
STATUTORY INSTRUMENTS

2015 No. 728

**The Non-Maintained Special
Schools (England) Regulations 2015**

Interpretation

2.—(1) In these Regulations —

“the 1996 Act” means the Education Act 1996;

“the 1997 Act” means the Police Act 1997(1);

“the 2002 Act” means the Education Act 2002(2);

“the 2005 Act” means the Education Act 2005(3);

“the 2006 Act” means the Safeguarding Vulnerable Groups Act 2006(4);

“EHC plan” means a plan within the meaning of section 37(2) of the Children and Families Act 2014(5);

“employment business” has the same meaning as in section 13(3) of the Employment Agencies Act 1973(6);

“enhanced criminal record certificate” means an enhanced criminal record certificate issued under section 113B(1)(7) of the 1997 Act which includes, in such cases as are from time to time prescribed under section 113BA(1)(8) of that Act, suitability information relating to children or vulnerable adults, and any relevant up-date information where such a certificate is subject to up-date arrangements;

“interim prohibition order” has the same meaning as in section 141C(7) of the 2002 Act(9);

“maintained special school” means a community or foundation special school(10);

“National Minimum Standards” means the statement of national minimum standards relating to residential special schools(11) published in November 2012 by the Secretary of State for Education under section 87C(1) of the Children Act 1989(12); and in a case where a non-maintained special school is also a children’s home, the statement of national minimum

(1) 1997 c. 50.

(2) 2002 c. 32.

(3) 2005 c. 18.

(4) 2006 c. 47.

(5) 2014 c.6.

(6) 1973 c. 35.

(7) Section 113B was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 (c. 15). Section 113B(1) was amended by articles 36 and 37(e) of the Protection of Freedoms Act 2012 (Disclosure and Barring Service Transfer of Functions) Order 2012 (S.I. 2012/3006), sections 97(2), 112(2) and Part 8 of Schedule 8 of the Policing and Crime Act 2009 (c.26) and section 80 (1) of the Protection of Freedoms Act 2012 (c.9) (“the 2012 Act”).

(8) Section 113BA was inserted by section 63(1) of, and paragraph 14(1) and (4) of Schedule 9 to, the Safeguarding Vulnerable Groups Act 2006 (“the 2006 Act”).

(9) Section 141C was inserted by section 8 of the Education Act 2011 (c.21) (“the 2011 Act”).

(10) For the meaning of “community special school” and “foundation special school” see section 20 of the School Standards and Framework Act 1998 (c. 31) (“the 1998 Act”).

(11) The National Minimum Standards relating to residential special schools are available at <https://www.gov.uk/government/publications/residential-special-schools-national-minimum-standards>.

(12) 1989 c. 41; Section 87C was inserted by section 107 of the Care Standards Act 2000 (c. 14) (“the 2000 Act”).

standards relating to children’s homes(13) issued in 2011 by the Secretary of State under section 23 of the Care Standards Act 2000(14);

“prohibition order” has the same meaning as in section 141B of the 2002 Act;

“relevant up-date information” means up-date information within the meaning given in section 116A(8)(b)(i) or 116A(8)(c)(i) (15)of the 1997 Act;

“suitability information relating to children” has the same meaning as in section 113(BA)(2) of the 1997 Act;

“suitability information relating to vulnerable adults” has the same meaning as in section 113BB(2)(16) of the 1997 Act;

“supply staff” means any person working at the school supplied by an employment business;

“up-date arrangements” has the same meaning as in section 116A(3) of the 1997 Act.

(2) In these Regulations, an “enhanced criminal check” is made if —

(a) an application for an enhanced criminal record certificate is made under section 113B(1) of the 1997 Act and the application is countersigned by a registered person (as defined in section 120(1) of that Act) or on behalf of that person; or

(b) where an enhanced criminal record certificate has been obtained under section 113B(1) of the 1997 Act and is subject to up-date arrangements, relevant up-date information is obtained.

(3) In these Regulations a person is appointed to a position if that person is—

(a) engaged to work at a school, other than a person supplied by an employment business, or

(b) appointed to the governing body of a school.

(4) A person is to be treated as meeting any staff qualification requirements if the person—

(a) fulfils any requirements with respect to qualifications or registration which apply to the person as a result of regulations made under sections 132 to 135 of the 2002 Act(17) and regulations made under section 19 of the Teaching and Higher Education Act 1998(18);

(b) meets any conditions with respect to health and physical capacity, which apply to the person as a result of regulations made under section 141 of the 2002 Act(19);

(c) is not barred from regulated activity relating to children, to vulnerable adults or to both under section 3 of the 2006 Act, where that person is or will be engaging in activity which is regulated activity within the meaning of Part 1 of Schedule 4 of that Act; and

(d) is not subject to a prohibition order or an interim prohibition order.

(5) For the purposes of paragraphs 4(4), 5(2)(a)(ii) and 6(3)(a) of Part 1 of the Schedule, an enhanced criminal record check is only relevant where a person or an individual is or will be engaging in—

(a) regulated activity within the meaning of Part 1 of Schedule 4 to the 2006 Act; or

(13) The National Minimum Standards relating to children’s homes are available at <https://www.gov.uk/government/publications/childrens-homes-national-minimum-standards>. A children’s home is defined in section 1 of the 2000 Act.

(14) 2000 c.14.

(15) Section 116A was inserted by section 83 of the 2012 Act and amended by articles 36 and 37(g) of the Protection of Freedoms Act 2012 (Disclosure and Barring Service Transfer of Functions) Order 2012 (S.I. 2012/3006).

(16) Section 113BB was inserted by section 63(1) of, and paragraph 14(1) and (4) of Schedule 9 to, the 2006 Act.

(17) The relevant regulations are the Education (School Teachers’ Qualifications (England) Regulations 2003 (S.I. 2003/1662), amended by S.I. 2007/2782 and 2009/3156; and the Education (Specified Work and Registration) (England) Regulations 2003 (S.I. 2003/1663), amended by S.I. 2007/2117.

(18) 1998 c. 30; section 19 is amended by sections 139 and 153 of, and Schedule 11 to, the Learning and Skills Act 2000 (c. 21), section 215 of, and Schedule 21, paragraph 85 to, the Education Act 2002 (“the 2002 Act”) and S.I. 2010/1158. The relevant Regulations are the Education (Recognition of School Teachers Professional Qualifications) (Consequential Provisions) (England) Regulations 2007 (S.I. 2007/2782).

(19) The relevant regulations are the Education (Health Standards) (England) Regulations 2003 (S.I. 2003/3139).

- (b) regulated activity relating to children or vulnerable adults within the meaning of Part 1 of Schedule 4 to the 2006 Act, as it had effect immediately before the coming into force of section 64 of the Protection of Freedoms Act 2012⁽²⁰⁾.

⁽²⁰⁾ 2012 c.9; and came into force on 1st May 2012 .