EXPLANATORY MEMORANDUM TO

THE SCHOOL ORGANISATION AND GOVERNANCE (AMENDMENT) (ENGLAND) REGULATIONS 2009

2009 No. 1556

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.

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

2. Purpose of the Instrument

These regulations amend parts of The School Organisation (Establishment and Discontinuance of Schools)(England) Regulations 2007 (SI 2007/1288) and The School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2007 (SI 2007/1289) The changes proposed are principally to improve consistency across the school organisation regulations, improve general clarity and correct a number of errors/omissions.

They also make minor amendments to The Education (Transition to New Framework)(School Organisation Proposals) Regulations 1999 (SI 1999/704), The Education (Middle Schools)(England) Regulations 2002 (SI 2002/1983), The School Governance (Federations)(England) Regulations 2007 (SI 2007/960) and The Information as to Provision of Education (England) Regulations 2008 (SI 2008/4).

A note is attached which gives further detail on the changes made by the regulations.

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

None

4. Legislative Context

Regulation 2 revokes the Education (Transition to New Framework) (School Organisation Proposals) Regulations 1999 (SI 1999/704), in relation to England. The transitional provisions contained in these Regulations are no longer required.

Regulation 3 makes amendments to the Education (Middle Schools) (England) Regulations 2002 (SI 2002/1983) so that various definitions reflect current legislation relating to school organisation and school governance.

Regulation 4 amends the School Governance (Federations) (England) Regulations 2007 (SI 2007/960) so as to require governing bodies to send federation proposals to the Secretary of State as well as other parties. The governing bodies must also notify the Secretary of State of their decision on the proposals. Where a school is planning to leave a federation, the governing body must also notify the Secretary of State.

Regulation 5 amends the School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007 (SI 2007/1288), so as to correct minor drafting errors and so as to add two further conditional approvals:

- Regulation 5(6)(a) amends regulation 20 so that approval for school closure proposals may also be conditional on the agreement of the Secretary of State to extend or enlarge an existing Academy.
- Regulation 5(6)(d) amends regulation 20 so that approval for sixth form school closure proposals may also be conditional on a decision by the Secretary of State to establish a new further education college.

Regulation 5(9) amends paragraph 20 of Schedule 4 so as to bring it in line with policy intention to only require the SEN Improvement Test to be applied whenever changes are proposed to existing provision 'that would be recognised by the LA as reserved for pupils with SEN'.

Regulation 6 amends the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (SI 2007/1289), so as to correct minor drafting errors in addition to the following:

Regulation 6(2) extends the timeframe in which a governing body must make a decision on a foundation proposal from 6 months to 12 months.

Regulation 6(3) omits paragraphs 2 and 13 of Schedule 2 which provided for statutory proposals to be published for increases in the school's 'PAN' (Published Admission Number i.e. the maximum number of pupils that a school is normally permitted to admit) during the school year. Regulations 6(4)(b) and 6(4)(e) omit the analogous provisions in Schedule 2 and Regulations 6(5), 6(6)(b) and 6(6)(d)(ii-v) omit the analogous provisions in Schedule 4. Any changes to pupil admission numbers are now the responsibility of the admissions authority, in accordance with the School Admissions Code.

Regulations 6(4)(a) and 6(6)(a) amend Schedules 3 and 5 to add additional requirements to the information that must be included in sixth form proposals.

Regulations 6(4)(d) and 6(6)(d)(i) allow for the length of the representation period for an excepted expansion proposal to be extended from 4 weeks to 6 weeks if it is "related" to another proposal which has a prescribed representation period of 6 weeks.

Regulations 6(4)(f)(ii) and 6(6)(e)(ii) amend Schedules 3 and 5 to add a new conditional approval: where the proposals are to alter the upper age limit, the decision of the Secretary of State to establish a new further education college.

Regulation 7 amends the Information as to Provision of Education Regulations 2008 (SI 2008/4), so as to specify information required for forecasting the numbers of registered pupils.

5. Territorial Extent and Application

These regulations apply to England only.

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

The policy background for the school organisation provisions has its origins in the Department for Education and Skills' White Paper *Higher Standards, Better Schools for All*, published in October 2005. Policies were carried forward by the Education and Inspections Act 2006. The objectives of the policies are to give a new focus to the work of local authorities as commissioners, rather than providers, of educational services and to increase the diversity and choice of educational provision available to parents and pupils. The Children's Plan built on this further by highlighting the benefits that diversity of provision can bring, while stressing that to capture the full benefits of a diverse system, providers also need to work collaboratively, because we want all children to benefit from innovation and best practice. The 21st Century Schools consultation document set out the vision for a 21st century school characterised by schools working more extensively and effectively with parents, other providers and wider children's services. It also set out that we would consider what needs to change in a 21st century school system to ensure deeper, more consistent and more effective partnership working and its implications for school leadership, governance, accountability and funding. We consulted specifically on the key changes that need to be made to drive the development of stronger partnerships and the most effective partnership models.

