

EXPLANATORY MEMORANDUM TO
THE EDUCATION (NATIONAL CURRICULUM) (SPECIFIED PURPOSE)
(ENGLAND) ORDER 2016

2016 No. 478

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 Under the National Curriculum for England, arrangements called assessment arrangements are made for assessing pupils for certain purposes that we specify by order. This order specifies as a purpose of assessment arrangements to provide The Office of Qualifications and Examinations Regulation (Ofqual) with evidence on changes over time in pupils' performance in English Language and mathematics, at the end of key stage 4.

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 The Education (National Curriculum) (Specified Purpose) (England) Order 2016 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. This is the first order to specify a purpose for key stage 4 assessment arrangements. The details of the assessment arrangements are set out in The Education (National Curriculum) (Key Stage 4 Assessment Arrangements) (England) Order 2016 (S.I. 2016/476) made under section 87(3)(c) of the Education Act 2002. This order is not subject to any parliamentary procedure and no explanatory memorandum is required.

4. Legislative Context

- 4.1 Under the National Curriculum arrangements are made for assessing pupils for specified purposes (assessment arrangements). Such arrangements are specified by the Secretary of State by order under section 87(3)(c). The Education (National Curriculum) (Specified Purpose) (England) Order 2016 brings national reference tests within the definition of "assessment arrangements".

5. Extent and Territorial Application

- 5.1 The instrument extends to England only.
5.2 The instrument applies to 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 Ofqual is introducing national reference tests to provide additional information that will be used to strengthen the grade setting process when the new reformed GCSEs are awarded.
- 7.2 Ofqual's introduction of the new national reference tests contributes to the Government's programme of reform of GCSEs. It is one of a number of strands of activity that Ofqual is taking forward to strengthen the GCSE grade setting process. The first annual tests will be held in selected schools in March 2017.
- 7.3 The instrument will support Ofqual's plans to introduce national reference tests. It will make participation mandatory for those schools that are selected to take part in the tests, which will help to make sure the sample of students that take them every year is nationally representative.
- 7.4 Currently, Ofqual's comparable outcomes approach to awarding of GCSEs allows exam boards to increase (or decrease) the proportion of pupils awarded each grade in a particular year, provided that there is evidence to show performance has genuinely improved (or declined) across the cohort. Providing evidence to show performance has genuinely improved (or declined) is not straightforward. Teachers are concerned that their efforts to raise standards, year by year, may not be fully reflected in the awards made at GCSE. This is the gap in information that the national reference tests are designed to address.
- 7.5 Ofqual has requested that DfE introduces secondary legislation to require selected schools to take part in the tests.

Consolidation

- 7.6 Not applicable.

8. Consultation outcome

- 8.1 There is no requirement to consult for the purposes of the Education (National Curriculum) (Specified Purpose) (England) Order 2016. However the Department for Education ran a national consultation from 30 November 2015 to 22 January 2016 on a draft of the Order, which received 28 responses. Overall, there was a consensus amongst respondents that the tests should be made compulsory for selected schools with two-thirds agreeing with this point. The overwhelming majority also agreed that the head teacher should be able to withdraw a pupil from the tests where they consider this to be necessary. Over half of respondents agreed that the guidance on the administration of the tests should be subject to the approval of the Secretary of State. Two-thirds of respondents did not believe that the secondary legislation will have a disproportionate impact, positive or negative, on specific pupils, in particular those with 'relevant protected characteristics'.
- 8.2 Having carefully considered the responses to this consultation the Department has decided to proceed with enacting the proposed secondary legislation. The consultation

response was published on 24 March 2016, before the instruments were laid, and can be found here: <https://www.gov.uk/government/consultations/national-reference-test-implementation-arrangements>.

9. Guidance

- 9.1 The test supplier will make delegated supplementary provisions (subject to the approval of the Secretary of State) which will apply to the selection of schools and pupils to take part in the tests. We will write to schools to advise them of the purpose of the tests and when the statutory provisions will come into force. The delegated supplementary provisions will be published by the Secretary of State as required by the Education (National Curriculum) (Key Stage 4 Assessment Arrangements)(England) Order 2016.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is to provide additional information to strengthen the GCSE grade setting process.
- 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.

12. Monitoring & review

- 12.1 As the instrument only affects publicly funded schools a review clause is not required.
- 12.2 Ofqual will review each year the extent to which schools are complying with the new instruments (including The Education (National Curriculum) (Key Stage 4 Assessment Arrangements) Order 2016) and how this is contributing to a nationally representative sample of students taking the tests. Ofqual will publish the results of the tests annually after the GCSE results have been announced (in late August) and this will include an analysis of the effectiveness of these instruments.

13. Contact

- 13.1 Stephen Rogers at the Department for Education: telephone: 07825 105186, or email: Stephen.rogers@education.gsi.gov.uk. Stephen Rogers can answer any queries regarding these instruments.