EXPLANATORY MEMORANDUM TO

THE SCHOOL ORGANISATION (PRESCRIBED ALTERATIONS TO MAINTAINED SCHOOLS) (ENGLAND) (AMENDMENT) REGULATIONS 2025

2025 No. 94

1. Introduction

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

2. Declaration

2.1 Minister McKinnell, Minister of State (Minister for School Standards) at the Department for Education confirms that this Explanatory Memorandum meets the required standard.

2.2 Kim Sibley, Deputy Director for Admissions, School Organisation and Transport, at the Department for Education confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Aimee Shaw at the Department for Education, email: schoolorganisation.notifications@education.gov.uk, can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The instrument amends The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 ("the 2013 Regulations") so that it will be possible for maintained schools to add a new nursery, remove an existing nursery or change the age range of an existing nursery without the need for the governing body or local authority to follow the statutory 'prescribed alterations' process. It will also make all other age range changes of one year group or more a prescribed alteration across voluntary, foundation and community schools (excluding changes related to nursery provision).

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction in which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

5.1 When a governing body or local authority wants to add a new nursery, remove an existing nursery or change the age range of an existing nursery at a maintained school

(voluntary, foundation and community), they may be required to follow the statutory process for making prescribed alterations to schools, as set out in the 2013 Regulations and the 'Making significant changes ('prescribed alterations') to maintained schools' guidance[1].

5.2 The prescribed alteration relevant to nursery provision changes is 'Alteration of upper or lower age limit' (or 'change of age range'). Whether or not a change meets the threshold for a prescribed alteration depends on the school type, the number of year groups that are being added or removed and how long the change is expected to be in place (see paragraph 5.4 for further information).

5.3 The amendment to the 2013 Regulations will remove the need to follow the statutory process when changing the age range of a school in order to add a new nursery, remove a current nursery or change the age range of an existing nursery. The reason for this change is to support the government's commitment to create or expand 3,000 nurseries in primary phase schools. This change will support the expansion of early years provision and will remove a burden on local authorities and governing bodies in order to meet increased demand for childcare places. This change also addresses sector feedback which highlighted concerns about the length and complexity of some of the Department's processes, including the processes for changing the pupil age range of a school by adding additional year-groups to accommodate a nursery.

5.4 In addition, the amendment to the 2013 Regulations will standardise the number of year groups for any other change of age range i.e. all other age range changes of one year group or more will be a prescribed alteration (excluding age range changes related to nurseries). For community schools, an age range change of one year group or more is currently classed as a prescribed alteration. Whereas, for voluntary and foundation schools, age range changes of fewer than three year groups are not currently classed as a prescribed alteration. The department does not expect there to be many other situations (outside of changes to nursery provision) in which voluntary and foundation schools currently use this flexibility to change their age range by up to two years. Adding sixth form provision is, and will remain, a prescribed alteration and requires the statutory process to be followed.

5.5 For changes that can be made outside of the statutory process, there is a strong expectation from the Department that local authorities and governing bodies will work together to, amongst other things, ensure any necessary consents have been gained, an open and fair consultation has been carried out and in the case of changes by governing bodies – that they have consulted with the local authority to ensure the proposal is aligned with place planning arrangements. The expectations for changes made outside of the statutory process are set out in full in the guidance. This expectation will be in place for changes to nursery provision going forward, once they are no longer a statutory requirement.

What was the previous policy, how is this different?

5.6 Previously, when a governing body or local authority wanted to add a new nursery, remove an existing nursery or change the age range of an existing nursery at a maintained school (voluntary, foundation and community), they may have been required to follow the statutory process for making prescribed alterations to schools, as set out in the 2013 Regulations and the 'Making significant changes ('prescribed alterations') to maintained schools' guidance[2].

[1] https://www.gov.uk/government/publications/school-organisation-maintained-schools
[2] https://www.gov.uk/government/publications/school-organisation-maintained-schools

5.7 Depending on the type of school and number of year groups being added, maintained schools could, under certain circumstances, make such changes without needing to follow the statutory process. A governing body of a voluntary or foundation school had to follow the statutory process when they altered the upper or lower age range by 3 years or more, and a local authority had to follow the statutory process when they altered the upper or lower age range of a community school by one year or more.

5.8 Following the change, voluntary, foundation and community schools will not need to follow the prescribed alteration statutory process to make age range changes relating to nursery provision. For all other age range changes, the change will bring voluntary and foundation schools in line with community schools in that they will all have to follow the statutory process for changes of one year group or more.

6. Legislative and Legal Context

How has the law changed?

6.1 The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 ("the 2013 Regulations") are made in exercise of the powers conferred by sections 18(1), (2) and (3), 19(2) and (3), 21(1) to (6), 22(3) to (5), 23(1), and (3) to (5), 24(1) to (7), 181(2) and 183(1) and (2) of the Education and Inspections Act 2006 and sections 29(5) and 537 of the Education Act 1996. The 2013 Regulations replaced the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 ("the 2007 Regulations") and have not been updated since they took effect in 2013.

6.2 The 2013 Regulations set out the process for making prescribed alterations to maintained schools. These changes will remove the requirement to follow the statutory process for any age range changes relating to nursery provision and will make all other age range changes of one year group or more (excluding those related to nursery provision) a prescribed alteration for voluntary, foundation and community schools. This will be achieved by amending paragraph 2 and revoking paragraph 3 of Schedule 2 and by amending paragraph 3 of regulation 4 of the 2013 Regulations.

Why was this approach taken to change the law?

6.3 There are no alternatives to achieve the desired policy outcome other than to amend The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013.

7. Consultation

Summary of consultation outcome and methodology

7.1 The department does not judge that a consultation is required for this change to existing regulations. This is removing a burden on local authorities and governing bodies and does not require them to carry out any additional work.

8. Applicable Guidance

8.1 The Department's 'Making significant changes ('prescribed alterations') to maintained schools' guidance[3] will be updated and published once the regulations come into force to reflect the changes.

[3] https://www.gov.uk/government/publications/school-organisation-maintained-schools

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the private, voluntary or public sector is foreseen.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because no new funding is required.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that the effect of the policy will be kept under review through regular engagement with Early Years sector via Childcare Reform policy officials, and action will be taken if any issues arise.

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").