

**EXPLANATORY MEMORANDUM TO
THE EDUCATION (NON-MAINTAINED SPECIAL SCHOOLS) (ENGLAND)
(AMENDMENT) REGULATIONS 2015**

2015 No. 387

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 These Regulations amend the Education (Non-Maintained Special Schools) (England) Regulations 2011 (“the principal regulations”), which set out the requirements for a non-maintained special school (NMSS) to be approved, and continue to be approved by the Secretary of State. These Regulations update a number of safeguarding requirements for members of staff, governors, supply staff and the chair of the governing body, to reflect the current legislative position.

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

3.1 When the principal regulations were considered by the Merits Committee, it asked “why does a governor require a CRB check because they will not have much contact with children?”. In its response, the Department gave a commitment that it would review the safeguarding checks in relation to governors for all schools, after the Protection of Freedoms Bill had received Royal Assent, and would report back to the Merits Committee on this matter.

3.2 In response to this query raised by the Merits Committee, the principal regulations are being amended, following a review of the safeguarding provisions in regulations governing the school sector. Accordingly, these Regulations make it clear that a Disclosure Barring Service check (as it is now called) is only required for governors, where they are going to be working in

regulated activity.

4. Legislative Context

4.1 A separate instrument, the Non-Maintained Special Schools (England) Regulations 2015 (“the 2015 Regulations”), is being prepared to update the conditions for approval and continued approval for NMSSs and is intended to come into force on 1 September 2015. It will revoke the principal regulations, and these amending regulations.

5. Territorial Extent and Application

5.1 This 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

7.1 The 2015 Regulations will replace the principal regulations, but in the meantime, the Department is of the view that the principal regulations should be amended to make the latest safeguarding requirements explicit. This ensures that the requirements for approval and continued approval for NMSSs are in line with the latest safeguarding requirements.

7.2 The changes update the requirements for enhanced criminal record checks¹ and make it a requirement that no member of staff, supply staff or member of the governing body (including the chair) carry out any teaching activity at the

¹ Following changes to “regulated activity” in the Safeguarding Vulnerable Groups Act 2006-
<http://www.legislation.gov.uk/ukpga/2006/47/contents> (schedule 4) as amended by Protection of Freedoms Act 2012-
<http://www.legislation.gov.uk/ukpga/2012/9/contents>

school in contravention of a prohibition order or an interim prohibition order².

- 7.3 The Independent School Standards³ have recently been updated to reflect the safeguarding changes and it is intended that the School Staffing Regulations⁴ will also be updated to reflect the same changes.

8. Consultation outcome

- 8.1 No separate consultation exercise was carried out for these Regulations, but the amendments were consulted on as part of the broader consultation in relation to the 2015 Regulations, which took place between 17 October and 19 December 2014. The Department received six responses. The consultation responses gave support to the proposed regulatory changes.

9. Guidance

- 9.1 The changes are minor and technical and as such the Department will not be issuing specific guidance. Guidance on safeguarding, which takes account of these changes, can be found in “Keeping Children Safe in Education⁵”, available on GOV.UK.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is minimal.
- 10.2 There is no impact on the public sector.
- 10.3 The minor and technical nature of these changes means a separate impact assessment is not required for these amendments.

² Prohibition orders are made by the Secretary of State under Education Act 2002 (section 141B) <http://www.legislation.gov.uk/ukpga/2002/32/contents> as amended by the Education Act 2011 <http://www.legislation.gov.uk/ukpga/2011/21/contents>

³ <http://www.legislation.gov.uk/uksi/2014/3283/contents/made>

⁴ <http://www.legislation.gov.uk/uksi/2009/2680/contents/made>

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/372753/Keeping_children_safe_in_education.pdf

11. Regulating small business

- 11.1 The legislation applies to small business (where a NMSS is a small business).
- 11.2 The Department has not taken any action to minimise the impact of the requirements on small businesses.
- 11.3 The basis for this decision is that the amendments set out in the Regulations reflect current legislative safeguarding requirements which NMSSs are already required to follow, regardless of the size of the NMSS.
- 11.4 The Department also believes that it would be inappropriate to award a partial exemption to small NMSSs, to grant them an extended transition period, or to make compliance voluntary, as the safeguarding regime must apply equally across all schools, regardless of size.

12. Monitoring & review

- 12.1 The Department will review and monitor safeguarding requirements as part of the monitoring and review process of the 2015 Regulations.

13. Contact

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