

**EXPLANATORY MEMORANDUM TO  
THE EDUCATION (INDEPENDENT SCHOOL STANDARDS)  
REGULATIONS 2014**

**2014 No. 3283**

1. This explanatory memorandum has been prepared by the Department for Education (“the Department”) and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This instrument sets out the minimum standards that all independent schools (including academies and free schools) must meet. The instrument replaces the Education (Independent School Standards) (England) Regulations 2010 (2010 Regulations) as amended. The instrument introduces new requirements to raise standards in education and safeguard children. Full details are provided in paragraph 7.

**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 instrument forms part of a wider regulatory reform programme for independent schools. Other changes include new Prohibition from Management Regulations<sup>1</sup> and Independent Inspectorate Regulations<sup>2</sup>.

4.2 Part 4 Chapter 1 of the Education and Skills Act 2008 (2008 Act) sets out the new framework for the regulation and inspection of independent educational institutions (including independent schools) in England. Part 4 Chapter 1 of the

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<sup>1</sup> <http://www.legislation.gov.uk/uksi/2014/1977/contents/made>

<sup>2</sup> <http://www.legislation.gov.uk/uksi/2014/2158/contents/made>

2008 Act is to be commenced on 5th January 2015. This replaces the framework provided for by Part 10, Chapter 1 of the Education Act 2002 (2002 Act) insofar as it applies to England.

4.3 Section 94 of the 2008 Act provides that the Secretary of State must by regulations prescribe standards for the purposes of Chapter 1.

4.4 This instrument prescribes these standards in the following matters:

- a) Quality of education provided
- b) Spiritual, moral, social and cultural development of pupils
- c) Welfare, health and safety of pupils
- d) Suitability of staff, supply staff, and proprietors
- e) Premises of and accommodation at schools
- f) Provision of information
- g) Manner in which complaints are handled
- h) Quality of leadership in and management of schools

4.5 When the instrument comes into force, the 2010 Regulations will cease to have effect.

## **5. Territorial Extent and Application**

5.1 This instrument applies to England.

## **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 The Department is making this instrument under section 94 of the 2008 Act.
- 7.2 Most independent schools offer high quality education and care to children and the regulatory requirements of the 2002 Act have been a major driver for improvement. However, cases that continue to come to light have led the Department to review the independent school standards and identify specific areas to strengthen. This is to help ensure that all children in independent schools receive the best possible education and welfare, are not exposed to poor quality teaching and are not exposed to extremist teaching and curriculum content. As this instrument keeps the structure of the 2010 Regulations and retains much of their content, the rest of this section focuses on what is being changed. References to Parts are references to Parts of the Schedule to the instrument.
- 7.3 The standards (which apply to academies and free schools, except those contained in Part 1 of the Schedule and certain sections of Part 6 of the Schedule) have the following effects:

#### **7.4 Part 1: (quality of education)**

The changes to Part 1 are aimed at raising the threshold for meeting the quality of education standard and securing continued improvement. The intention is to ensure that schools that currently only secure “adequate” inspection judgments (and only just meet the quality of education standard) are likely to need to improve their provision to be able to meet the amended standards.

The changes also include new requirements that the curriculum and teaching do not undermine the fundamental British values (see more on this in Part 2 below) and that teaching does not discriminate against students contrary to Part 6 of the Equality Act 2010. We are clear that this is not placing new requirements on schools with regards

to the Equality Act. What it does do is require schools to encourage pupils to respect other people, and also potentially provides the Secretary of State with the power to take regulatory action against a school where, for example, teaching at the school discriminates against pupils contrary to Part 6 of the Equality Act.

### **7.5 Part 2: (spiritual, moral, social and cultural development of pupils)**

Part 2 is unchanged. Amendments to Part 2 were made by the Education (Independent School Standards) (England) Regulations 2014 which came into force on 29 September 2014. The Explanatory Memorandum<sup>3</sup> to those amending regulations provides full details of the changes.

### **7.6 Part 3: (welfare, health and safety of pupils)**

The changes in Part 3 strengthen the standard by focussing on outcomes, requiring schools to not only draw up policies but demonstrate that they are being implemented effectively. This will allow the Secretary of State to take regulatory action where the requisite policies are in place but their practical implementation is poor.

