EXPLANATORY MEMORANDUM TO

THE SCHOOL ORGANISATION (ESTABLISHMENT AND DISCONTINUANCE OF SCHOOLS) (ENGLAND) AMENDMENT REGULATIONS 2009

2009 No. 2984

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. Purpose of the instrument

These regulations amend parts of The School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007 (SI 2007/1288). The changes proposed are to reflect new arrangements whereby the annual performance assessment (APA) of local authorities made by Ofsted under section 138(3) of the Education and Inspections Act 2006 will no longer be known as an APA, but rather will be referred to as a performance rating. The changes will, therefore, remove all references to APA, to be replaced with references to a performance rating that will now form part of the new Comprehensive Area Assessment (CAA). These performance ratings are used to determine which local authorities are able to submit a bid for a community school or a community special school into a new school competition.

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

None

4. Legislative Context

Regulation 3 omits the definition of APA rating in regulation 2 of The School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007 because the APA no longer exists. Regulation 4 replaces all references to the APA rating (in regulation 9 of those Regulations with the new performance rating terminology.

5. Territorial Extent and Application

This instrument applies 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 2002 Education Act introduced a requirement for competitions for new additional secondary schools - i.e. ones not replacing existing schools. The 2005 Act extended this requirement to proposals for all new maintained secondary schools, including amalgamations and wider re-organisations; unless the Secretary of State agreed that a competition need not take place. The Education and Inspections Act 2006, further extends the requirement to include all new primary and special schools.

The aim of the competition policy is to give parents and other stakeholders the opportunity to consider different options for setting up new schools. Competitions make it easier for providers with a good track record, or indeed new providers, to establish new schools.

It was recognised that some local authorities were delivering high standards of education through their schools and should, therefore, be allowed to propose a community school or community special school in a new school competition. Regulations prescribe the circumstances in which local authorities may do this and are currently based on their APA rating, but will, as a result of the amendment, be based on the performance rating as part of the Comprehensive Area Assessment.

8. Consultation outcome

None conducted. These changes result from a change to recognised terminology, rather than a material change to process. Consultation took place on the issue prior to the introduction of The School Organisation (Establishment and Discontinuance of Schools) (England) Regulations.

9. Guidance

The Department's current guidance 'Establishing a New Maintained School' will be amended to incorporate this change. Other sets of School Organisation guidance (relating to new schools and school competitions) will also 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. There will be minimum impact as the purpose of the instrument is to merely amend wording contained in current legislation – it does not introduce any new duties.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

These regulations are the result of the cessation of 'APAs' and their replacement by the performance assessment and rating that is now an element of the CAA. We will monitor the effectiveness of this legislation for 12 months and then determine whether or not further amendments are required, but do not expect that there will be a need to do so.

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.