EXPLANATORY MEMORANDUM TO

THE NEW WOODLANDS SCHOOL ORDER 2007

2007 No. 2599

1. This explanatory memorandum has been prepared by the Department for Children, Schools and Families and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Order is made under section 2 of the Education Act 2002.

2.1.1 In relation to New Woodlands School and the London Borough of Lewisham (the local authority) article 3(a) provides that section 316A(2)(c) of the 1996 Education Act is relaxed.

2.1.2 Article 3(b) (also in relation to New Woodlands School and the London Borough of Lewisham) relaxes the requirement in regulation 12A(1)(c) of the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001. (See explanation at paragraph 7.5 below).

2.1.3 Article 4 modifies those provisions so that other local authorities who place pupils at New Woodlands School are subject to the same requirements as the London Borough of Lewisham.

2.1.4 Article 5 provides that regulation 8 of the Education (Pupil Registration) (England) Regulations 2006 is modified so as to allow pupils at New Woodlands School to remain on the register of their original school if appropriate.

2.1.5 Article 6 provides that pupils admitted to New Woodlands School pursuant to the relaxation provided for in the Order shall be deleted from the admissions register of New Woodlands School after 12 months.

2.1.6 Article 7, in respect of the London Borough of Lewisham and other authorities who place pupils at New Woodlands School, modifies the requirement in regulation 12A(3) of the 2001 Regulations.

2.2 Article 8 specifies that the Order shall have effect until 30 September 2010.

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

3.1 None

4. Legislative Background

4.1 The Order is made under section 2 of the Education Act 2002 as amended in Chapter 1 of Part 1 by Schedule 16 to the Education and Inspections Act 2006. The purpose of Chapter 1 of that Act (which includes section 2) is to facilitate the implementation of innovative projects that may (in the opinion of the Secretary of State) contribute to the raising of educational standards. Specifically, section 2 gives the Secretary of State the power, upon the application of one or more qualifying bodies, to suspend (and make consequential modifications to) particular provisions of education legislation, or to relax the requirements of such legislation, in order to further such innovative projects. Orders made under section 2 have effect for the period specified

in the order, which cannot exceed 3 years. Section 3(2) allows the Secretary of State, on one occasion only, to extend the period for which an order has effect by a period of not more than three years.

4.2 Article 3(a) of the Order (in respect of the school and the applicant local authority) relate to the requirement for a child with SEN to be educated in a mainstream school unless a statutory exception applies. A child does not have to be educated in a mainstream school if he is admitted to a special school following a change in his circumstances. The relaxation in these articles has the effect that a child can be admitted to New Woodlands without there first being a change in the circumstances in order to provide timely, flexible and targeted short-term programmes which address the needs of pupils with challenging behaviour or underlying learning needs. This is expected to reduce the number of permanent exclusions from mainstream schools, and further improve the attainment of pupils whilst at New Woodlands and on return to mainstream school.

4.3 Article 3(b) of the Order (in respect of the school and the applicant local authority) relaxes the requirement that, for a child to be admitted to a maintained special school, they must either have a statement of special educational needs or be admitted solely for assessment or have a change in his circumstances. The effect of these relaxations is to provide a child, who does not fit into one of these categories, with relatively short term intensive learning and behaviour management programmes to address their underlying learning needs and to prepare them for successful return to mainstream school. In practice, this could be for a period of up to twelve months. The expectation is that most of these pupils will re-integrate to mainstream provision, but this enables a period of assessment that will better help to identify, in the small number of cases where it is appropriate, pupils unable to cope with mainstream provision.

4.4 Article 4 applies where local authorities other than the London Borough of Lewisham, which applied to the Secretary of State to make the order, place pupils at New Woodlands School. They benefit from modifications so that the requirement for there to be a change in the child's circumstances is treated as if it were omitted.

4.5 Article 5 of the Order modifies regulation 8 of the Education (Pupil Registration) (England) Regulations 2006 (SI 2006/1751). This modification makes further provision to allow pupils who have been dual registered at New Woodlands School to remain on the register of their original school, in order for them to be allowed to return to mainstream provision once their short-term intensive learning or behaviour management programme at New Woodlands School is complete.

4.6 Article 6 of the Order modifies regulation 8 of the Pupil Registration Regulations (as cited in paragraph 4.5) so that a pupil admitted pursuant to this Order is automatically deleted form the admission register of New Woodlands School after a period of 12 months. This is to prevent a pupil remaining at New woodlands for a prolonged period without any active consideration being given as to whether a statement of special educational needs may be required. This modification does not prevent the re-admission of the pupil under any of the grounds set out in regulation 12A as it normally operates.

