

**EXPLANATORY MEMORANDUM TO**  
**THE EDUCATION (SCHOOL AND LOCAL EDUCATION AUTHORITY**  
**PERFORMANCE TARGETS) (ENGLAND) (AMENDMENT) REGULATIONS 2008**

**2008 No. 3086**

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**

The purpose of these regulations is to amend the requirements for governing bodies and local authorities to set annual targets for the educational performance of children in maintained schools.

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

None

4. **Legislative Context**

4.1 The Education (Local Education Authority Performance Targets) (England) Regulations 2005 currently require local authorities to set and submit to the Secretary of State annually performance targets in certain subjects for pupils in key stages 2-4 inclusive. The targets are for the percentage of pupils who attain a defined threshold at each key stage, and progress by defined amounts between key stages. Local authorities are currently required to set targets in each of the specified subjects and at each of the relevant key stages for pupils in up to 17 ethnic groups and against 10 indicators. There is currently no requirement to set targets for pupils eligible for free school meals.

4.2 Both the Local Education Authority Performance Target Regulations (for local authorities) and the Education (School Performance Targets) (England) Regulations 2004 (for schools) require targets to be set in relation to attainment at Key Stage 3. Targets are set for the percentage of children achieving a certain level and for the percentage of children progressing two levels between key stages. National Curriculum testing at Key Stage 3 has been abolished by the Education (National Curriculum) (Key Stage 3 Assessment Arrangements) (England) (Amendment) Order 2008, and so consequential amendments are required.

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

- *What is being done and why*

### Target groups

7.1 Since 1998 local authorities have been required to set targets to improve the school attainment of different ethnic groups, breaking down their overall key stage threshold and performance targets (against 10 National Indicators) by up to 17 BME (black minority ethnic) groups wherever there are 30 or more pupils in that group in the relevant age cohort in the local authority. It is believed that the current system is over complex and burdensome to local authorities and is not operating as an effective driver on standards, producing extremely complex data-sets which actually mask the most important priorities.

7.2 These regulations reduce the number of pupil groups for the ethnic minority targets from 17 to 8 for which local authorities must set performance targets for the academic year 2009/2010 and adds a further category not based on the pupil's ethnic group - pupils eligible for free school meals. The regulations include a new trigger which will require a local authority to set targets where defined ethnic groups under perform locally by more than 10% relative to the whole cohort in the preceding year. The regulations also reduce the number of indicators against which targets must be set for each group from 10 to 4. The effect of the changes is to reduce the burden on local authorities, and to focus target-setting on the weakest performing pupil groups. Local authorities will still be able voluntarily to set performance targets for any other group and against other indicators if they wish.

### Key Stage 3

7.3 On 14 October the Secretary of State announced that he was ending schools' requirement to run National Curriculum tests at the end of Key Stage 3, with immediate effect.

7.4 The announcement that there will be no Key Stage 3 National Curriculum tests from 2009 onwards has implications for LA and school statutory targets for 2010. The following targets will no longer apply:

- The proportion of pupils achieving level 5+ in both English and maths (National Indicator 74)
- The proportion of pupils achieving level 5+ in science (National Indicator 83)
- The proportion of pupils making 2 levels progress in English Key Stage 2-3 (National Indicator 95)
- The proportion of pupils making 2 levels progress in maths Key Stage 2-3 (National Indicator 96)

- The proportion of pupils making 2 levels progress in English Key Stage 3-4 (National Indicator 97)
- The proportion of pupils making 2 levels progress in maths Key Stage 3-4 (National Indicator 98)

7.5 The Department's guidance to schools and local authorities has been revised to take account of these changes and an updated version is now available on the Department's target setting website

- *Consolidation*

7.6 The Department does not currently have any plans to consolidate either of the instruments which are amended. These amendments affect only a small part of the amended regulations.

