

**EXPLANATORY MEMORANDUM TO**  
**THE EDUCATION (PRESCRIBED PUBLIC EXAMINATIONS) (ENGLAND)**  
**REGULATIONS 2010**

**2010 No. 2327**

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 sets out the public examinations which are prescribed for the purposes of sections 402, 451, 453 and 454 of the Education Act 1996, which impose obligations on schools in relation to entering pupils into examinations. It revokes and replaces the Education (Prescribed Public Examinations) Regulations 1989 (so far as they apply to England), which are now out of date.

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

3.1 None

**4. Legislative Context**

4.1 The Education (Prescribed Public Examination) Regulations 1989 (S.I. 1989/377) have not been amended to reflect changes to qualifications and are out of date, which has the potential to undermine the Government's policy in relation to sections 402, 451, 453 and 454 of the Education Act 1996.

4.2 These provisions impose obligations on schools in relation to entering pupils into prescribed public examinations and on charging fees. The fact that the Regulations are out of date means it is open to schools to impose charges in relation to a qualification which is not listed in the Regulations. The Education (Prescribed Public Examinations) (England) Regulations 2010 update the qualifications in relation to which the 1996 Act will apply so as to ensure the Government's policy intentions are reflected in the legislation.

**5. Territorial Extent and Application**

5.1 This instrument applies to England.

5.2 This instrument applies to all maintained schools, excluding sixth-form and further education colleges.

## **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 Maintained (state) schools in England are obliged to enter their pupils for prescribed public examinations which the school has prepared them for through teaching a specific course of study (section 402 of the Education Act 1996 (“the 1996 Act”). Furthermore section 453 of the 1996 Act states that maintained schools may not pass on charges for entries into prescribed public examinations to pupils or their parents, except in limited circumstances. Section 454 provides that pupils and parents are not required to pay for or supply materials and books etc for use in connection with a prescribed public examination, and Section 451 provides that no charge shall be made for the provision of education, including education offered outside of normal school hours which contributes toward the attainment of a prescribed public examination.

7.2 The public examinations that are prescribed for the purposes of these provisions of the 1996 Act are currently contained in the Education (Prescribed Public Examination) Regulations 1989 (“the 1989 Regulations”). Many of the qualifications listed in the 1989 Regulations have now been withdrawn and others have taken their place, however the Regulations have not been updated and so there is potential for uncertainty over which qualifications are subject to the statutory obligations on examination entries and fees and which are not.

7.3 The Education (Prescribed Public Examinations) (England) Regulations 2010 clarify the situation and better reflect the range of qualifications currently being offered by maintained schools. The public examinations which are prescribed in the new Regulations are those which are listed in regulation 2(3) and which are approved for the purposes of section 96 of the Learning and Skills Act 2000 (qualifications for persons under 19). Qualifications approved for the purposes of section 96 of the Learning and Skills Act 2000 may be viewed and downloaded from the Department for Education’s website.<sup>(1)</sup> Further information on each of the qualifications which are included in the new Regulations is included in the annex to this memorandum.

## **8. Consultation outcome**

8.1 Members of the Association of School and College Leaders (ASCL) and the Advisory Council for Mathematics Education (ACME) were the only respondents to the public consultation. The draft Regulations consulted on included a list of qualification categories, and the response from ASCL indicated that the list encompassed every type of qualification currently being offered by maintained schools. However, the return from ACME pointed to two additional mathematics

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(1) A full list of approved qualifications can be found at <http://www.dcsf.gov.uk/section96/>

qualifications which did not fit comfortably into any of the existing qualification categories.

8.2 The changes made as a result of the consultation have eliminated this problem by removing the list of qualification categories on the face of the document in favour of a broader reference to accredited qualifications.

## **9. Guidance**

9.1 It is expected the new Regulations will have no practical implications for maintained schools. The Regulations have been designed to closely reflect what it already taking place in schools, and therefore we feel that publishing guidance on the changes is unnecessary.

