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STATUTORY INSTRUMENTS

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**1994 No. 651**

**EDUCATION, ENGLAND AND WALES**

**The Education (Special Educational Needs)  
(Approval of Independent Schools) Regulations 1994**

<i>Made</i>	- - - -	<i>9th March 1994</i>
<i>Laid before Parliament</i>		<i>11th March 1994</i>
<i>Coming into force</i>	- -	<i>1st April 1994</i>

In exercise of the powers conferred by sections 172(6), 189(2) and 301(6) of the Education Act 1993(1), the Secretary of State for Education, as respects England, and the Secretary of State for Wales, as respects Wales, hereby make the following Regulations:

**Citation and Commencement**

1. These Regulations may be cited as the Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994 and shall come into force on 1st April 1994.

**Interpretation**

2.—(1) In these Regulations—

“the 1993 Teachers Regulations” means the Education (Teachers) Regulations 1993(2);

“the Act of 1993” means the Education Act 1993;

“approval” means approval of a school for the purposes of section 189(1) of the Act of 1993 and “approved” in relation to such a school shall be construed accordingly;

“boarding school” means a school which has boarders whether or not it also has day children, and “boarder” includes a child at a boarding school who is accommodated there during the week, but not at weekends, in the school term;

“child with a statement” means a child for whom a statement is maintained under section 168 of the Act of 1993;

“head of care” means a person who is in daily charge of the care and welfare of boarders;

“hearing impaired” means deaf or partially hearing;

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(1) 1993 c. 35. For matters to be prescribed and the definition of “regulations” see section 305(1) of this Act.  
(2) S.I.1993/543, amended by S.I. 1994/222.

“local authority” means a local authority acting in the discharge of their functions under any of the enactments specified in Schedule 1 to the Local Authority Social Services Act 1970<sup>(3)</sup> (enactments conferring functions assigned to the social services committee) or, so long as an order under section 12 of that Act is in force, the Council of the Isles of Scilly;

“non-maintained special school” means a school which is not maintained by a local education authority and is not a grant-maintained school or a grant-maintained special school, but which has been approved as a special school under section 188 of the Act of 1993 (including approval treated as given under subsection (3) of that section);

“relevant local education authority” in relation to a child with a statement, means the local education authority by whom the statement is maintained; and

“visually impaired” means blind or partially sighted.

(2) Except where the context otherwise requires, any reference in these Regulations to a regulation or Schedule is a reference to a regulation contained herein or to a Schedule hereto, any reference in a regulation or Schedule to a paragraph is a reference to a paragraph of the regulation or Schedule, and any reference in a paragraph to a sub-paragraph is a reference to a sub-paragraph thereof.

### **Conditions of approval of independent schools**

3. The requirements set out in Schedule 1 shall be complied with by an independent school as a condition of its approval for the purposes of section 189(1) of the Act of 1993.

### **Requirements to be complied with by an approved independent school**

4. While an approval is in force with respect to an independent school the school shall comply with the requirements set out in Schedules 1 and 2.

### **Withdrawal of approval**

5.—(1) Subject to paragraph (2), the Secretary of State may withdraw his approval of a school on the ground that, in the case of that school, there has been a failure to comply with any of the requirements referred to in regulation 4.

(2) Unless the Secretary of State is of the opinion that it is necessary or expedient so to do in the interests of the health, safety or welfare of children at the school, he shall not withdraw his approval of the school in pursuance of paragraph (1) without—

- (a) consulting the proprietor of the school, and
- (b) if the proprietor so requests, affording the school a period specified by the Secretary of State within which to comply with the requirement with which the school has not complied.

(3) The Secretary of State shall withdraw his approval of a school if the proprietor thereof in writing requests him so to do.

### **Revocation**

6. The Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1991<sup>(4)</sup> are hereby revoked.

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(3) 1970 c. 42.

(4) S.I. 1991/449.

## SCHEDULE 1

Regulations 3 and 4

### REQUIREMENTS TO BE COMPLIED WITH AS CONDITION OF APPROVAL AND WHILE APPROVAL IS IN FORCE

#### **Control of the school**

1. Every person who is a proprietor of the school shall be a fit and proper person so to act.

#### **Teaching staff**

2.—(1) Subject to sub-paragraphs (2) to (4), there shall be appointed and employed a staff of teachers suitable and sufficient in number for the purpose of securing the provision of education appropriate to the ages, abilities, aptitudes and special educational needs of the children at the school; and the staff shall include a head teacher.

