENT PROGRAMME REGULATIONS 2008

2008 No. 3080

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument provides for the Secretary of State's functions in relation to the weighing and measuring of children in schools to be carried out by Primary Care Trusts (PCTs). It outlines the conditions for carrying out weighing and measuring exercises and gathering the data, for example that the process should be carried out in an appropriate setting and parents should be given a reasonable opportunity to withdraw their child. This instrument also provides for further processing of the data, including for surveillance, for research and to provide results to parents with additional information on healthy living and local services.

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

3.1 None

4. Legislative Context

4.1 The National Child Measurement Programme (NCMP) is one element of the Government's strategy to tackle obesity. The NCMP, established in 2005, aims to weigh and measure the pupils in two school year groups (reception year and year 6) and provides population-level surveillance data, as well as local-level data which can be used to inform local planning and delivery of services.

4.2 In 2006, the Public Accounts Committee (PAC) strongly stated that the Department of Health should move quickly to disclose the information gathered by the NCMP, in ways that will help parents to address the dietary and exercise needs of their children. In *Healthy Weight, Healthy Lives: a cross-government strategy for England* (January 08), the Government committed to ensuring parents routinely receive their child's NCMP results.

4.3 The previous powers relied on to collect height and weight information (regulation 3 of the Health Service (Control of Patient Information) Regulations 2002 (SI No 2002/1438)) were not considered wide enough to enable routine feedback of results to be given to parents in accordance with the data protection concept of fair processing. New powers were taken in the Health and Social Care Act 2008 (section 143 of which inserted new

paragraphs 7A and 7B into Schedule 1 to the National Health Service Act 2006) to provide for this.

4.4 This instrument provides a clear legal basis for the NCMP, setting out provisions for the collection of the data, and enabling individual results to be sent to parents, along with advisory material, without their explicit consent but placing a duty on PCTs to take steps to give parents a reasonable opportunity to withdraw their child from the programme. It also provides for specified further uses of the data, for example using anonymised data for performance management purposes, surveillance and research.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

- ***What is being done and why***

7.1 Paragraphs 7A and 7B of Schedule 1 to the National Health Service Act 2006 (as amended by s.143 of the Health and Social Care Act 2008) provide for the Secretary of State to make regulations to govern the weighing and measuring of children in primary and middle schools. This instrument exercises these powers and fulfils the policy objectives set out during debate on the Health and Social Care Act, by setting out provisions for the collection of the data under the NCMP and enabling individual results to be sent to parents along with advisory material. It also provides for specified further uses of the data, including using anonymised data for performance management purposes, surveillance and research.

7.2 The Foresight Report, produced by the Government Office of Science's Foresight programme in 2007, predicts that, on current trends, by 2050, 60% of men, 50% of women and 26% of children and young people will be obese. Without intervention, overall costs to society are forecast to reach £50bn by 2050 on current trends. The NCMP results in 2006/07, show that in reception year in schools (ages 4 to 5) one in four children (22.9%) were overweight or obese; and in year 6 (ages 10 to 11) one in three children (31.6%) were overweight or obese.

7.3 The NCMP is just one part of the Government's work programme to tackle obesity. The instrument will help to ensure all parents of children, who are weighed and measured as part of the programme, receive their child's results and additional information about steps they can take for their family to achieve and maintain healthy weight. The Government must lead on action across society to tackle obesity, and engaging parents in this issue is essential to

achieving success in prompting behavioural change. This programme provides an excellent opportunity to do this by giving parents their child's results and related advisory material.

7.4 There is considerable public interest about the issue of child obesity, with ongoing media interest in the NCMP, most recently on the implementation of routine feedback to parents.

7.5 Routinely sending the results to parents, the key change that the instrument provides for, is important to implement the PAC recommendation and fulfil the Government's commitment in *Healthy Weight, Healthy Lives*.

8. Consultation outcome

8.1 When considering the policy and legal options for implementing routine feedback to parents, key stakeholders were consulted, which included: PCTs, the National Screening Committee, the Children's Commissioner, the Royal College of Nursing, and the Department for Child, Schools and Families' Primary Reference Group. The Cross Government Obesity Unit also held regional workshops with NCMP leads and nurses, at which the intention to implement routine feedback was outlined, and sought their views.

8.2 Generally, most groups supported the move towards routinely sending results to parents, especially as a way of engaging parents about their child's weight, and also in relation to the wider programme of work to prevent and reduce obesity. Although most PCTs thought this change was timely, and agreed it was important, many expressed concern about resource implications and the need for follow-up services to be in place to deal with any demand generated by feedback. The Cross Government Obesity Unit has also undertaken research with parents and children on the content and format of the results letter, and accompanying information associated with the NCMP.

8.3 In January, following the Second Reading of the Health and Social Care Act 2008 in the House of Commons, draft regulations were made available to the Standing Committee, placed in the House Library and posted on the Department of Health's website. The draft regulations have attracted no specific comment since most stakeholders are supportive of the changes, with only a very a few opposed in principle. Stakeholders have concentrated their attention on discussing the detail of the administrative arrangements for implementing the programme and the specific drafting of the letters and leaflets to be used.

9. Guidance

9.1 The Cross Government Obesity Unit produce annual guidance to PCTs and schools on the NCMP. In August 2008, we issued the PCT guidance for the 2008/09 programme, and in October 2008 we issued Schools Guidance. Both sets of guidance included a section on the new legal basis, and what this means in practice. The Unit also held a media briefing with journalists to ensure they understood the proposed changes. The Cross Government Obesity

Unit is producing tools and resources, such as a parent feedback tool (which generates the personalised letter for parents) and results template letter, to assist PCTs send the results in a meaningful way to parents. Further regional workshops are being held in November 2008 to help PCTs implement this change to the NCMP.

10. Impact

10.1 The impact on business, charities or voluntary bodies is minimal. Independent schools are not included in the national NCMP dataset, although the Government does encourage PCTs to weigh and measure pupils at these schools where the PCT has an agreement with the school.

10.2 The instrument does impact on the public sector. However, PCTs have been delivering this programme since 2005, and even before the national NCMP programme was formally established the majority of PCTs were weighing and measuring all children in reception year as part of a routine health check. In October 2007, as part of the Comprehensive Spending Review, the Government committed £372 million to addressing obesity, of which £69.5 was allocated to PCTs in the 2008/09 financial year to fund the NCMP and other obesity services.

The impact on maintained schools is minimal. As schools have long recognised the importance of supporting 'the whole child' through their pastoral care, ethos and teaching, over the years the majority have worked closely with the NHS across a range of health matters (since 1944 schools have been required to promote the spiritual, moral, mental, cultural and physical development of pupils). Most schools are already participating in the NCMP and are used to liaising with local health partners over the health and well-being of their pupils.

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 Cross Government Obesity Unit has undertaken research with parents, obesity experts, and other health professionals, about the process and content of the results feedback letter and accompanying information associated with the NCMP.

12.2 We have committed to a two-stage review of the NCMP. The first stage, to be carried out from November 2008 – June 2009, will assess the implementation of routine feedback to parents, examining the views of both PCTs and parents. The second stage will examine the whole programme and assess what changes are required to improve it. This will be carried out from September 2009, and

a report will be published on completion. At this stage, it is anticipated that any changes recommended by these reviews are likely to be administrative, rather than legislative.

13. Contact

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