EXPLANATORY MEMORANDUM TO

THE SCHOOL COMPANIES (AMENDMENT) REGULATIONS 2014

2014 No. 2923

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

These Regulations amend the School Companies Regulations 2002 ("the 2002 Regulations"). The amendments reduce the burdens on schools by allowing school companies to be exempt from stringent and expensive audit requirements if they meet the criteria for small companies under the Companies Act 2006. This will provide parity with other small companies. These Regulations also remove the requirement to provide accounts for the first six months of their operation. The amendments introduce a requirement for unaudited accounts to be independently examined in line with the Charities Act 2011.

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

None.

4. Legislative Context

Regulation 28 of the 2002 Regulations is being changed to allow a school company's accounts to be exempt from audit under section 477 of the Companies Act 2006 if the company qualifies as a small company under section 382 of that Act, i.e. if it has:

- A turnover of up to £6.5 million;
- Total assets of up to £3.26 million; and
- Up to 50 employees on average during the year.

The changes also remove the requirement for school companies to provide accounts to the supervising authority (a local authority) for the first six months of their operation.

5. Territorial Extent and Application

This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

- What is being done and why

7.1 Governing bodies of maintained schools may, independently or with other governing bodies and / or 'prescribed' third parties, form companies to undertake certain activities as specified in legislation. The existence of a company allows individual school governing bodies to enter into contracts as a group and to pool resources. Schools are able to follow a well-established procedure for forming a company.

In April 2014 the department was asked to look into an anomaly in the School Companies Regulations 2002. When the Companies Act was re-enacted in 2006, it required companies to have their accounts audited unless they are small i.e. at least two of the following conditions apply:

a) Total assets of up to £3.26 million;
b) Turnover of up to £6.5 million;
c) Up to 50 employees on average during the year.

The School Companies Regulations 2002 deny school companies access to this small companies audit exemption, and the audit requirements are therefore arguably disproportionate for the type of company which a group of schools would be likely to set up. They also require school companies to provide accounts for the first six months of their operation to the supervising authority (a local authority). This again was identified as being out of line with the requirements for companies in general.

The School Companies Regulations are, therefore, being changed to address these issues and bring the auditing requirements for school companies into line with the auditing requirements for companies and charities in general.

To ensure a level of scrutiny remains in relation to the financial matters of a school company, the amendments include a requirement for unaudited accounts to be independently examined in line with the Charities Act 2011.

- Consolidation

7.2 The department does not intend to consolidate the School Companies Regulations.

8. Consultation outcome

8.1 There has been no consultation on these changes. This decision was taken as a) there is no duty under statute to consult on these changes, and b) the changes are being made to bring school companies into line with other companies and so reduce administrative burdens.

8.2 However, while developing the change of policy, the department consulted internally with legal representatives and financial risk assessment advisors to consider the implications of the changes. Discussions were also undertaken with the Department for Business Innovation and Skills and the head teacher of the school in Surrey who raised the issue originally, who responded that the change would improve practical school partnership co-operation.

9. Guidance

Schools and local authorities will be alerted to the change of regulations through departmental communication channels.

10. Impact

10.1 The impact on business, charities or voluntary bodies is a reduction of auditing burdens on small school companies they may be a part of.

10.2 The impact on the public sector is a reduction of auditing burdens on small school companies which were previously more stringent and costly.

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

Through our regular contact with schools and local authorities we will continue to informally monitor the impact of these regulations.

13. Contact

Sarah Todd at the Department for Education Tel: 0114 2742387 or email: sarah.todd@education.gsi.gov.uk can answer any queries regarding the instrument.