- (2) No teacher shall be regarded as suitable for the purposes of sub-paragraph (1) unless—

- (a) he is a person—

- (i) falling within paragraph 1(1)(a) of Schedule 3 to the 1993 Teachers Regulations, or
- (ii) who has received notification under paragraph 1(1)(b) of that Schedule that he is a qualified teacher, or

- (b) subject to sub-paragraphs (2)(d), (3) and (4), where he is a teacher of hearing impaired children (otherwise than to give instruction in a craft, trade or domestic subject), he is either a qualified teacher as referred to in, or possesses a qualification for the time being approved under, regulation 14 of the 1993 Teachers Regulations; or

- (c) subject to sub-paragraphs (2)(d), (3) and (4), where he is a teacher of visually impaired children (otherwise than to give instruction in a craft, trade or domestic subject), he is either a qualified teacher as referred to in, or possesses a qualification for the time being approved under, regulation 15 of the 1993 Teachers Regulations; or

- (d) subject to sub-paragraphs (3) and (4), where he is a teacher of children who are both hearing impaired and visually impaired (otherwise than to give instruction in a craft, trade or domestic subject), he is either a qualified teacher as referred to in, or possesses a qualification for the time being approved under, regulation 16(1) of the 1993 Teachers Regulations.

- (3) A person who possesses a qualification approved under regulation 14 or 15 of the 1993 Teachers Regulations shall be a qualified teacher for the purpose mentioned in paragraph 2(2)(d) notwithstanding that he does not possess a qualification approved for the purposes of that paragraph, where the school is satisfied that no teacher with such a qualification is available to teach the children in question.

- (4) A person may be appointed and employed at the school as a teacher of children who are—

- (a) hearing impaired,
- (b) visually impaired, or
- (c) both hearing and visually impaired,

notwithstanding that he is not a qualified teacher as referred to in regulation 14, 15 or 16(1), as the case may be, of the 1993 Teachers Regulations for the purpose of such appointment or employment, if his employers are satisfied that it is his intention to acquire a qualification approved by the Secretary of State under the said regulation 14, 15 or 16(1), as the case may be: provided, however, that the aggregate period for which he has been employed, in one or more schools, as a teacher of such children as are mentioned in paragraphs (a), (b) or (c) of this sub-paragraph, as the case may be, does not exceed three years.

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### **Residential care staff**

3.—(1) In the case of an independent school which is also a boarding school, there shall be employed staff suitable and sufficient in numbers for the purposes of securing the proper care and supervision of the boarders, and of attending to their welfare.

(2) Without prejudice to the generality of sub-paragraph (1), the staff referred to therein shall include an appropriately qualified and experienced person who is the head of care and who is designated as such; and the head of care shall not also be the head teacher of the school.

### **Admissions**

4. The proprietor shall maintain arrangements to secure that a child shall not be admitted to the school unless the school is capable of providing the child with full-time education appropriate to his age, ability, aptitude and special educational needs in the form of a balanced and broadly based curriculum adapted for that purpose.

### **Exclusions**

5.—(1) The proprietor shall make and maintain arrangements to secure that children shall not be excluded from the school otherwise than on reasonable grounds.

(2) Before any decision is taken as to whether any child is to be excluded the proprietor or head teacher shall give, unless it would not be appropriate to do so in any case, written notice to his parents, the local education authority or, as the case may be, the local authority who have arranged for the placing of the child at the school and the local authority in whose area the school is situated, stating the grounds for the proposed exclusion, and shall take into account any representation made by them.

### **Health and welfare of pupils**

6.—(1) Provision shall be made by the proprietor—

- (a) for the care and supervision of the health of the children at the school by appropriately qualified persons with, in the case of a school providing for children with a particular type of disability, or particular types of disabilities, experience relevant thereto;
- (b) in the case of a school which is also a boarding school, for such steps as may be necessary to be taken to safeguard and promote the welfare of the boarders at all times; and
- (c) for the maintenance of medical and dental records relating to the children at the school.

Without prejudice to the generality of sub-paragraph (1), provision shall be made (by way of arrangements in pursuance of paragraph 1(b) of Schedule 1 to the National Health Service Act 1977<sup>(5)</sup> or otherwise) for the medical and dental inspection at appropriate intervals of the children at the school and their medical and dental treatment, and for any other medical examination or treatment which may be needed.

