
STATUTORY INSTRUMENTS

1994 No. 652

EDUCATION, ENGLAND AND WALES

The Education (Special Schools) Regulations 1994

Made - - - - *9th March 1994*
Laid before Parliament *11th March 1994*
Coming into force - - *1st April 1994*

In exercise of the powers conferred on the Secretary of State by sections 172(6), 183(2) and (6), 188(2), (4), (5) and (6) 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:

PART I
GENERAL

Citation and commencement

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

Interpretation

2.—(1) In these Regulations—

“the 1993 Act” means the Education Act 1993;

“funding authority” has the meaning assigned to it by section 5 of the 1993 Act;

“grant-maintained special school” means a special school conducted by a governing body incorporated in pursuance of proposals for the purpose—

(a) made by the funding authority under section 183 of the 1993 Act, or

(b) made by a governing body under section 186 of the 1993 Act;

“maintained special school” means a special school maintained by a local education authority;

“non-maintained 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;

(1) 1993 c. 35; for matters to be prescribed and the definition of “regulations” see section 305(1) of this Act.

“non-maintained special school” means a non-maintained school which has been approved as a special school under section 188 of the 1993 Act (including approval treated as given under subsection (3) of that section);

“proprietor” means the person or body of persons responsible for the management of a school;

“registered pupil” means a pupil registered as such in the register kept in accordance with section 80 of the Education Act 1944(2);

“school” has the meaning assigned to it by section 14(5) of the Further and Higher Education Act 1992(3);

“special school” means a school which is specially organised to make special educational provision for pupils with special educational needs (within the meaning of section 156 of the 1993 Act) and which is for the time being approved by the Secretary of State under section 188 of the 1993 Act, including approval treated as given under subsection (3) of that section.

(2) Except where the context otherwise requires, any references in these Regulations to a regulation or Schedule is a reference to a regulation contained therein or to the Schedule thereto, any reference to a paragraph is a reference to a paragraph of the regulation or Schedule in which the reference is made, and any reference to a sub-paragraph is a reference to a sub-paragraph of the paragraph in which the reference is made.

Revocation

3. The Education (Approval of Special Schools) Regulations 1983(4) and the Education (Approval of Special Schools) (Amendment) Regulations 1991(5) are hereby revoked.

PART II

APPROVAL OF NON-MAINTAINED SCHOOLS

Conditions of approval

4. The requirements set out in Part I of the Schedule shall be complied with by any non-maintained school which is specially organised to make special educational provision for pupils with special educational needs as a condition of its approval as a special school under section 188(1) of the 1993 Act.

PART III

REQUIREMENTS TO BE COMPLIED WITH BY SPECIAL SCHOOLS

Non-maintained special schools

5. The requirements set out in both Parts I and II of the Schedule shall be complied with by any non-maintained school while approved as a special school under section 188 of the 1993 Act (including approval treated as given under subsection (3) of that section).

(2) 1944 c. 31; and see the Pupil’s Registration Regulations 1956, S.I.1956/357, as amended by S.I. 1987/1285, 1988/1185 and 1991/1582.

(3) 1992 c. 13. Section 14(5) is amended by section 304(1) of the Education Act 1993.

(4) S.I. 1983/1499.

(5) S.I.1991/450.

Other special schools

6. The requirements set out in paragraph 1 of Part I of the Schedule and in paragraphs 6(1), 7 to 11 and 13 to 16 of Part II of that Schedule shall be complied with by any maintained special school or grant-maintained special school while approved under section 188 of the 1993 Act (including approval treated as given under subsection (3) of that section).

PART IV

WITHDRAWAL OF APPROVAL AS A SPECIAL SCHOOL

7.—(1) Subject to paragraph (2), the Secretary of State may withdraw his approval from a school on the ground that, in the case of that school, there has been a failure to comply with any requirement applicable to the school and contained in—

- (a) these Regulations;
- (b) the Regulations from time to time in force under section 218 of the Education Reform Act 1988(6);
- (c) the Regulations made under section 27 of the Education Act 1980(7) to the extent that they continue to have effect on the repeal of that section and the coming into force of section 218 of the Act of 1988 on 1st April 1989, or
- (d) the Regulations(8) from time to time in force under section 10 of the Education Act of 1944.