## **8. Consultation outcome**

### Amendments in relation to target groups

8.1 The proposals have been the subject of several phases of consultation:

- Via the Dept's External Target Setting Group Meeting (April 2008). A paper was discussed which led to the development of the policy to slim down the number of targets
- The draft regulations were also informed via a wider consultation based on specific proposals for the detailed changes to be made. This consultation built on previous discussions with the External Targets Group and enabled us to refine the policy already developed. It was conducted via the Department's website. Because of the wish to relieve the burden on local authorities who would otherwise have had to set the original targets by 31 January 2009, the consultation lasted 6 weeks. It began on 26 August and closed on 6 October 2008. To ensure that as many who wished to were able to respond in the time, the consultation was preceded by notifications to each local authority and to other interested parties and stakeholders.
- The draft regulations were also informed by a series of visits to local authorities in October 2008 to consider the capacity of LAs to set, monitor and achieve targets for higher performance by FSM pupils. The consultations showed that the LAs consulted expected to be able to do this without significant difficulty.

8.2 In response to the formal consultation, 68% of respondents regarded the proposed new model as less burdensome for local authorities, 63% agreed that the proposed model would result in more meaningful targets, 70% accepted the rationale for removing the requirement for all LAs to set targets for nationally high-achieving groups and 63% agreed with our proposed groupings. 27% disagreed with the amalgamation of Black Caribbean with White / Black Caribbean as they felt that would hide an attainment gap between those two groups. As a result of this message, we re-visited the attainment statistics and, as a result, we have disaggregated those two groups.

8.3 79% of respondents welcomed the introduction of target-setting for pupils eligible for Free School Meals. Of those who disagreed with this point, some thought it was not a sharp enough tool to measure deprivation but there is a consensus that it is the sharpest tool available. 82% of respondents agreed with the trigger system to

require LAs to set targets for groups which under achieve locally.

8.4 Of the respondents who did not agree with certain elements of the proposals, some asked for some categories to be further broken down into sub-categories, several asked for LAs to be reminded of the need to collect data and monitor trends and some emphasised the need to monitor the traditionally high-achieving group. All of these needs can be met by the current proposals and the flexibility they provide to local authorities. These points will be addressed in guidance.

#### Amendments in relation to National Curriculum testing at Key Stage 3

8.5 The abolition of National Curriculum tests at key Stage 3 has meant a consequential removal of the requirement to set targets for attainment in those tests. The proposal to end KS3 testing was developed as a result of ongoing consultation with a range of stakeholders, and in response to the Select Committee's report on Testing and Assessment in May 2008. Further consideration of the assessment system will be taken over the coming months by an Expert Group on Assessment, appointed by the Secretary of State for Children, Schools and Families, who will continue to take into account the views of a range of stakeholders.

8.6 Attached are separate collated third party responses immediately after the announcement, mainly welcoming the move to abolish the tests from unions, QCA, opposition etc.

### **9. Guidance**

9.1 We will issue new guidance which covers arrangements for setting LA and school targets for 2010. The guidance will be aimed at those directly involved in setting LA targets - Directors of Children's Services, Heads of School Improvement, Primary and Secondary Strategy Managers, SIP Managers, Early Years' Lead Officers and other advisers. School and local authorities have already been informed of the proposals to amend the legislation.

9.2 The guidance will also contain information for people who work directly with schools to set targets. It covers target-setting for all pupil groups from Early Years Foundation Stage to Key Stage 4 and for improving attendance. LAs may wish to use some or all of the advice in part 2 to inform the guidance they provide to School Improvement Partners, Governing Bodies and Head teachers.

### **10. Impact**

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

10.2 The impact on the public sector is a reduction in burden on local authorities as they will be required to set targets for fewer underperforming groups. LAs will also be afforded greater flexibility under the new regulations, to meet local needs.

10.3 An Impact Assessment has not been prepared for this instrument.

**11. Regulating small business**

The legislation does not apply to small business.

**12. Monitoring & review**

The achievement and attainment figures for the national cohort, broken down by all ethnic categories, and by pupils eligible for FSM, are reported and analysed on an annual basis by the Department.

**13. Contact**

Angela Overington at the Department for Children, Schools and Families Tel 020 7340 7175 or e-mail: [angela.overington@dczf.gsi.gov.uk](mailto:angela.overington@dczf.gsi.gov.uk) can answer any queries regarding the instrument.