There is also a new requirement for schools to demonstrate that they have drawn up and effectively implemented a risk assessment policy. This will help safeguard the welfare of pupils at the schools.

### **7.7 Part 4: (suitability of staff, supply staff and proprietors)**

Changes to Part 4 update the requirements for enhanced criminal record checks<sup>4</sup>, make it a requirement that no member of staff or any proprietor carries out work in contravention of a prohibition order<sup>5</sup> and make it a requirement that persons in a management position in a school are not subject to a section 128 direction<sup>6</sup>. It is

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<sup>3</sup> [http://www.legislation.gov.uk/uksi/2014/2374/pdfs/uksiem\\_20142374\\_en.pdf](http://www.legislation.gov.uk/uksi/2014/2374/pdfs/uksiem_20142374_en.pdf)

<sup>4</sup> Following changes to “regulated activity” in the Protection of Freedoms Act 2012-  
<http://www.legislation.gov.uk/ukpga/2012/9/contents>

<sup>5</sup> See School Staffing Regulations 2009-  
<http://www.legislation.gov.uk/uksi/2012/1740/contents/made>

<sup>6</sup> A Direction under section 128 of the Education and Skills Act 2008 prohibiting them from taking part in the management of an independent school. See The Independent Educational Provision in England (prohibition on Participation in Management) Regulations 2014-

essential that the standards reflect the most up to date legislative and policy position on safeguarding and ensure that as effective a safeguarding environment as possible is in place to protect children.

#### **7.8 Part 5: (premises of and accommodation at schools)**

No changes have been made to Part 5. The standards in this Part are the same as the standards in Part 5 of the 2010 Regulations (as amended).

#### **7.9 Part 6: (provision of information)**

The three main changes to this Part are: the inclusion of a new requirement for schools to publish information relating to certain regulatory action taken by the Secretary of State in relation to them, the removal of a requirement to publish summary details of staff (number of staff and their qualifications) and the insertion of a requirement to inform parents when the Secretary of State has made a determination removing the school from the register of independent schools.

#### **7.10 Part 7: (manner in which complaints are handled)**

The main changes in Part 7 are: (a) to remove the requirement for schools to ensure that their complaints procedure makes provision for a written record to be kept of all complaints, giving schools flexibility as to when and how they record informal complaints; and (b) to require schools to ensure that their complaints procedure makes provision for a written record to be kept of action taken by the school as a result of all formal complaints.

#### **7.11 Part 8: (quality of leadership and management of schools)**

Part 8 contains a new standard. The quality of leadership and management of any school is critical to its success and this new standard will allow the Secretary of State to take regulatory action to improve leadership and management.

The standard will help to ensure that where leadership and management is found to be weak, for example as evidenced by failings against other standards, schools can be required to produce appropriate action plans setting out how the leadership and management of the school will be improved so that this standard is met. This may, for example, mean that in certain cases a person with leadership or management responsibilities at a school should undergo training or be replaced. Ultimately, however, it will be for the school to decide on the appropriate action to take so that the standard is met.

The standard will allow the Secretary of State to take regulatory action where there are concerns about safeguarding, extremism, or persistent failings for example, which stem from poor leadership and management.

It is not expected that the new standard would be used in isolation: the Department would expect that a school would only be found to have not met it if failings against other standards are also evident, and these suggest that a failure of leadership and/or management has taken place at the school. Some schools have, on inspection, been found to be failing the current standards. They have improved for a time so that they do temporarily meet them, but then failed subsequent inspections: so revealing that they have done nothing to improve the leadership of the school – to the detriment of pupils' education and welfare.

## **8. Consultation outcome**

8.1 The Department ran a two stage public consultation. Stage one focused on Parts 2 and 4 and ran from 23 June 2014 to 4 August 2014. Stage 2 focused on Parts 1, 3 and 6-8 and ran from 23 June 2014 to 18 August 2014.

8.2 The changes consulted on in stage one were planned to be commenced first. As mentioned in paragraph 7.5 changes to Part 2 were brought into force on 29 September through an amendment to the 2010 Regulations by the Education (Independent School Standards) (England) Regulations 2014.

