EXPLANATORY MEMORANDUM TO

THE TRANSFER OF FUNCTIONS CONCERNING SCHOOL LUNCHES ETC. (ENGLAND) (AMENDMENT) ORDER 2013

2013 No. 3111

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 The Order amends the Education (Transfer of Functions Concerning School Lunches etc.) (England) (No. 2) Order 1999 to add clarity to when the responsibility for providing school lunches is transferred from local authorities to maintained schools.

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

3.1 None.

4. Legislative Context

4.1 The Order amends the Education (Transfer of Functions Concerning School Lunches etc.) (England) (No. 2) Order 1999 to provide that the duty to provide school lunches in accordance with section 5123(3) and (4) of the Education Act 1996, and the duty to provide school lunches free of charge in accordance with section 512ZB(1) of that Act, is transferred from local authorities to the governing body of each maintained school in England.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

7.1 Prior to this Order being made, the Education (Transfer of Functions Concerning School Lunches etc.) (England) (No. 2) Order 1999 provided that certain obligations on local authorities in respect of school lunches were transferred from local authorities to the governing bodies of maintained schools in England where

the schools' "budget share" (within the meaning of section 47(1) of the School Standards and Framework Act 1998) included an amount in respect of meals and other refreshment. The "budget share" is the main funding the school receives from the local authority.

7.2 Schools' budget shares have for some time not included specific amounts for meals and other refreshments, but rather the funding for providing school lunches is included in their general budget share allocation. The purpose of this Order is therefore to clarify what is already common practice: that the responsibility in respect of school lunches falls on all maintained schools, rather than on local authorities, and this is not dependent on there being a specific amount of budget share allocated in respect of school lunches.

8. Consultation outcome

8.1 The Department had initially planned to include this amendment in the School and Early Years Finance (England) Regulations 2013, before determining to make the amendment in a separate order. The Department consulted on a draft of the School and Early Years Finance (England) Regulations 2013 Regulations between 26 September and 7 November 2013. There were 36 responses – 23 from local authorities and school forums, six from teacher, college and special school associations and seven from schools in Wokingham. A link to the consultation documents is here: https://www.gov.uk/government/consultations/school-and-early-years-finance-regulations-2013

8.2 The Department received 17 responses in respect of this particular provision, which was generally welcomed. Five responses were based on the mistaken view that the responsibility for providing school lunches was only now being proposed to be transferred from local authorities to schools. In fact, this responsibility was transferred by the the Education (Transfer of Functions Concerning School Lunches etc.) (England) (No. 2) Order 1999. The Department will be making the true position clear in the response to the consultation that will be published on (www.gov.uk) and in the guidance referred to below.

9. Guidance

9.1 A guidance note is to be sent to all local authorities outlining the changes to school finance for the financial year commencing 1st April 2014. This will also include further guidance on this Order. This will be published on www.gov.uk.

10. Impact

10.1 An impact assessment has not been produced for this instrument as it has no impact on civil society organisations or on the public sector.

11. Regulating small business

11.1 The Regulations do not apply to small business.

12. Monitoring & review

12.1 As this order simply clarifies existing practice, there is no plan to monitor or review its effect.

13. Contact

13.1 Kit McHenry at the Department for Education. Tel: 020 7340 7976 or email: kit.mchenry@education.gsi.gov.uk can answer any queries regarding the instrument.