(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 pupils at a school, he shall not withdraw his approval of the school in pursuance of paragraph (1) without—

- (a) consulting the local education authority by whom the school is maintained or, in the case of a non-maintained special school or grant-maintained special school, the governing body thereof, and
- (b) if that authority or governing body so request, affording the school a period specified by him within which to comply with the requirement which has not been complied with;

but, if he so directs, pending compliance with that requirement, the arrangements as respects the matter to which it relates shall be such as are temporarily approved by him.

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

PART V

SPECIAL SCHOOLS IN HOSPITALS

Application of Regulations to special schools in hospitals

8.—(1) This Regulation shall apply in the case of a special school which provides wholly or mainly for pupils who reside as patients, and receive education, in a hospital.

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- (6) 1988 c. 40. The relevant Regulations currently in force are the Education (Schools and Further and Higher Education) Regulations 1989, S.I. 1989/351, and the Education (Teachers) Regulations 1993, S.I.1993/543, amended by S.I.1994/222.
- (7) 1980 c. 20. See the Education (Schools and Further Education) Regulations 1981, S.I.1981/1086, amended by S.I.1983/262, 1987/879, 1989/351, 1990/2259 and 1993/559.
- (8) The Regulations currently in force are the Education (School Premises) Regulations 1981, amended by S.I.1989/1277, 1990/2351 and 1993/559.

(2) Paragraph 5 of the Schedule (premises) shall not apply in the case of the school and paragraphs 9 (health of pupils) and 11 (milk, meals and refreshment) thereof shall only apply in relation to such pupils, if any, as do not reside as patients in the hospital.

(3) If the governing body of the school make arrangements approved by the Secretary of State in relation to any matter mentioned in any other provision of these Regulations then, in relation to that matter, that provision shall not apply; but a failure to comply with any requirement mentioned in the approved arrangements shall, for the purposes of Regulation 7, be treated as a failure to comply with a requirement contained in these Regulations.

PART VI

ESTABLISHMENT, ALTERATION AND DISCONTINUANCE OF MAINTAINED SPECIAL SCHOOLS

Alterations for which notice must be served

9. The following are prescribed as alterations of a maintained special school for which notice of proposals must be served under section 183(6) of the 1993 Act—

- (1) any change in the number, age range or sex of the day or boarding pupils for which the school makes provision;
- (2) any change in the type of special educational needs for which the school makes provision or the type of special educational provision made by the school;
- (3) any significant enlargement of the premises of the school;
- (4) any transfer of the school to a new site unless at the time of transfer the school is intended to return to the existing site within three years.

Persons on whom notice of establishment, alteration and discontinuance must be served

10. Where a local education authority are required to serve notice of their proposals to establish, alter or discontinue a maintained special school under section 183(6) of the 1993 Act, they shall, in addition to serving notice on the Secretary of State, serve notice on—

- (a) the funding authority (whether or not an order under section 12(1) of the 1993 Act applies to the area of the local education authority in whose area the school is or is proposed to be situated);
- (b) if the proposals will affect the provision of education to which section 2(1) of the Further and Higher Education Act 1992(9) applies, the appropriate further education funding council (as defined in section 1(6) of that Act);
- (c) the governing body of every grant-maintained special school in the area of the local education authority in whose area the school is or is proposed to be situated;
- (d) where the proposals are to alter or discontinue a special school, any local education authority which maintains a statement under section 168 of the 1993 Act in respect of a registered pupil at the school;
- (e) any local education authority whose area adjoins that of the authority in whose area the school is proposed to be situated and, where the proposal is to transfer the school to a site in the area of another authority, adjoining that area;

- (f) where the proposals are to discontinue the school, the registered parent of every registered pupil at the school.

