

EXPLANATORY MEMORANDUM TO

THE EDUCATION (NON- MAINTAINED SPECIAL SCHOOLS) (ENGLAND) REGULATIONS 2011

2011 No. 1627

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

2. **Purpose of the instrument**

2.1 These Regulations consolidate with amendments the Non-Maintained Special Schools Regulations 1999 (“the 1999 Regulations”) and set out the requirements for a non-maintained special school to be approved, and continue to be approved, by the Secretary of State.

2.2 These Regulations remove unnecessary requirements on the sector contained in the 1999 Regulations and realign the requirements for non-maintained special schools with those for maintained special schools.

2.3 These Regulations also implement provisions inserted in the Education Act 1996 (“the 1996 Act”) by sections 143 and 145 of the Education and Skills Act 2008 (“the 2008 Act”). The amendment made by section 143 (new section 342(5A)) provides a regulation making power securing the right for sixth form pupils to withdraw from acts of religious worship. The amendment made by section 145 (new section 342B) enables regulations to provide for a new right of appeal for proprietors of non-maintained special schools to the First-tier Tribunal (Health, Education, and Social Care) against decisions of the Secretary of State.

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

3.1 The Government has given a commitment to the Merits Committee to ensure schools have adequate time to make arrangements to meet any new requirements in regulations. It has committed to lay schools-related statutory instruments by 1 April in any year to come into force on 1 September in that year, except in exceptional circumstances. It was not possible to make and lay these Regulations by 1 April 2011 for the reasons set out in this memorandum.

3.2 However, officials have maintained regular contact with the representative body for the sector, the National Association for Independent Schools and Non Maintained Special Schools, ensuring they were fully aware of the reasons for the delay in introducing new Regulations. The sector has been very supportive of the approach adopted in these Regulations and are keen to have the Regulations come into force from 1

September 2011.

3.3 Draft Regulations were consulted on in December 2009 and included recommendations contained in the Report of Sir Roger Singleton Keeping Our School Safe published in March 2009. It had been the intention to make the Regulations in April 2010 and they would have come into force on 1 September 2010. However, following a change in Government further work was carried out to ensure new regulations did not impose additional burdens on schools and were aligned with the new Government's priorities.

4. Legislative Context

4.1 The Regulations are made under sections 342 and 342B of the 1996 Act. The powers in section 432(5A) in so far as they relate to sixth form pupils being able to withdraw from acts of religious worship and section 342B (the new right of appeal) are exercised for the first time. The Regulations revoke and replace the 1999 Regulations and amending Regulations - the Education (Non-Maintained Special Schools) (England) (Amendment) Regulations 2002, and the Education (Non Maintained Special Schools) (England) (Amendments) Regulations 2007.

4.2 The 1999 Regulations set out the requirements for a non-maintained special school to be approved and continue to be approved by the Secretary of State under section 342 of the 1996 Act.

4.3 In summary these Regulations:

- Provide proprietors with a right of appeal to the First-tier Tribunal - this is a new right of appeal for schools as previously the only way a school could challenge a decision of the Secretary of State was through a judicial review (regulation 5).
- Make small changes to the governance arrangements for non-maintained special schools to bring them more in line with the arrangements that apply in the maintained sector. Governors (other than the head teacher) will hold office for a fixed term of 4 years; governing bodies must meet at least three times a year and no person paid to work at the school for more than 500 hours in a year may be a parent governor (paragraph 2 of the Schedule).
- Require schools to comply with the Regulatory Reform (Fire Safety) Order 2005, although compliance with fire safety recommendations was considered, it is now a specific requirement (paragraph 10).
- Make provision for sixth form pupils to withdraw from attending acts of religious worship. This brings non-maintained special schools in line with requirements for maintained special schools (paragraph 24).
- Ensure non-maintained special schools comply with nutritional standard requirements, bringing non-maintained special schools in line with requirements for maintained special schools (paragraph 27).

