

**EXPLANATORY MEMORANDUM TO  
THE EDUCATION (INDEPENDENT SCHOOL STANDARDS) (ENGLAND)  
(AMENDMENT) REGULATIONS 2007**

**2007 No. 2007/1087**

**1** This explanatory memorandum has been prepared by the Department for Education and Skills and is laid before Parliament by Command of Her Majesty.

**2 Description**

2.1 These Regulations amend the Education (Independent School Standards) (England) Regulations 2003. The amendments introduce a number of additional requirements for new staff appointed to these schools from 1 May 2007, alongside existing requirements for enhanced Criminal Records Bureau (CRB) checks and in relation to qualifications, health, physical capacity and the absence of any bar from working with children. The additional requirements for staff appointed from 1 May 2007 comprise:

- the person's identity and right to work in the UK must be checked;
- foreign nationals must be subject to an enhanced CRB check, in the same way as all other staff;
- further checks must be carried out on those who have lived overseas if a CRB check is insufficient to establish suitability to work in a school; and

2.2 The Regulations include new requirements for schools where staff are supplied by a supply agency. Before such supply staff begin work, the school must:

- receive written notification from the supply agency that it has carried out the checks the school is required to make for its own staff before appointment, that it has applied for or obtained a CRB certificate and, where it has received a CRB certificate, whether or not the CRB certificate included any disclosed information or any information was provided to the agency alongside the certificate; and
- receive a copy of the CRB certificate if the agency has received a CRB certificate which included any disclosed information or any information was provided to the agency alongside the certificate.

2.3 Schools must place agencies under an obligation to provide the written notifications and certificates at 2.2, through their contracts or other arrangements with them. Schools must also carry out their own identity checks to confirm that the individual arriving at the school is the individual the agency is intending to supply.

2.4 The Regulations also place a new requirement on schools to keep a single register of the checks they have made in respect of their staff and for supply staff.

2.5 These amendments will bring Independent school standards regulations into line with those for maintained schools. Similar amendments for Non-Maintained Special Schools are also intended to commence on 1 May 2007.

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

3.1 None

### **4 Legislative Background**

4.1 Section 157(1) (c) and (d) of Part 10 to the Education Act 2002 gives the Secretary of State regulation making powers in respect of independent school standards, specifically the suitability of proprietors and staff, and the welfare, health and safety of pupils, at independent schools.

### **5 Extent**

5.1 These Regulations apply to England only.

### **6 European Convention on Human Rights**

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

### **7 Policy Background**

7.1 The government commissioned Ofsted to carry out a survey of recruitment processes and record keeping in schools and institutions, including the use of CRB Disclosures, as strongly recommended in DfES guidance. Their report, *'Safeguarding Children: An Evaluation of Procedures for Checking Staff Appointed by Schools'*, was published on 20 June. Of the institutions surveyed, all had complied with guidance by seeking enhanced CRB Disclosures for staff working in schools. However, there were inconsistencies in record-keeping.

7.2 Following this the Secretary of State, Alan Johnson, in a statement to the House of Commons on 20 June (HC 20 June 2006 col 1191), made commitments in the light of the recommendations on record keeping. These included the requirement for schools to maintain a single central record, as well as additional requirements in respect of checks on agency staff and staff who have lived overseas.

7.3 Guidance previously issued by the Department for Education and Skills required staff in schools to have a range of checks, including enhanced CRB checks, prior to, or as soon as possible following, appointment. On 14 November, the Department launched revised and consolidated guidance for education institutions which sets out existing requirements and those that these new Regulations will introduce. This guidance was published on 1 January 2007.

## Consultation

7.4 The draft regulations were subject to a consultation of all independent schools between 15 January and 26 February 2006, and followed an earlier consultation on new guidance on recruitment checks. The consultation gave support to the regulatory changes and respondents acknowledged that the proposed amendments establish, through regulations, what is already common practice in many independent schools.

