

**EXPLANATORY MEMORANDUM TO**  
**THE EDUCATION (PUPIL INFORMATION) (ENGLAND) (AMENDMENT)**  
**REGULATIONS 2018**

**2018 No. 688**

**1. Introduction**

1.1 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 These Regulations make consequential amendments to the Education (Pupil Information) (England) Regulations 2005.

**3. Matters of special interest to Parliament**

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

3.1 None.

*Other matters of interest to the House of Commons*

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

4.1 These Regulations make amendments to the Education (Pupil Information) (England) Regulations 2005.

4.2 Regulation 6 of the Education (Pupil Information) (England) Regulations 2005 provides for the information to be included in the head teacher's report on a pupil. Regulation 9 provides for the information to be included in the common transfer file.

4.3 The information to be included in the head teacher's report to parents of pupils with special educational needs at the end of Key stage 1 and Key Stage 2 is amended to apply only to pupils assessed to Performance Scale (P scale) 4. The standards of assessment have been extended to cover all pupils engaged in subject-specific study for English and mathematics, which makes P scales 5 to 8 obsolete.

4.4 To align with the revised standards of assessment, reference to P Scales above P Scale 4 have been removed, along with the requirement to report P Scales in science.

4.5 The Regulations also amend the information to be included in the common transfer file for these pupils to only include P scales 1 to 4 in English and mathematics.

**5. Extent and Territorial Application**

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is England only.

## 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**

### *What is being done and why*

- 7.1 Statutory assessment has an important role to play in ensuring that every child is supported to leave primary school prepared to succeed. It is vital that the statutory assessment system is fair and inclusive, and that it enables all pupils to show progress, regardless of any additional needs they may have.
- 7.2 Currently, pupils working below the standard of national curriculum tests are assessed using statutory P scales if they have special educational needs and disabilities (SEND). Introduced in 1998, P scales are performance attainment targets set out in a numerical scale ranging from 1 to 8 for pupils with SEND. They were designed to sit below the level descriptors used to assess the old national curriculum, which was replaced in 2014.
- 7.3 In 2015, Ministers established an independent review of statutory assessment arrangements for pupils in primary school who are working below the standard of national curriculum tests, led by Diane Rochford. This review recommended removing P scales as they were no longer fit for purpose and had come to dominate assessment and teaching at the expense of children's individual needs. Following a public consultation which saw broad support for this proposal, the government confirmed that P scales would be removed as statutory assessment.
- 7.4 P scales will be replaced by two new forms of statutory assessment for pupils working below the standard of national curriculum tests. Pre-key stage standards of attainment, assessed by teachers as opposed to national curriculum tests, will apply for all pupils that schools deem engaged in subject-specific study (on P scales 5 to 8).
- 7.5 For pupils not deemed to be engaged in subject-specific study, a separate approach is being piloted by the Department for Education, eventually to replace P scales 1 to 4. Once this assessment has been confirmed, P scales will be removed in their entirety from legislation. Until that point, P scales will be used for pupils deemed to be working below the pre-key stage standards.

## 8. **Consultation outcome**

- 8.1 In order that organisations and individuals with an interest in statutory assessment arrangements for pupils working below the standard of national curriculum tests could comment on the Rochford Review recommendations, the Department for Education ran a public consultation from March to June 2017 on the final recommendations made by the Review.
- 8.2 The consultation following the recommendations made by the Rochford Review received 594 submissions, with respondents providing a diverse and informed range of views. The consultation received responses from: 122 teachers working in special schools, 77 teachers working in mainstream schools, 68 head teachers of special schools, 78 head teachers of mainstream schools and 37 local authority representatives. The number of people whose views have been considered as part of this process is, however, greater than 594. Representative organisations such as the

teaching unions canvassed their members before responding. People also contributed via consultation events and meetings.

- 8.3 The majority of the consultation respondents and representative organisations supported the removal of P scales. As a result the government agrees with the Rochford Review that P scales are no longer fit for purpose. As they are based on the old national curriculum, they do not support pupils to progress onto the new national curriculum. In addition, they replicate the old system of levels, which over time came to dominate teaching, and prioritised pace over consolidation. On this basis, it is the Government's intention to accept the Rochford Review recommendation to remove the statutory requirement for teachers to assess pupils using P scales. The government response to the consultation is published online:  
<https://www.gov.uk/government/consultations/primary-school-pupil-assessment-rochford-review-recommendations>.
- 8.4 In the response the government set out that from the academic year 2018/19, the requirement to assess pupils engaged in subject-specific study using P scales (broadly P scales 5 to 8) will be removed and the requirement will be replaced with a duty to report against new pre-key stage standards of attainment.
- 8.5 The response also sets out that the government will pilot the Review's recommended approach to assessing pupils not engaged in subject specific study (broadly P1 to P4) in the 2017/18 academic year, before taking any final decisions on whether to implement this approach on a statutory basis. Subject to the evaluation of this pilot, and final ministerial decisions, the government confirmed that it would remove P scales for pupils not engaged in subject specific study from the 2019/20 academic year and replace them with a duty to report against the 7 aspects of engagement as recommended by the Rochford review.<sup>1</sup>

## 9. **Guidance**

- 9.1 Schools have been made aware of the upcoming change through the government response to the consultation, communications directly to all primary schools, media coverage and conference presentations.
- 9.2 The Standards and Testing Agency's annual statutory guidance in autumn 2018 will set out schools' legal duty to report attainment for pupils working below the standard of national curriculum tests in the form of pre-key stage standards, and P scales 1 to 4 for those working below these.

## 10. **Impact**

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

## 11. **Regulating small business**

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

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<sup>1</sup> The 7 aspects of engagement for cognition and learning are assessment criteria developed in 2011 as part of a DfE-funded research project into children with complex learning difficulties and disabilities (CLDD).

12. **Monitoring & review**

12.1 The legislation does not apply to activities that are undertaken by small businesses, therefore a review provision is not required.

13. **Contact**

13.1 Rumana Begum at the Department for Education, Telephone: 0207 654 6458 or email: Rumana.Begum@education.gov.uk can answer any queries regarding the instrument.