EXPLANATORY MEMORANDUM TO

THE SCHOOLS (SPECIFICATION AND DISPOSAL OF ARTICLES) REGULATIONS 2012

2012 No. 951

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

2.1 This instrument specifies further articles which head teachers and school staff authorised by them can search pupils for without their consent. These are: tobacco and cigarette papers; fireworks and pornographic images.

2.2 Provision is also made as to how these articles may, or must be, disposed of.

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

3.1 None.

4. Legislative Context

4.1 The regulation making power in section 550ZA of the Education Act 1996 ("the Act") recognises that it is not possible to predict now what schools may need to search for in a year or two years' time and was therefore introduced to enable additional items to be added to the list of prohibited items should a justifiable need arise. This is the first use of the regulation making powers under section 550ZA(3)(f) and 550ZC(7) of the Act[1].

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 The Secretary of State for Education has made the following statement regarding Human Rights: In my view the provisions of the Schools (Specification and Disposal of Articles) (England) Regulations 2012 are compatible with the Convention rights.

7. Policy background

[1] Sections 550ZA and 550ZC were inserted by section 242 (1) of the Apprenticeships, Skills, Children and Learning Act 2009.

- **What is being done and why**

7.1 Regulation 3 lists the prohibited articles. Regulation 4 makes provision for their disposal as follows: school staff may keep or dispose of tobacco and fireworks; pornography may be disposed of unless its possession constitutes a specified offence, in which case it must be handed to the police as soon as reasonably practicable.

7.2 The policy objective of the regulation making power was to enable additional items to be added to list of prohibited items if a justifiable need arose and these Regulations fulfil that objective.

7.3 The Government has made it a priority to improve standards of behaviour and discipline in schools - the coalition agreement includes a commitment to "give heads and teachers the powers they need to ensure discipline in the classroom and promote good behaviour". On 7 July 2010, the Minister of State for Schools made a statement to Parliament in which he announced the first of a number of measures to give teachers the powers and freedoms they need to maintain discipline in the classroom and promote good behaviour.

7.4 The announcement set out the Minister's intention to make regulations to add personal electronic devices (mobile phones, iPods and personal music players), pornography, fireworks, cigarettes and other tobacco products, and legal highs to the list of prohibited. The Minister also announced that the Government intended to give teachers a more general search power covering any item which may cause disorder or pose a threat to safety in the next Education Bill.

7.5 The Education Act 2011 has extended the range of items which may be searched without the pupil's consent to include any article which has been, or could be, used to commit an offence or to cause personal injury or damage to property. The Act also provides for searches for any item banned by the school rules which has been identified in the rules as an item which may be searched for. It is intended to commence the extended powers on 1 April 2012.

7.6 The items listed in these regulations have no place in school. Allowing them to be searched for regardless of whether they had been used or were intended to be used to cause harm or commit an offence or were banned 'under the school rules' puts the teacher's power to search for these particular items beyond argument. It also sends an important message to pupils who are tempted to bring these items into school, that these items may be found (and confiscated) as a result of a search.

8. Consultation outcome

8.1 Ministers expected to lay these Regulations early in the autumn 2010 and undertook an informal consultation in September 2010 with Ofsted and five teacher professional organisations. We received three responses, two supported the proposals and one urged that any extension to the power to search without consent should be used with caution.

8.2 Ministers' intention to add the items included in these Regulations was also mentioned in "the Importance of Teaching – The Schools White

Paper 2010 (published on 22 November 2010). In a letter to head teachers and chairs of governors on 24 November, the Secretary of State for Education invited comment on the White Paper by 8 December 2010. A summary of these comments was published in spring 2011.

9. Guidance

9.1 As these Regulations enable additional items to be searched for without the pupil's consent and set out how items found as a result of a search must be disposed of we will update the Department's "*Screening, Searching and Confiscation – advice for head teachers, staff and governing bodies*" and make it available prior to these regulations coming into force.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies

10.2 The impact on the public sector is to add additional prohibited items to those for which pupils in maintained schools can be searched, without their consent. This is a power not a duty and teachers cannot be compelled to use it.

10.3 An Impact Assessment has not been prepared for this instrument because there is no consequent impact on the public, private or civil society sectors, and none of the thresholds set out in the Impact Assessment guidance have been breached.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 There are no plans to formally review the operation of these powers. The Department will, however, remain alert to any feedback from practitioners, parents or others with an interest in this area, either through correspondence to the Department or through formal arrangements such as the Education Partnership. The Department will consider and respond to any information received.

13. Contact

13.1 Paula Morgan at the Department for Education, Tel: 020 7340 7081 or email: paula.morgan@education.gsi.gov.uk can answer any queries regarding the instrument.