**The Education (School and Local Education Authority Performance Targets) (England)**  
**(Amendment) Regulations 2008**

**Annex**

**Third-party comment on testing announcement**

- **Steve Munby, NCSL**

Steve Munby, Chief Executive of National College for School Leadership

“The existing assessment system was, like the financial services system becoming too bloated and the decision to scrap key stage 3 tests is a victory for professionalism which will reduce the burden on heads and their schools and their students.

This is a brave move from a government that is listening to headteachers, parents, and pupils. The NCSL has backed the idea of the balanced score card for a long time and is delighted to see it on the table now. We hope school leaders themselves can be involved in helping to shape this,

Leaders in schools make a huge difference, especially when their skills can be unleashed to provide real leadership and to develop a curriculum and an approach to teaching and learning which suits the children and young people in their school.

Parents want to know how the school their children attend is performing but most of all they want their child to enjoy learning and to become a powerful and life-long learner.

These proposals go a significant way to addressing both of these issues and affirm that we don't have to sacrifice creativity in order to ensure accountability and to continue to raise attainment in schools.”

- **John Dunford, ASCL**

“Having advocated for many years a policy of intelligent accountability for schools, in particular the end of key stage 3 tests, I strongly welcome today's announcement. The proposals will make the testing regime more manageable and help to avoid a repetition of the chaos in summer 2008.”

“As I wrote in an article in the Times Educational Supplement on 5 September, nobody will mourn the loss of key stage 3 tests or league tables of their results. This is not weakening secondary school accountability, but re-focusing on results at ages 16 and 18, which directly impact on students' future prospects. By concentrating on what is most important, the accountability system will be strengthened and more widely respected.”

“Similarly, primary schools will be held to account for pupils' overall achievement through the key stage 2 test. Although there should be a stronger element of teacher assessment built into this stage, it is right to maintain an externally validated element to key stage 2, not least because it forms the baseline for accountability of secondary schools.”

“Assessment at the end of key stage 3 will now be part of the normal cycle of teacher assessment from 11 to 16. It will be for heads and teachers to decide on appropriate assessment arrangements and how to report progress to parents.”

“ASCL will work with the government to ensure that the end of key stage 3 tests does not increase teacher workload. In fact, this has the potential to decrease workload, as the time consuming period of preparation and mock testing will end. Teachers and pupils will be able to

take full advantage of the increased flexibility recently introduced into the curriculum for 11 to 14 year-olds.”

“Today’s proposals will help to raise standards, combining greater scope for creativity with a stronger emphasis on the basics. The proposed functional skills tests will be an important component of this.”

“I strongly welcome the consultation on a balanced scorecard to replace league tables of examination results. Schools do much more than prepare students for exams and there will be the opportunity to reflect more strongly the overall performance of the school. This is a move towards the intelligent accountability that ASCL has been arguing for over the last five years.”

“I can see the advantages of a single overall grade in place of an examinations result percentage, which only tells part of the story of how good a school is, but the devil will be in the detail.”

“The indicators used to make up the scorecard system must be carefully considered, in consultation with school leaders. A good school serving a challenging area must have as much chance of a high score as a good school serving a more affluent area. We look forward to detailed discussions with ministers and officials about the content and balance of the scorecard. In particular, for schools with sixth forms the proposed scorecard will need to align with the Framework for Excellence.”

“This package comes after many years of patient lobbying by ASCL and will be seen by secondary school leaders as a welcome move to intelligent accountability and assessment that supports good learning.”

- **Margaret Morrissey, Parents Outloud**

Margaret Morrissey, of parents group Parents Outloud who used to work as an Ofsted lay inspector, said it was the "first sensible thing Mr Balls has done since becoming Schools Secretary".

She said: "He should now scrap the whole lot.

"We are teaching the children to take these tests and supposing that all children are the same."

- **Christine Blower, NUT**

Christine Blower, acting general secretary of the National Union of Teachers, said the announcement was an "admission that the current testing system has failed".

She said: "For too long, English, mathematics and science teachers in secondary schools have found themselves skewing everything to enable their pupils to jump through a series of unnecessary hoops.

"The marking disaster of this year's tests has clearly been the last straw.

"A mixture of incompetence and an endemic shortage of markers must surely have propelled Ed Balls to take the view that at least part of the testing system was unsustainable."