### **Substances and apparatus involving health hazards**

7.—(1) This paragraph shall apply in relation to the use of—

- (a) any radioactive substance which has a specific activity in excess of 100 becquerels per gram, or
- (b) any apparatus in which electrons are accelerated in vacuo by a potential difference of at least 5 kilovolts other than a cathode ray oscilloscope, a television receiving set or a visual display unit used in the normal way for viewing.

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(5) 1977 c. 49.

(2) Before any such substance or apparatus is used for the purpose of instruction at the school, the Secretary of State shall be notified in writing of the proposed use.

### **Collective worship and religious education**

8. Arrangements shall be made to secure that, so far as practicable, every child with a statement at the school who has been placed there pursuant to arrangements made by a local education authority will attend daily collective worship and receive religious education, or will be withdrawn from attendance at such worship or from receiving such education, in accordance with the wishes of his parents.

### **Incident and punishment books**

9.—(1) An incident book shall be kept in which there shall be recorded—

- (a) any incident involving a person who either is a child or is employed or a volunteer working at the school which results in personal injury (to that or some other person) or damage to property, and
- (b) any loss of, theft of, or damage to, property (otherwise than as a result of such an incident) where the property is that of such a person as aforesaid or school property,

without prejudice, however, to the recording therein of other incidents and matters.

(2) A punishment book shall be kept in which there shall be recorded disciplinary measures taken against children at the school.

### **Premises**

10.—(1) The premises of the school shall, subject to sub-paragraph (2), conform to the standards prescribed by regulations from time to time in force under section 10 of the Education Act 1944(6) and applicable in the case of a special school maintained by a local education authority.

(2) If the Secretary of State is satisfied with respect to the school that it would be unreasonable to require conformity with a requirement of the said regulations as to any matter having regard to all the circumstances of the case, he may give a direction that the premises of the school shall, while the direction remains in force, be deemed to conform to the prescribed standards as respects matters with which the direction deals if such conditions, if any, as may be specified in the direction as respects those matters are observed.

## SCHEDULE 2

Regulation 4

### FURTHER REQUIREMENTS TO BE COMPLIED WITH WHILE APPROVAL IS IN FORCE

#### **Educational provision**

1. Each child with a statement admitted to the school shall receive special educational provision suited to his age, ability, aptitude and special educational needs.

#### **Control of the school**

2. Any change in—

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(6) 1944 c. 31. The Regulations currently in force are the Education (School Premises) Regulations 1981, S.I. 1981/909, to which there are relevant amendments in S.I. 1990/2351.

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- (a) the persons being the proprietor, principal, head teacher or head of care at the school, or
- (b) in the staff employed at the school such as to constitute a significant change in the character of the school,

shall be notified forthwith in writing to the Secretary of State.

### **Admissions**

- 3. The proprietor shall—
  - (a) maintain arrangements to secure that a child shall not be admitted to the school unless the child is within the scope of the school as approved by the Secretary of State, with regard to his age, sex, status as a day child or boarder and particular type of disability; and to secure that the admission of the child will not result in the number of children at the school, as so approved, being exceeded; and
  - (b) ensure that sufficient children are admitted to the school to avoid any substantial reduction in that number.

### **Premises and fire precautions**

4. Any proposed substantial alteration to the premises of the school, any proposed rebuilding of such premises and any proposed transfer of the school to other premises shall be notified forthwith in writing to the Secretary of State.

5. Within five years of these Regulations coming into force, or within five years of the school having received approval under section 11(3)(a) of the Education Act 1981(7) if that is sooner, and at intervals of no more than five years thereafter in each case, the proprietor of the school shall request the fire authority in whose area the school is situated to give, in pursuance of section 1(1)(f) of the Fire Services Act 1947(8) advice as to fire prevention, restricting the spread of fires and means of escape in case of fire; and any specific recommendations contained in advice from time to time given as aforesaid shall be implemented forthwith.

### **Misconduct reports**

6. Where any person is dismissed from employment as a member of the staff of the school on grounds of his misconduct (whether or not he is convicted of a criminal offence), or would have been so dismissed or considered for dismissal but for his resignation, the facts of the case shall be reported within one month of the dismissal or, if given, of any notice of dismissal or, as the case may be, resignation to the Secretary of State, the local education authority in whose area the school is situated, any local education authority or, as the case may be, local authority who have arranged the placing of a child at the school and the local authority in whose area the school is situated.