## **10. Impact**

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

10.2 The impact on the public sector is minimal. The new Regulations apply only to maintained schools and do not represent any additional regulatory or administrative burden on the part of schools. The new instrument updates the list of prescribed public examinations in relation to which the statutory obligations in the 1996 Act are linked, but the 1996 Act obligations remain the same. So far as we are aware, schools are not currently charging to enter pupils into examinations in any of the qualifications which will be prescribed in the new Regulations and so the Regulations will have little impact on schools.

10.3 An Impact Assessment has not been prepared for this instrument. The existing statutory obligations have not changed, and therefore the cost impact of the new instrument is expected to fall below the five million pound threshold required for a full impact assessment.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 The instrument has been drafted with longevity in mind. By listing qualification categories rather than specific qualifications we hope to reduce the need continually to update the Regulations whenever new qualifications are developed.

## **13. Contact**

13.1 Anthony McDonough at the Department for Education Tel: 0207 783 8743 or email: Anthony.McDonough@education.gsi.gov.uk can answer any queries regarding the instrument.

## GLOSSARY OF QUALIFICATIONS CATEGORIES

**Advanced Extension Awards** are qualifications aimed at the top 10% of students taking GCE A-level qualifications. The Award is now only available in mathematics.

**An Award, Certificate or Diploma in the Qualifications and Credit Framework** – the Qualifications and Credit Framework is a system for recognising skills and qualifications, which is intended to give a wider range of learners the opportunity to get qualifications in a way that suits them. It recognises smaller steps of learning and enables learners to build up qualifications bit by bit.

**Asset Languages** qualifications assess skills in listening, speaking, reading and writing of languages and, if assessed externally, it leads to a nationally recognised qualification.

**Cambridge International Certificate** is a qualification, similar to the old O Level, which is recognised internationally and was developed by the University of Cambridge International Examinations.

The **Cambridge Pre-University** is a qualification from the University of Cambridge international Examinations that is an alternative to A-level qualifications. It is a diploma-type qualification, principally aimed at students aged 16–19.

The **Diploma** is a composite qualification for 14 to 19 year olds offering a mix of theoretical and applied learning. The Diploma can be studied at Foundation Level (roughly the equivalent of 5 GCSEs at grade D to G), Higher Level (roughly equivalent to 7 GCSEs at grade A\* to C) or Advanced level (roughly equivalent to 3.5 A levels).

**Entry level qualifications** are qualifications targeted at 14 to 16 year olds who are not yet working at GCSE level.

**Extended Project** is a skills-based qualification which is broadly equivalent in size to an AS level. It can be a stand-alone qualification or taken alongside A levels and/or as a component of Advanced Diplomas.

**Free-Standing Mathematics Qualifications** are mathematics qualifications available at Foundation, Intermediate and Advanced level, which are aimed at post-16 students.

**Functional Skills** are practical skills in English, information and communication technology (ICT) and mathematics. Functional skills can be stand-alone qualifications and they can also form part of other qualifications, such as the Diploma.

The **General Certificate of Secondary Education (GCSE)** is an academic qualification awarded in a specified subject, generally taken in a number of subjects by students aged 14–16 in secondary education.

**Advanced Subsidiary Level and Advanced Level General Certificate of Education**, usually referred to as an AS-level and A-level respectively. They are subject-based qualifications mostly taken by students aged 16-19 in school sixth-forms or at college. AS is the first half of an A-level, as well as being a stand-alone qualification, and A2 is the second half of an A-level qualification.

The **International Baccalaureate** is a broad educational foundation with headquarters in Geneva, Switzerland. The IB offers three educational programmes for children aged between 3 and 19.

**Key skills** are the skills that are commonly needed for success in a range of activities in education and training, work and life in general and include communication, problem solving and working with others. Key skills qualifications can be taken by anyone and alongside other qualifications, such as GCSEs.

**Vocational qualifications** range from general qualifications, where you learn skills relevant to a variety of jobs, to specialist qualifications designed for a particular sector. They are mainly taken by learners over 16 at college.