## **8 Impact**

8.1 A Regulatory Impact Assessment has been prepared and is attached to this Explanatory Memorandum.

## **9 Contact**

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## **Regulatory Impact Assessment on amendments to the Education (Independent School Standards) (England) Regulations 2003**

### **Purpose and intended effect**

#### Objective

To strengthen the procedures that independent schools (nb references to independent schools include Academies and CTCs) need to follow when recruiting staff, reducing the risk that unsuitable people gain access to children in the schools' workforce, and so helping to reduce the risk of children suffering harm.

#### Background

Following the List 99 review earlier this year, Ofsted inspected the recruitment practices in a sample of maintained schools. The resulting report, 'Safeguarding Children, an evaluation of procedures for checking staff appointed by schools' published in June 2006, highlighted a number of concerns around record keeping in schools and clarity of guidance. Following this report, the Government proposed to further strengthen the schools workforce recruitment and vetting arrangements.

The proposals covered by this RIA seek to reflect the commitments made by the Government to:

- amend regulations to remove the exemption from mandatory CRB checks for overseas staff recruited directly from abroad, so that CRB checks are mandatory for all new overseas staff;
- strengthen record keeping requirements through new legislation, to ensure that schools keep a record that the necessary pre employment checks have been carried out; and,
- make it a requirement for schools to obtain confirmation from supply agencies that CRB and other checks on suitability to work with children have been carried out, and to keep a record of receiving that confirmation.

To further strengthen the safeguards around supply teachers the proposals introduce new requirements that schools must ensure in their contractual relationship with supply agencies that they provide confirmation that a CRB check has been carried out, and that information is passed on if appropriate.

#### Rationale for government intervention

To reduce the risk of unsuitable people gaining access to children through the school workforce by ensuring clear guidance exists that is underpinned by regulation where appropriate; and to help ensure all those that work in the schools' workforce are clear about their responsibilities when recruiting staff. This will help to reduce the risk of children suffering harm; and the resultant costs - social and economic.

## **Consultation**

### Within government

The proposals have received cross- government support, and wide-ranging discussions have been held with other relevant government departments and key stakeholders. The proposals have been well received.

### Public Consultation

The draft regulations were the subject of a dedicated consultation of all independent schools and their representative bodies. In view of the relatively small scale, dedicated target audience, the fact that independent schools were included in the consultation on new guidance on recruitment checks, and the fact that the proposed amendments seek to formalise what is already common practice in independent schools, the consultation period was shortened to 6-weeks (15 January-26 February).

We received 17 responses to the consultation, all of which supported the need to enshrine in regulations a more robust CRB checking regime.

## **Options**

### Option 1: maintain the status quo

### Option 2: voluntary approach through guidance

The Government could seek to implement the recommendations through a voluntary approach, by strongly recommending that schools implement the revised guidance.

### Option 3: introduce regulations and guidance to take forward the proposals

Introduce amending regulations as set out above, which reflect the changes in revised guidance.

## **Costs and Benefits**

### Sectors and groups affected

The proposals will affect all independent schools; and, teacher and other supply businesses that provide staff to independent schools.

### Benefits

#### *Option 1: maintain the status quo*

Allows schools to continue as present. However, this will allow inconsistent practice to continue. The Government has concluded that the system does need to be strengthened in advance of the vetting and barring scheme scheduled to be introduced in 2008, and that leaving the current system untouched is not an option. The Government considers that implementing these commitments would help to

strengthen the existing system, further help to safeguard children from harm and help to maintain public confidence in the system.

*Option 2: voluntary approach through guidance*

While a voluntary approach could go some way to further strengthen the existing system, it may lead to inconsistent practice across the workforce, with the result that some schools do not carry out the necessary checks and keep the necessary records to ensure that they are taking every reasonable step to safeguard their children from harm. It is the Government's view that effective systems must be used by every school to ensure that all children are safeguarded from harm and that public confidence is maintained, and that clarity and consistency of approach is needed.

*Option 3: introduce regulations and guidance to take forward the proposals*

This option strengthens existing regulation, and supports this with guidance at minimal cost and effort and offers greatest consistency across the workforce, helping to ensure that schools and educational establishments are using good practice recruitment processes to help minimise the risk of harm to children. This is the Government's preferred option, and should help to provide the public with reassurance that robust measures are in place to help protect children from harm. It reduces the risk of children suffering harm and reduces the associated social and economic costs.