8.3 Due to the complexity and number of comments that the Department received

on proposed changes to Part 4, a decision was made to delay making the changes to Part 4. Part 4 of the Schedule to this instrument includes the changes consulted on in stage one of the consultation.

- 8.4 The consultation was open to the public via GOV.UK following a press release. The Department emailed independent schools, and independent school academy and free school representative bodies, directly on the day the consultation was launched to encourage their participation.
- 8.5 The consultations generated 1,529 responses. In making this instrument the Department did not look again at 909 “campaign” responses which were primarily focused on changes to Part 2. The Department had already considered these representations when it made the amendment to Part 2 through the Education (Independent School Standards) (England) Regulations 2014.
- 8.6 75 respondents agreed with the changes proposed to Part 1, 220 disagreed and 44 were not sure. The majority of negative feedback related to the requirements that pupils’ progress should be assessed with reference to “national norms”. The Department has taken this criticism on board and amended the instrument to remove the provisions that required reference to national norms.
- 8.7 The majority of respondents were in favour of the proposed changes to Parts 4, 6 and 7. The Department took on board useful technical feedback with the regards to the drafting of Part 4 and amended the instrument accordingly. The Department also took on board comments regarding the drafting of Part 7 and the importance of ensuring formal complaints could not be “buried” and has amended the instrument accordingly.
- 8.8 50 respondents agreed with the proposed introduction of Part 8, 139 disagreed and 71 were not sure. The Department is still of the view that this new standard is essential and will introduce it. However, respondents raised concerns about the potential confusion the standard could cause in relation to school governance. The concerns were noted and the instrument amended accordingly – primarily by removing the word “governance” to make clear the standard

concerns leadership and management. The standard has also been amended to make clear that it relates to the leadership and management of the school in relation to meeting the other standards, rather than any leadership and management more broadly.

8.9 The consultation and consultation response document can be found on GOV.UK<sup>7</sup>.

## **9. Guidance**

9.1 The Department has issued revised supplementary guidance on the changes that have already been made to the Part 2-SMSC standard.<sup>8</sup> The Department will issue non-statutory guidance to explain the changes that have been made to the other standards.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is relatively minimal.

10.2 The Department expects those schools that are failing to meet or are just meeting the previous requirements to be affected the most. These schools will be required to take the necessary action to meet the new requirements. Good and high performing schools will see little or no impact as they will already be meeting the vast majority of the new requirements, although they will still need to take time to review the standards and consider what implications they have for their school.

10.3 The impact on the public sector is minimal.

10.4 The IA demonstrates that the impact on the majority of independent schools will be relatively minimal. The estimated total net cost to business will be 1.61 million pounds per year.

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<sup>7</sup> <https://www.gov.uk/government/consultations/proposed-new-independent-school-standards>

<sup>8</sup> <https://www.gov.uk/government/publications/improving-the-sm-sc-development-of-pupils-in-independent-schools>



10.5 The Impact Assessment is attached (Annex A) and will be published alongside the Explanatory Memorandum on the OPSI website.

## **11. Regulating small business**

11.1 The legislation applies to small business.

11.2 The Department has not taken any action to minimise the impact of the requirements on firms employing up to 20 people. There are 2,369 independent schools in England. Of these, around 75% are small and medium enterprises (SMEs) that employ fewer than 50 FTE employees.

11.3 The basis for this decision is the Department believes quality of education and safeguarding to be basic requirements of the education system and, as such, they matter regardless of the size of the school concerned. Given the serious nature of the issues that the instrument addresses, the department believe that small and micro businesses should not be exempted from them.

11.4 The Department also believe that it would be inappropriate to award a partial exemption to small and medium schools, to grant them an extended transition period, or to make compliance voluntary for the same reasons as set out above.

## **12. Monitoring & review**

12.1 The Department will monitor and review the effectiveness of the instrument and the impact on independent schools on an ongoing basis.

12.2 The success criteria for the instrument will ultimately be reflected in improved standards across independent schools, in particular amongst those schools that are currently failing to meet or only just meeting the standards.

## **13. Contact**

13.1 Michael Bell at the Department for Education Tel: 01325735779 or email: [michael.bell@education.gsi.gov.uk](mailto:michael.bell@education.gsi.gov.uk) can answer any queries regarding the instrument.