Information to be given in notice

11. Every notice served by a local education authority under section 183(6) of the 1993 Act shall give the following information—

- (a) the numbers, age group, sex and special educational needs of the pupils (distinguishing boarding and day pupils) for whom provision is currently made or, in the case of a proposed school, is proposed;
- (b) the special educational provision currently made or, in the case of a proposed school, proposed;
- (c) particulars of any alteration proposed, including particulars and location of any new site to which it is proposed to transfer the school;
- (d) the proposed date of implementation of the proposals, if approved;
- (e) the name and address of a person from whom further information regarding the proposals may be obtained;
- (f) an explanation of the procedure for submitting objections to the proposals under section 184(2) of the 1993 Act, including the period within which such objections are to be submitted and the name and address of the person to whom they are to be submitted.
- (g) the name of the authority by whom the notice is served and the date on which it is given.

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THE SCHEDULE

Regulations 4, 5 and 6

REQUIREMENTS

PART I

CONDITIONS OF APPROVAL AND CONTINUING REQUIREMENTS

Special educational provision

1.—(1) The arrangements as respects—

(a) the pupils for whom provision is made categorised by reference to—

(i) the number, age and sex of day and of boarding pupils, respectively, and

(ii) their respective special educational needs, and

(b) the special educational provision made for those pupils,

shall be such as have been approved by the Secretary of State.

(2) An approval given for the purposes of this paragraph may be expressed to have effect for only a limited period and is subject to such conditions, if any, as are specified therein being observed.

Governing body

2. The arrangements as respects the governing body (including, in particular, the composition and functions of that body and the appointment or election of the members thereof) shall be such as have been approved by the Secretary of State.

Welfare of pupils

3. The governing body shall make such arrangements for safeguarding and promoting the welfare of the pupils at the school as shall have been approved by the Secretary of State.

School not to be conducted for profit

4.—(1) The school shall not be conducted for profit.

(2) No member of the staff shall have a financial interest therein otherwise than by reason only of his being employed for the purposes thereof at a salary unrelated to the financial performance of the school.

Premises

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

(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 school premises shall, while the direction remains in force, be deemed to conform to the prescribed standards as respects matters with

(10) The regulations currently in force are the Education (School Premises) Regulations 1981, S.I. 1981/909, as amended by S.I. 1989/1277, 1990/2351 and 1993/559.

which the direction deals if such conditions, if any, as may be specified in the direction as respects those matters are observed.

PART II

FURTHER CONTINUING REQUIREMENTS

Changes as respects special educational provision or governing body

6.—(1) Where any change is proposed in the arrangements mentioned in paragraph 1 or, in the case of a non-maintained special school, in paragraph 1 or 2, the Secretary of State shall be given written notice of the proposed change and effect shall not be given to the proposal unless and until the changed arrangements have been approved by him for the purposes of the paragraph in question.

(2) If, in the case of a non-maintained special school, the arrangements mentioned in paragraph 2 do not provide for the governing body to include—

- (a) at least one member appointed by one or more local education authorities,
- (b) at least one member elected by teachers at the school from among their number, and
- (c) at least one member elected by, or appointed to represent, parents of children at the school, being, if not such a parent, a person with a child of compulsory school age,

then, at the request of the Secretary of State and by a date specified by him, changed arrangements shall be proposed (to take effect as soon as is reasonably practicable) which would result in the governing body including such members appointed or elected as aforesaid as are specified by the Secretary of State; and any steps necessary or expedient for the purpose of making such a change shall be taken.

Admissions and special educational provision

7. No pupil shall be admitted to the school unless he falls within the category specified in the arrangements mentioned in paragraph 1 which are for the time being approved for the purposes thereof (“the approved arrangements”) and the special educational provision made in pursuance of those arrangements shall be suited to the pupils at the school (having regard to their different ages, abilities and aptitudes and, in particular, special educational needs) and shall be efficiently provided.