4.7 Article 7 of the Order modifies the requirement whereby the admission of a child to a special school (in accordance with the relaxation of the requirements in regulation

12A as set out above in paragraph 4.3) needs to be reviewed termly so that for the applicant school it need only be reviewed annually.

5. Territorial Extent and Application

5.1 This instrument applies to New Woodlands School, 49 Shroffold Road, Downham, Bromley, Kent, BR1 5PD and the London Borough of Lewisham, Children's Services, Laurence House, 1 Catford Road, London SE6 4SW.

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 The power to innovate ("the Power") provides schools, local authorities, further education colleges and foundations with the opportunity to apply to the Secretary of State to lift regulatory requirements in education legislation for a time-limited period (by means of a Power to Innovate Order), so they can trial a specific innovative project that has the potential to raise educational standards. The Power is the result of concerns that innovative ideas can be unintentionally thwarted by detailed regulations and legislation. It is intended to facilitate the implementation of these ideas and to ensure that no opportunity is lost to trial innovative proposals that could raise standards. It is intended that lessons learned will be used for further deregulation for the system as a whole.

7.2 New Woodlands is a Special School designated for pupils with behavioural, emotional and social difficulties (BESD) with a Pupil Referral Unit (PRU) and outreach service attached. It is registered currently both as a Special School and a PRU. In March 2006 an Ofsted inspection, which also considered the wider services of the school including the PRU provision, judged the school to be outstanding.

7.3 The school manages the PRU and Outreach services for 72 schools on behalf of the local authority (LA), Lewisham LB. The school has developed a model for working that provides pupils with relatively short-term intensive learning and behaviour management programmes to address their underlying learning needs and, in most cases, that prepares them for a successful return to mainstream school. In a small trial undertaken during 2005/06 this approach has proved to be very successful and the number of pupils from both the school and the PRU part of the provision, who have been reintegrated successfully into mainstream schooling has risen significantly from eighteen pupils in 2004/5 to thirty one in 2005/2006. The school and the local authority argue that they have developed a flexible service with skilled staff and learning programmes tailored to meet the individual needs of all pupils, both those with and without a statement of special needs.

7.4 With effect from September 2007, the school will have Key Stage 3 (KS3) provision, that is, provision for ages 11-14, which the school wishes to operate in a similar way to the current primary provision.

7.5 When the Power to Innovate Order is made and takes effect, the New Woodlands will operate solely as a Special School. Many of children newly placed at New Woodlands shall have a statement of SEN naming New Woodlands in Part 4. Regulation 12A(1)(b) and (c) of the Education (Special Educational Needs)(England)(Consolidation) Regulations 2001 will continue to enable the admission of children for the purposes of assessment or following a change of circumstances, as set out in those regulations. However, regulation 12A(1)(c) is being relaxed so that for certain pupils, who are excluded from mainstream schools and / or who remain on the roll of a mainstream school, it will not be necessary for there to be a statement of special educational needs specifying placement at New Woodlands for up to the first 12 months of a child's placement at New Woodlands - nonetheless it follows from the graduated approach set out in the SEN Code of Practice that there will be children at the school who either already have been, or who are assessed as requiring statements of special educational need during that time. Only those children whose statements of special educational needs specify New Woodlands as their school would remain at New Woodlands for longer than 12 months, unless they are admitted for assessment purposes or following a change in their circumstances as set out in regulation 12A. Additionally, pupils currently on the roll of New Woodlands who will already have statements of SEN must continue to have statements and must continue to have their statements reviewed on at least an annual basis.

7.6 Before making an application under the power to innovate provisions of the Education Act 2002, applicants must consult such persons as appear to them to be appropriate. The school and local authority have consulted school governors, parents, school staff and parents and carers of pupils at all mainstream primary schools in Lewisham LB. None of the stakeholders opposed the proposals. Officials at the Department for Children, Schools and Families consulted the Special Educational Needs Consortium and they also support the proposal.

8. Impact

8.1 A full Impact Assessment has not been carried out in this case. The geographic coverage of the order is local, and it is not intended to have an effect across the whole sector. An initial assessment has indicated that the impact of the changes in terms of costs and benefits will be negligible for the sector as a whole. Any future changes in policy to encompass the entire sector will be accompanied by a full Impact Assessment.

9. Contact

Gary Fincham at the Department for Children, Schools and Families, Tel: 020 7925 5354 or e-mail: gary.fincham@dcsf.gsi.gov.uk can answer any queries regarding the instrument.