### **Application of the provisions of the Education (Schools and Further Education) Regulations 1981**

- 7. The school shall comply with the following provisions of the Education (Schools and Further Education) Regulations 1981(9) as they apply to a special school—
  - (a) Regulation 10 (duration of school year and day)
  - (b) Regulation 11 (leave of absence for employment).
  - (c) Regulation 12 (leave of absence for annual holiday).

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(7) 1981 c. 60.

(8) 1947 c. 41.

(9) S.I. 1981/1086; relevant amending instruments are S.I. 1983/262, 1987/879, and 1990/2259.

### **Reports on children with statements to local education authorities**

**8.—(1)** A written report on each child with a statement at the school which complies with the requirements of sub-paragraphs (2) to (4) shall be furnished to the relevant local education authority at least once a year.

- (2) The report shall be capable of assisting such authority—
- (a) in reviewing their assessment of the special educational needs of the child and of the special educational provision to be made for the purpose of meeting those needs, and
  - (b) to perform their duties under the Disabled Person (Services, Consultation and Representation) Act 1986<sup>(10)</sup>.
- (3) The report shall be compiled in consultation with—
- (a) persons who comprise the professional staff who, for the period in respect of which the report is compiled, were regularly concerned with the education or care of the child, and
  - (b) any other persons who have been regularly in contact with the child at the school and whom it would be appropriate to consult,

and the report shall where appropriate, incorporate, or be accompanied by, a written statement comprising comments or advice provided directly by such persons.

(4) The report shall, where appropriate, refer to any involvement of the parents of the child in the preparation of the report, in any assessment of his special educational needs and in any review of such assessment.

(5) If so requested by the local education authority, the proprietor, head teacher and professional staff of the school shall participate in any review, conducted by the authority pursuant to section 172(5) of the Act of 1993<sup>(11)</sup> of a statement under section 168 of that Act<sup>(11)</sup> which relates to any child at the school, making no charge to the authority for such participation.

- (6) For the purposes of this paragraph, “professional staff” means—
- (a) members of the staff at the school who are directly concerned with the education or care of children thereat,
  - (b) persons who regularly advise such members of staff on educational, medical, psychological and social matters with respect to the child, and
  - (c) persons who provide such children with therapy or nursing care.

### **Provision of information**

- 9.—(1)** Where a child with a statement leaves the school and becomes a pupil at either—
- (a) another school, or
  - (b) an institution which provides further education (whether within or outside the further education sector),

the local education authority, in the case of a maintained school, the appropriate further education funding council (as defined in section 1(6) of the Further and Higher Education Act 1992<sup>(12)</sup>) in the case of an institution within the further education sector, the proprietor, in the case of an independent school, or the governing body, in the case of a non-maintained special school, grant-maintained school, grant-maintained special school, City Technology College or institution outside the further education sector, shall be furnished with such information concerning the education of that child

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<sup>(10)</sup> 1986 c. 33.

<sup>(11)</sup> Sections 168 and 172(5) are not in force at the date of making of these Regulations.

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<sup>(12)</sup> 1992 c. 13.

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at the school which he has left (including information as to his special educational needs) as the authority, council, proprietor or governing body in question may reasonably require of that school

(2) The Secretary of State shall be furnished with such reports, returns and information relating to the school as he may reasonably require of the school.

### **Reports of death, illness or injury**

**10.**—(1) Any death of child occurring at the school, or during the course of any activities organised by the school, shall be reported forthwith to his parents, the relevant local education authority, or as the case may be, the local authority who have arranged the placing of the child concerned at the school (unless in any particular case it would not be appropriate so to report to any of the persons as aforesaid), the local authority in whose area the school is situated and the Secretary of State.

(2) Any serious illness or serious injury occurring to a child at the school shall be reported forthwith to his parents (unless in any particular case it would not be appropriate to so report), the relevant local education authority, or as the case may be, the local authority which arranged the placing of the child at the school and the local authority in whose area the school is situated.

### **Access to the school and to boarders**

**11.**—(1) Where any local education authority or local authority have arranged for a child to be placed at the school, access to the school shall be afforded at all reasonable times to any person authorised by the authority for the purpose of inspecting that child and the facilities and provision available to him.

(2) In the case of a school which is also a boarding school, reasonable opportunities and encouragement to visit a child with a statement who is a boarder at the school shall be afforded to his parents and to any person authorised by a local authority or the relevant local education authority.

