EXPLANATORY MEMORANDUM TO
THE NATIONAL CURRICULUM (EXCEPTIONS FOR FIRST, SECOND, THIRD AND FOURTH KEY STAGES) (ENGLAND) REGULATIONS 2012

2013 No. 1487

1. This explanatory memorandum has been prepared by the Department for Education and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument provides for the current programmes of study, attainment targets and assessment arrangements for all national curriculum subjects, except for English, mathematics and science for pupils in years 1, 2, 5 and 6, to cease to apply at all four key stages in maintained schools for a limited period from September 2013. During this period schools will continue to be required to teach all subjects of the national curriculum, but teachers will have the freedom to teach a programme of study of their choice, as part of a broad and balanced curriculum.

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

3.1 None

4. Legislative Context

4.1 As part of the current review of the national curriculum, the Government plans to make available to maintained schools new programmes of study for all subjects of the national curriculum at all four key stages for first teaching in September 2014, except for key stage 4 English, mathematics and science which will be introduced for first teaching in September 2015. The new programmes of study will be finalised and published, subject to Parliamentary approval, in autumn 2013.

4.2 This instrument is being made to disapply the existing programmes of study (and the related attainment targets and assessment arrangements) for the majority of the national curriculum to support transition to the new curriculum. Disapplication will allow maintained schools the freedom to teach programmes of study of their choice, including the existing programmes of study or the new ones that will be available in the autumn, but they will still be required to teach all the subjects in the national curriculum. For the purposes of key stage 1 assessment arrangements and key stage 2 assessment and testing arrangements in English, mathematics and science, we need to retain the existing programmes of study, attainment targets and assessment arrangements for pupils in years 1, 2, 5 and 6 in school year 2013/14. The instrument will disapply the whole of the rest of the national curriculum, including the programmes of study, attainment targets and assessment arrangement for the subject of information and communication technology which have already been disapplied for school years 2012/13 and 2013/14 by Instrument 2012 Number 1926. That Instrument will be revoked and its provisions included in these Regulations.

4.3 Disapplication will last for the school year 2013/14 for the majority of subjects, but will also apply in school year 2014/15 in relation to key stage 4 English, mathematics and science.

4.4 The instrument is subject to the consultation process in section 96 of the Education Act 2002, which requires a consultation on the proposal and then a consultation on the draft Regulations. It is subject to the negative resolution procedure.

4.5 The instrument is being made in line with wider Government policy to allow schools greater autonomy and decision-making powers, and to reduce burdens placed on schools in legislation.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

7.1 On 7 February 2013 the Rt Hon Michael Gove MP, Secretary of State for Education, launched a public consultation on the Government's proposal to disapply certain aspects of the existing national curriculum for a limited period from September 2013, to give schools greater flexibility to prepare to teach the new national curriculum. This consultation formed part of a wider consultation on the national curriculum and closed on 16 April 2013.

7.2 We want to ensure that schools are able to prepare for a smooth transition to the new national curriculum, which will be introduced from September 2014. Disapplication of the current national curriculum in this way means that schools will still be required to teach the statutory subjects, but will not have to follow the centrally prescribed programmes of study (and associated attainment targets and assessment arrangements) from September 2013. This is a permissive change which does not disadvantage those who responded negatively to the consultation or those schools that do not want to change what they teach in the coming academic year. Schools can choose to continue teaching the current programmes of study if they wish, but they will also have the freedom to use the flexibility that disapplication offers to plan and prepare for the introduction of the new programmes of study from September 2014.

7.3 These Regulations have the effect of removing rather than imposing a duty on schools. The Department provided information about this opportunity as early as possible through the question in the consultation launched on 7 February 2013. Although it has not proved possible to give schools a full term’s lead-in time, it is preferable that the programmes of study and associated attainment targets and assessment arrangements are disapplied as soon as possible to increase school freedoms. We will also provide near-final drafts of the new programmes of study before the summer holidays to help schools to plan how best to make use of their new freedoms via this permissive, rather than prescriptive, change.