Since the school organisation regulations came into force on 25 May 2007 a number of omissions, inconsistencies and questions have come to light, raised and in some cases by Local Authorities, governing bodies and other stakeholders. The regulations will address and correct these. The regulations will also: remove the requirement to publish statutory proposals when increasing the admission number of a school by 27 or more pupils to bring the school organisation regulations into line with the School Admissions Code; clarify that the SEN Improvement Test should only be applied to reserved provision so that it reflects current policy; and provide that sixth form expansion proposals must be developed in collaboration with other 16-19 providers in an area.

8. Consultation Outcome

Limited consultation has taken place on the proposed changes as the majority are technical changes to correct the identified inconsistencies or respond to issues raised by stakeholders. Most respondents were in favour of the proposed changes, although two areas of concern were raised.

One was the circumstances in which the sixth form presumption proposals might not be agreed by the decision maker. This has no direct impact on the regulations, but the relevant guidance has been amended to clarify the exceptional circumstances in which the decision maker might reject sixth form proposals from a presumption school e.g. where there is evidence that a new sixth form was of a scale that it would directly affect the viability of another neighbouring high quality provider.

The other was in relation to the changes proposed by Regulation 5(9), that amends paragraph 20 of Schedule 4 so as to bring it in line with policy intention to only require the SEN Improvement Test to be applied whenever changes are proposed to existing provision 'that would be recognised by the LA as reserved for pupils with SEN'. Oliver Heald MP has been pursuing this issue as he believes the Test should be applied to all SEN and not just reserved SEN provision. Ministers have fully explained the position to him in correspondence.

9. Guidance

The user friendly guidance attached to the Memorandum will also be made available from the Department's school organisation website. Other sets of relevant guidance (relating to school closures, expansions and new schools) already on the website will be updated to reflect the changes introduced by these regulations.

10. Impact

An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

The impact of the instrument on the public sector will fall on local authorities and those publishing proposals. The impact will be minor, since the processes for making and deciding proposals are now well established, and the Department provides extensive guidance together with an on-line tool to enable them to build statutory notices and both will incorporate the proposed changes when the regulations come into force.

11. Regulating Small Business

The legislation does not apply to small business.

12. Monitoring and Review

These regulations result largely from feedback from our key stakeholders, where they have highlighted inaccuracies and inconsistencies in existing legislation that impact on the effective application of school organisation policy. We will monitor the effectiveness of this legislation for 12 months and then determine whether of not further amendments are required.

13. Contact

Paul Mackenley at the Department for Children, Schools and Families Tel: 01325 391275 e-mail: paul.mackenley@dcsf.gsi.gov.uk can answer any queries about the instrument.

Annex B

AMENDMENTS TO SCHOOL ORGANISATION AND SCHOOL GOVERNANCE REGULATIONS - Additional Explanatory Notes on Changes

The Education (Transition to New Framework) (School Organisation Proposals) Regulations 1999

1. To revoke these regulations in relation to England.

The Education (Middle Schools) Regulations 2002

2. Consequential amendments so that various definitions reflect current legislation relating to school organisation and school governance.

The School Governance (Federations) Regulations 2007

3. Amendments to require governing bodies to send to the Secretary of State copies of federation proposals within one week of publication and to notify the Secretary of State of their subsequent decision on the proposals, and where a school leaves a federation.

The School Organisation (Establishment and Discontinuance of Schools) Regulations 2007

4. Amendment to clarify that where a copy of a proposal is requested this should be provided within 1 week of the request and not the date of publication.

5. Amendment to introduce two further conditions that may be applied to the approval of proposals.

- The approval of proposals to close a school can be conditional on the Secretary of State agreeing to extend or enlarge an existing academy.

- The approval of proposals to close a school can be conditional on the Secretary of State agreeing to establish a new further education college under s16 of the FHE Act 1992.

6. Amendment to clarify the information that needs to be provided in relation to proposals for new maintained nursery schools.

7. Other technical amendments.

The School Organisation (Prescribed Alterations to Maintained Schools) Regulations 2007

8. Amendment to extend the timeframe in which a governing body must make a decision on a foundation proposal from 6 to 12 months.

9. Amendment to remove the need to publish statutory proposals for increases in the school's 'PAN' (Published Admitted Number i.e. the maximum number of pupils that a school is normally permitted to admit) during the school year. This will become the responsibility of the admissions authority, in accordance with the School Admission Code.

10. Amendments to align regulations on sixth presumption proposals with changes to decision maker's guidance re: evidence of collaboration.

11. Amendment to introduce two further conditions that may be applied to the approval of proposals.

- The approval of proposals to alter the upper age limit of a school can be conditional on the decision of the Secretary of State to establish a new further education college.

- The approval of proposal to enlarge the premises of a school can be conditional on the decision of adjudicators to approve any related change in admission numbers.

12. Other technical changes.

The Information as to Provision of Education (England) (Amending) Regulations

13. Amendment to place an existing arrangement on a statutory footing. To require local authorities to provide the Secretary of State with pupil forecast information at district level as part of the surplus places survey.