Costs

*Option 1: maintain the status quo*

Doing nothing will have no additional costs, although there may be social and economic costs if any child is harmed as a result of leaving the system as it is.

*Option 2: voluntary approach through guidance*

The Government would strongly recommend that independent schools follow these procedures, and the vast majority of schools will do so; the costs would be approximately the same as for a regulatory response.

*Option 3: introduce regulations and guidance to take forward the proposals*

The fee for a CRB check is paid by the individual applying for a check not the employer. Some employers choose to pay the fee on behalf of the employee, but it is at their discretion. Therefore, the need to conduct CRB checks on all teachers recruited from overseas does not necessarily represent an added financial burden on independent schools. The costs associated with processing the additional checks for overseas teachers are a small additional burden for which costs can be met from within existing resources.

The proposed regulation requiring schools to obtain evidence from supply agencies that the necessary checks have been undertaken on all supply staff engaged by a school are based on good practice that is already applied in many educational settings

and supply businesses as a result of the strong guidance that has been issued by the Department for Education and Skills over a number of years. The Government does not expect there to be significant additional costs.

Requiring schools to keep records that the necessary checks on staff have been carried out extends and clarifies the existing strong guidance. While it is the Government's view that schools should have been keeping records, Ofsted's findings suggest that many maintained schools are not. Inspection reports from Ofsted and the Independent Schools Inspectorate suggest that record keeping in independent schools is generally of a higher standard (these reports did not include Academies although we have no reason to believe that practice is different in Academies). The additional burden on independent schools of maintaining a single central record of checks will be small. It is expected that keeping this record up to date will usually be no more than two days of an administrative staff member's time spread over the year, depending on the size of the school, the number of teachers and the frequency with which supply staff are used. The Department for Education and Skills has provided advice and guidance to schools on record keeping.

### **Small Firms Impact Test**

Some independent schools and supply agencies will be small firms. Supply agencies should already have been supplying relevant information to schools. Where they are not, the additional cost borne by them to conform to the new regulations is likely to be minimal.

The number of staff recruited from overseas by small firms is likely to be small, so the additional cost of carrying out the additional checks on overseas staff is likely to be minimal; however, supply agencies are able to decide whether or not to reimburse the supply teacher for that cost.

### **Competition Assessment**

There are no competition implications.

### **Enforcement, sanctions and monitoring**

In relation to independent schools, the Department for Education and Skills will have a central leadership role in ensuring that schools take the necessary steps to safeguard their children from harm. Ofsted or other inspectorates, as part of their regular inspection process, will seek to determine how well schools comply with the regulations and associated guidance. Where schools are found to be placing the children for which they are responsible at risk of harm through inadequate checking, inspectorates will comment on this in their report. If schools do not take the necessary steps to correct the situation promptly, then the Department for Education and Skills will, as a last resort, deregister the independent school which will prevent it operating.

### **Implementation and delivery plan**

These regulations will come into force on 1 May 2007. For all new staff appointed after this date to whom these regulations apply, schools will be required to carry out

and record these checks.

### **Post-implementation review**

Ofsted inspectors will examine school records to ensure compliance with these regulations. Where non-compliance is reported, the Government will consider what additional steps may be necessary to ensure that the regulations are followed.

### **Summary and Recommendation**

The Government is committed to strengthening the existing safeguarding regime. To this end the Government has published revised guidance and subject to parliamentary procedure made revised regulations. Following Ofsted's June recommendations, the Government is in the process of ensuring that the records held by schools on their existing staff is complete. These regulations were promised to make the recording of a range of checks mandatory for all appointments to positions in schools, to strengthen the requirements schools in relation to supply staff and to ensure that foreign nationals recruited from overseas are all required to have a CRB disclosure.

Option 3 best meets ministerial policy commitments to safeguarding children whilst simultaneously minimising adverse impact on schools and those that supply staff to them. This is the recommended option.

### **Declaration and publication**

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed ...*Andrew Adonis*.....

Date ...*28th March 2007*.....

Lord Andrew Adonis  
Parliamentary Under Secretary of State for Schools  
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### **Contact Point**

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