8. Consultation outcome

8.1 A public consultation on these proposals was undertaken between 7 February and 16 April 2013. The Department gave notice of the proposal to associations of local authorities, bodies representing the interests of schools' governing bodies, and to organisations representing school teachers and to others with an interest via publication of the proposals on the Department's website. There were 2,451 responses relating to this proposal. 25 per cent of responses supported the proposal and 40 per cent of responses did not. 35 per cent were unsure.

8.2 Whilst the responses to the consultation showed higher numbers of respondents either unsure of or disagreeing with the proposals to disapply elements of the current national curriculum than were in favour, the comments received via the consultation indicate that there was uncertainty as to what disapplication would actually mean for schools, and this may have contributed to these higher figures. It is also notable that in contrast with other consultation questions, only a very small percentage of respondents went on to provide a rationale for their answer. Of those that did, the majority took the opportunity to express their views about the overall timescales involved in the introduction of the new curriculum, rather than comment on the specific issue of disapplication itself. Given that a proportion of respondents did consider that disapplication would be useful to schools in preparing to teach the new curriculum and that the proposed change is permissive rather than prescriptive, the Government considered that it was right to go ahead with the proposals as originally set out, to give those schools that wish to take up the opportunities that disapplication offers, the chance to do so.

8.3 As a result, the Government decided to proceed to draft Regulations to disapply elements of the national curriculum from September 2013. In line with statutory procedures which govern the national curriculum, the Secretary of State undertook a consultation on a draft of the Regulations necessary to effect these changes. This consultation closed on 3 June. This was a consultation on the Regulations themselves, rather than on the merits of disapplication as a means of helping schools to prepare for the new national curriculum. As a result, far fewer people responded, with only 24 responses being received. Of these, 3 respondents agreed with the Regulations, 11 disagreed and 10 expressed no preference.

8.4 Whilst the responses to this consultation showed higher numbers of respondents disagreeing with the Regulations to disapply elements of the current national curriculum, the overall number of responses was very small. Furthermore, the issues raised did not add any new arguments against disapplication to those raised in response to the disapplication question in the main curriculum consultation, which closed in April 2013. As in the main consultation, respondents to the consultation on the Regulations took the opportunity to express their views around the timescales involved in the introduction of the new curriculum, rather than the issue of disapplication itself. Concerns raised all related to the policy, rather than the drafting of the Regulations themselves.

8.5 Ministers have considered all the views expressed through both consultations and during meetings and discussions during the review of the national curriculum, and decided to lay the Regulations and proceed with disapplication procedures as set out in paragraph 4.2 above.

9. Guidance

9.1 The Department does not consider that any guidance is necessary. However, we will endeavour to ensure through our external communications that teachers and other key stakeholders are familiar with the proposal and the freedom they will enjoy in terms of deciding the programmes to teach from September 2013.

9.2 Schools will be free to design their own programmes of study for the relevant subjects or to choose programmes of study available from subject associations or other organisations. They will also be free to continue to use the current national curriculum programmes of study or the proposed new ones that will be available in the autumn if they so wish.

10. Impact

10.1 No impact on business, charities or voluntary bodies is expected. An Impact Assessment has not been prepared for this instrument because no impact is envisaged.

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring & review

12.1 This instrument will not be subject to monitoring or review as it is envisaged that new programmes of study, attainment targets and assessment arrangements will be introduced from September 2014 (or from September 2015 for key stage 4 English, mathematics and science).

13. Contact

Graham Pepper (Tel: 02073407137 or email: graham.pepper@education.gsi.gov.uk); or Maleck Boodoo (Tel: 0207 3408119 or email maleck.boodoo@education.gsi.gov.uk) at the Department for Education can answer any queries regarding the instrument.

ANNEX C

Consultation report: Regulations to disapply aspects of the existing national curriculum, from September 2013.