"Now I would like him to understand that the whole testing system needs fundamental change.

"I call on Ed Balls to suspend all primary school tests and commission a comprehensive and independent review of testing and assessment, and to include fully all school communities in that review."

- **Mary Bousted, general secretary of the Association of Teachers and Lecturers (ATL)**

"We are delighted the Government has had the sense to scrap key stage 3 tests in their current form and move towards greater use of teacher assessment.

"ATL has led the debate on testing, and has long called for a system that recognises teachers' expertise.

"The challenge now will be to get teacher assessments right so they allow teachers to teach a wide curriculum, rather than merely become test administrators."

But she said the Government should also scrap tests for 11-year-olds.

"We continue to hope the Government will eventually recognise the damaging impact of key stage 2 tests and consign them to the education bin alongside key stage 3 tests.

"We believe it is right to hold teachers and schools accountable for the education they provide, and these proposals should help achieve both high standards and a broader curriculum.

"The jury is out on how the Government will integrate pupil attainment, progression and wellbeing indicators into a single grade to replace the key stage 3 tests, and whether it will work.

"ATL will work with the Government, through the social partnership, to make sure the new measures benefit pupils and teachers and do not lead to excessive workloads."

- **Judith Bennett, National Governors Association**

(BBC News 1633) Schools can test children themselves, don't need enormous national testing system that was inordinately expensive .. Get rid of all Sats? Would like to have seen end of KS2 as well, they become so high in people's consciousness, linked to league tables and pillorying people like headmasters over things they can't control .. Could end up with more tests? Would hope not. As long as league tables go. Schools have enough professionalism to judge where children are and what their progress is .. US-style report cards? We don't have anything like that, would like something that looks more broadly at what children achieve in school than just five As at GCSE. Something that shows more rounded progress.

- **Barry Sheerman, chairman of the Commons schools select committee**

"I hope that with the abolition of these tests, teachers will have greater freedom to focus on personalised learning, as well as be able to offer children access to a balanced education.

"It is also good news that the government will review the current system of KS1 tests.

"Given our concerns about the single level tests, I am also pleased that the Government has said that more evidence is needed on single level tests at KS2 before proceeding nationally."

- **Ken Boston, chief executive of the Qualifications and Curriculum Authority**

Welcomed the moves and said the decision to develop national sampling to check on pupil performance could provide a "very useful check" on how the system is doing.

- **Chris Keates, general secretary of the National Association of Schoolmasters Union of Women Teachers**



"The sound of a deep collective sigh of relief will emanate from secondary schools across the country at the announcement."

But she warned that proposals to introduce a school report card would require careful thought.

"Get it right and it could help to streamline school information systems, rationalise complex reporting systems and reduce bureaucratic burdens on teachers.

"Get it wrong and the response from schools will be fierce."

- **Michael Gove, Shadow Children's Secretary**

Michael Gove welcomed Mr Ball's change of mind and said England had fallen behind in every external measure educational performance.

"We've argued for fewer national tests and more rigour and we want to work constructively to improve the assessment and qualifications regime."

(from BBC News 1636) Welcome spirit of what's been announced today. KS3 is weak link in chain, but also needs to be proper focus on those at risk falling behind .. Tories introduced these tests? We did introduce tests at certain age groups but have seen those tests narrowed to overstress one type of attainment .. Report cards? Intriguing and want to see more detail. They worked in NY and would be wrong to dismiss them but don't want another layer of bureaucracy .. Bipartisan approach? When govt does right thing we offer support. Balls may have been politically deaf to us today to make a point.

- **David Laws, Lib Dem children's spokesman**

"I welcome the Government's complete U-turn.

"The Sats tests taken by 14-year-olds are not only a waste of time but have been highly unreliable over the last few years.

"This U-turn needs to be just the first move in restoring confidence in standards in English education and putting the needs of young people first instead of the current system of factory farming our children.

"Ed Balls needs to establish a genuinely independent Educational Standards Authority to sample pupil performance each year so that we really know what is happening to standards and that results are not being inflated by teaching to the test or the dumbing down of exams.

"It is important to retain testing at 11 years so that parents have real information about results in primary schools and that the focus is on giving young people the key skills they need to thrive in secondary education."