- Require non-maintained special schools to have a formal complaints procedure (paragraph 35). Non-maintained special schools currently have to have a complaints policy as part of their inspection arrangements, and this change implements the Singleton Review recommendation that schools should have a formal complaints procedures.
- Makes minor changes to the requirement for non-maintained special schools to provide sex education to bring them in line with the requirements for maintained schools (paragraph 25).
- Removes the requirement in the 1999 Regulations on non-maintained special schools to provide a copy of their school prospectus to the Secretary of State.
- Requires non-maintained special schools with residential provision to provide a copy of their welfare inspection reports to parents (paragraph 36). This follows a recommendation in the Singleton Review that welfare inspection reports should be made available to parents.

5. Territorial Extent and Application

5.1 This instrument applies in relation to non-maintained special schools in England.

6. European Convention on Human Rights

As the regulations are subject to negative resolution procedures and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The 1999 Regulations have been subject to amendment Regulations in 2002 and 2007. Following discussions with the sector in 2009 we believed the time was right to consolidate and update the regulations to remove unnecessary requirements on the sector, realign the requirements for non-maintained special schools with those for maintained schools, and implement changes introduced through the 2008 Act.

7.2 As noted above the 2008 Act introduced two major changes for non-maintained special schools. The first was to provide sixth form pupils with a right to opt out of acts of religious worship. This is a right that is available to sixth form pupils in all other special schools that fall within the definition of a special school as set out in section 337 of the 1996 Act. It was anomalous that pupils placed within the non-maintained special school sector did not have the same rights available to pupils in similar schools. Section 143 of the 2008 Act corrected this anomaly and these Regulations implement this provision.

7.3 The second major change was to introduce a new right of appeal for proprietors of non-maintained special schools to the First-tier Tribunal where they disagree with a decision of the Secretary of State, for example to withdraw approval from a school for failure to comply with a prescribed requirement, or not to agree a change requested to a school's approved arrangements. Currently there are no rights of appeal against decisions about approval of specific arrangements or withdrawal of approval of non-maintained special school status. The only recourse is for a school to seek a judicial review of the decision. This provides proprietors with a swift and more accessible route to appeal a decision of the Secretary of State.

7.4 The requirements set out in the Regulations are largely the same as the existing requirements in the 1999 Regulations subject to the changes summarised in section 4 above. The amendments are not considered controversial within the sector.

7.5 Costs to schools in the sector will be minimal as additional costs are cancelled out through savings elsewhere. For example, there is a small additional cost for schools that provide residential accommodation to make welfare reports available to parents. However, we have removed the requirements for schools to provide the Secretary of State with a copy of their annual accounts and school prospectus.

8. Consultation outcome

8.1 A consultation on draft Regulations took place between 3 December 2009 and 11 March 2010. It was issued as a joint consultation on proposed changes to the National Minimum Standards for Boarding Schools and Residential Special Schools, and Regulations relating to independent schools.

8.2 The proposed changes to the 1999 Regulations were received positively, with a majority of response in favour of the changes proposed.

8.3 However, following the change of Government further work was required to ensure proposed changes were aligned with new Government policies and priorities. Officials have maintained a dialogue and consulted with the sector through their representative body, the National Association for Independent and Non Maintained Special Schools (NaSS). NaSS have been supportive of the approach adopted, confirmed the proposed changes will not introduce new burdens for schools, and confirmed they would like any new regulations implemented with effect from 1 September 2011.

9. Guidance

9.1 Current guidance for non-maintained special schools will be revised to take in to account changes in the regulations and will be made available to schools on the Department's internet website at www.education.gov.uk

10. Impact

10.1 There is no impact on the private (business) or civil society (charities and

voluntary organisations) sectors in terms of noticeably increasing or decreasing their burdens. Schools offering residential provision are obliged to send welfare reports to parents, but the cost of this is will be negligible if they opt to use e-mail. This has been confirmed by the National Association for Independent and Non Maintained Special Schools.

10.2 There is no impact on the frontline public sector, as the policy does not impose any new recurring information obligations, and nor does it increase the sector's administrative or policy burdens by £5 million (Equivalent Annual Costs) or more.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Regulations will be reviewed regularly.

13. Contact

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