### **Prospectus**

**12.**—(1) The school shall publish in advance of each school year a prospectus giving information about the school and the school year and any significant changes likely to take place in the year in question.

(2) The prospectus shall include the following information—

- (a) The name, address and telephone number of the school and its proprietor, and the names of the head teacher and of the head of care;
- (b) particulars of the arrangements as respects children for whom provision is made by the school categorised by reference to—

- (i) the number, age and sex of day children and of boarders, respectively, and
- (ii) the range and severity of their respective special educational needs,

and particulars of the special educational provision made for those children and the availability of resources for that provision, including the use of any specialist support services;

(c) particulars relating to the school curriculum including, in particular—

- (i) the organisation of education at the school, especially in respect of the teaching of children of different ages and abilities together or in separate groups (either generally or in particular subjects) and any requirements as respects homework;



- (ii) any arrangements made in respect of the National Curriculum and the subject choices, if any, available (including the arrangements for the making of such choices by parents and children);
  - (iii) the education offered in subjects not comprised in the National Curriculum and any arrangements for access to specialist teaching aids and new technologies;
  - (iv) the manner and context in which education as respects personal, social, health and sexual matters is given, and its content;
  - (v) the careers education and advice provided for those children who are senior pupils;
  - (vi) a list of any external qualifications for which courses of study are provided, and the names of the syllabuses associated with such qualifications, and the arrangements for the inspection of such syllabuses at the school;
  - (vii) courses of study which do not lead to external qualifications;
- (d) without prejudice to sub-paragraph (c), particulars of any special curricular and other arrangements made for particular classes or descriptions of children;
- (e) (i) the affiliation, if any, of the school with a particular religion or religious denomination, and
- (ii) without prejudice to sub-paragraph (c), particulars of the religious education provided at the school and of any arrangements for the parent of a child to express a wish that the child be withdrawn from attendance at collective worship or religious education as mentioned in paragraph 8 of Schedule 1;
- (f) particulars of the arrangements for pastoral care,
- (g) particulars of the general arrangements as to school discipline including, especially, the practice of the school as respects corporal punishment where permitted by law and the arrangements for bringing to the attention of children and parents school rules made in respect of such punishment;
- (h) where there are arrangements for parents of children at the school, or for parents considering sending their children to the school, to visit it, particulars of those arrangements;
- (i) particulars of the main societies and activities open, and the facilities available, to children at the school or in the local community otherwise than as part of the education provided at the school;
- (j) particulars of the tuition and other fees payment of which is a condition of attendance at the school, including boarding fees in the case of a school which is also a boarding school;
- (k) a summary of the manner in which any complaints about the school may be made;
- (l) information as to whether advice as to fire safety has been requested and acted upon;
- (m) particulars of the arrangements for liaison between parents and the school;
- (n) particulars of the arrangements for parental access to school records relating to a child; and
- (o) particulars of the arrangements for the involvement of parents in the assessment of their child's special educational needs and in any review of such assessment.
- (3) The school shall furnish a copy of the prospectus to any local education authority or, as the case may be, local authority who have arranged the placing of a child at the school and any parents of a child with a statement in respect of whom arrangements have been made, or are proposed to be made, for his education at that school; and shall, if so requested, furnish a copy of the prospectus to the Secretary of State and the parents of any other child.

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7th March 1994

*John Patten*  
Secretary of State for Education

9th March 1994

*John Redwood*  
Secretary of State for Wales

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### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations prescribe the requirements to be complied with by an independent school as a condition of its approval as a school suitable for the admission of children for whom statements of special educational needs are maintained under section 168 of the Education Act 1993.

They replace the Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1991, which are revoked. Apart from provisions taking account of changes in relevant legislation since those regulations were made, a small number of changes are made. The provision to be made for children with special educational needs must be in the form of a balanced and broadly based curriculum (Schedule 1, paragraph 4). Incidents involving volunteers working at the school must now be recorded (Schedule 1, paragraph 9), and the premises must conform to the standards prescribed for special schools maintained by a local education authority (Schedule 1, paragraph 10). The approved number of pupils must not be allowed to fall substantially (Schedule 2, paragraph 3). If so requested, the staff of the school must participate in any review by the local education authority of a pupil's statement of special educational needs (Schedule 2, paragraph 8(5)).