EXPLANATORY MEMORANDUM TO

THE SCHOOL GOVERNANCE (CONTRACTS) (ENGLAND) (REVOCATION) REGULATIONS 2011

2011 No. 1500

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

2. Purpose of the instrument

To revoke the School Governance (Contracts) (England) Regulations 2005, which required governing bodies of maintained schools to have regard to the Code of Practice on Workforce Matters in Public Sector Service Contracts (commonly referred to as the "Two-Tier Code"). As this Code was withdrawn with immediate effect on 13 December 2010 there is no longer a requirement for these Regulations.

3. Matters of special interest to the [Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments]

None.

4. Legislative Context

4.1 The Minister for the Cabinet Office announced the withdrawal of the Code of Practice on Workforce Matters in Public Sector Service Contracts (the Two-Tier Code) with immediate effect on 13 December 2010. This was part of the Government's drive to reduce red tape and costs for business and was followed by the withdrawal of the Best Value Code of Practice on Workforce Matters in Local Authority Service Contracts on 23 March 2011.

4.2 The School Governance (Contracts) (England) Regulations 2005 required the governing bodies of maintained schools to have regard to the Two-Tier Code when entering into contracts which involved the transfer of staff. Following the withdrawal of this Code, these Regulations are effectively redundant. This is why they are being revoked.

5. Territorial Extent and Application

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 These Regulations revoke The School Governance (Contracts)(England)

Regulations 2005 (Statutory Instrument 2005 No. 1508), which came into force on the 30 June 2005 and are no longer needed following the withdrawal of the Code of Practice on Workforce Matters in Public Sector Service Contracts (otherwise known as the "Two-tier Code").

7.2 Under the 2005 Regulations schools were expected to include adherence to the Two-Tier Code in any contract which involved the transfer of staff. Compliance with the Code would ensure that, even where the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) did not apply to those staff, the principles of TUPE would be followed, so that transferred staff would not be treated any less favourably than if the Regulations had applied to them. Compliance with the Code would also ensure that new employees hired by the successful contractor would be employed on terms and conditions "no less favourable overall" than the terms and conditions of the transferred, ex-public sector employees that they were to work alongside.

7.3 Withdrawal of the Code will not have retrospective effect and so contracts that were already in place before withdrawal, which included in their terms and conditions adherence to the Code, will continue to apply. The Code has been replaced by the "Principles of Good Employment Practice", which are voluntary.

8. Consultation outcome

Not applicable.

9. Guidance

A notice will be put onto the Department's website drawing the attention of school governing bodies to these Regulations and why the 2005 Regulations have been revoked.

10. Impact

10.1 The revocation of the 2005 Regulations by these Regulations has no impact upon business, charities or voluntary bodies because the Two-Tier Code has already been withdrawn. The withdrawal of the Code itself should, however, make it easier for smaller businesses to enter the public sector service market.

10.2 The impact on the public sector is minimal.

10.3 An impact assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not directly apply to small business.

12. Monitoring & review

We do not anticipate that there will be any monitoring or review required as a result of this change.

13. Contact

Peter Windram at the Department for Education, Tel: 01325 735698, or email: peter.windram@education.gsi.gov.uk can answer any queries regarding the instrument.