Introduction

This report summarises the responses received to our consultation on draft regulations, to be laid under Section 91 of the Education Act 2002, that will give force to the Government's decision to disapply aspects of the existing national curriculum, from September 2013.

Background

On 7 February 2013 the Department for Education published proposals for the reform of the national curriculum for consultation. These proposals included one to disapply certain aspects of the existing national curriculum for a limited period from September 2013, to give schools greater flexibility to prepare to teach the new national curriculum. Following the close of the consultation on the proposal (which ran from 7 February to 16 April), Ministers confirmed their intention to proceed with the proposals, namely:

- to disapply the existing programmes of study, attainment targets and statutory assessment arrangements from September 2013 for:
    - English, mathematics and science for pupils in years 3 and 4
    - all foundation subjects for all pupils at key stages 1 and 2
    - all subjects for pupils at key stages 3 and 4.

A report summarising the outcome of the consultation and the Government's reasons for going ahead was published on the Department's website here on 3 May. The same day, a consultation on the draft regulations required to bring about these changes was launched, which closed on 3 June.

Findings

There were 24 responses to the consultation.

Most respondents used the consultation exercise as an opportunity to set out, or reiterate, similar views to those expressed previously. Overall, 12% of respondents supported the proposal, 45% disagreed and 42% expressed no preference in their comments. Comments received all related to the policy, rather than the draft regulations themselves.

Respondents who agreed with the proposal believed that the disapplication of the elements of the national curriculum set out in the consultation from September 2013 would allow schools and teachers more time to prepare and plan for the introduction of the new curriculum.

Respondents who disagreed with the proposal expressed the view that this could lead to a disruption of the flow of pupils' education, and also raised concerns around how

Ofsted would measure progress if parts of the curriculum were disapplied. There were also concerns raised that the timescale for disapplication and the introduction of the new curriculum was too short for schools to react.

Whilst the responses to this consultation showed higher numbers of respondents disagreeing with the proposals to disapply elements of the current national curriculum than agreeing, there was nothing to add from these to the responses received to the disapplication question in the main curriculum consultation, which closed in April. These responses to the earlier consultation indicated that there is uncertainty as to what disapplication will actually mean for schools. Also, respondents once again took the opportunity to express their views around the timescales involved in the introduction of the new curriculum, rather than the issue of disapplication itself.

Next steps

Having carefully considered the responses to this consultation the Government has decided to proceed to lay the regulations to disapply the programmes of study, attainment targets and statutory assessment arrangements from September 2013 for:

- English, mathematics and science for pupils in year 3 and year 4
- all foundation subjects for pupils at key stages 1 and 2
- all subjects for pupils at key stages 3 and 4.

Disapplication will have effect for the school year 2013/14, except in relation to English, mathematics and science for pupils at key stage 4 where it will have effect for the two years 2013/14 and 2014/15, because the new key stage 4 programmes of study for these subjects will not be introduced until September 2015. The reason why disapplication will not apply to English, mathematics and science for pupils in years 1, 2, 5 and 6 is to retain the statutory underpinning for statutory assessment at the end of key stage 1 and key stage 2 for those cohorts of pupils in summer 2014.

We want to ensure that schools are able to prepare for a smooth transition to the new national curriculum which will be introduced from September 2014. Disapplication of the current national curriculum in this way means that schools will still be required to teach the statutory subjects but will not have to follow the centrally prescribed programmes of study (and associated attainment targets and assessment arrangements) from September 2013. They can choose to continue teaching the current programmes of study if they wish but will have the freedom to use the flexibility that disapplication offers to plan and prepare for the introduction of the new programmes of study from September 2014.

Under the legislation which underpins the national curriculum a final set of regulations to enable this disapplication to take place will be laid before Parliament with a commencement date of 2 September 2013.

Overview of responses

The organisational breakdown of respondents was as follows:

Secondary School	2

Primary School	3
Other	8
Local Authority	2
Academy/Free school	1
Parent	0
Organisation Representing School Teachers	8
Special School	0
Subject Association	0
Total	24