Pupil numbers

8. The number of pupils at the school shall at no time exceed the number specified in the approved arrangements.

Health of pupils

9.—(1) Provision shall be made—

- (a) for the care and supervision of the health of the pupils at the school by appropriately qualified persons with, in the case of a school providing for pupils with a particular type of disability, experience relevant thereto, and
- (b) for the maintenance of medical and dental records.

(2) Without prejudice to the generality of sub-paragraph (1), in the case of a non-maintained special school, provision shall be made (by way of arrangements in pursuance of paragraph 1(b) of

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Schedule 1 to the National Health Service Act 1977⁽¹¹⁾ or otherwise) for the medical and dental inspection at appropriate intervals of the pupils and their medical and dental treatment.

Collective worship and religious education

10. Arrangements shall be made to secure that, so far as practicable, every pupil attending the school 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 parent.

Sex education

11.—(1) Arrangements shall be made to secure that, with effect from 1st September 1994, every pupil who is provided with secondary education at a grant-maintained special school or a non-maintained special school will receive sex education, or will be wholly or partly excused from such education (except in so far as it is comprised in the National Curriculum) if his parent so requests.

(2) As from that date the governing body of a grant-maintained special school or a non-maintained special school shall, in relation to pupils who are provided with secondary education at the school—

- (a) make and keep up to date a separate written statement of their policy with regard to the provision of sex education, and
 - (b) make copies of the statement available for inspection, at all reasonable times, by parents of pupils at the school and provide a copy of the statement free of charge to any such parent who asks for one.
- (3) In this Schedule, “sex education” includes education about—
- (a) Acquired Immune Deficiency Syndrome and Human Immunodeficiency Virus, and
 - (b) any other sexually transmitted disease.

Milk, meals and refreshment

12.—(1) In the case of a non-maintained special school, the governing body—

- (a) shall provide such facilities as they consider appropriate for the consumption of any meals or refreshments brought to school by day pupils, and
- (b) shall ensure, in relation to a day pupil whose parents are in receipt of income support or who is himself in receipt of it, that such provision is made for him in the middle of the day, by way of milk, a meal or other refreshment, as appears to them to be requisite.

(2) In the case of such a school, no charge shall be made—

- (a) for facilities provided in pursuance of sub-paragraph (1)(a), or
- (b) for anything provided in pursuance of sub-paragraph (1)(b) for such a pupil as is there mentioned.

(3) Subject to sub-paragraph (2), the governing body must charge for anything provided by them to day pupils by way of milk, a meal or other refreshment and must charge every pupil the same price for the same quantity of the same item.

(4) Nothing in this paragraph shall be construed as precluding the governing body of a school, when determining the tuition and other fees payment of which is a condition of attendance at the school, from taking into account the net cost to them of providing for day pupils—

- (a) such facilities as are mentioned in sub-paragraph (1)(a) and

(11) 1977 c. 49.

- (b) milk, meals and other refreshment.

Incident and punishment books

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

- (a) any incident, involving a person who either is a pupil 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 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 pupils.

Reports on pupils to local education authorities

14. A report on each pupil in respect of whom a local education authority maintain a statement under section 168 of the 1993 Act shall be furnished to that authority at least once a year.

Non-teaching staff

15. In the case of a residential school, there shall be employed staff suitable and sufficient in number for the purposes of securing the proper care and supervision of the children accommodated thereat, including any children so accommodated during school holidays, and of attending to their welfare.

Staff not to suffer discrimination on grounds of religion

16.—(1) No person shall be disqualified, by reason of his religious opinions or of his attending or omitting to attend religious worship (“reasons of religion”) from being appointed to any teaching or other post at the school:

Provided that this sub-paragraph shall not apply—

- (a) in the case of a non-maintained special school if a majority of the governing body have been appointed to represent the interests of a particular religion or religious denomination or if the school has other such religious or denominational affiliations;
- (b) in the case of any school, in relation to the appointment of a Chaplain.

(2) No person employed at the school shall, for reasons of religion or because he does or does not give religious education, receive any less emolument or be deprived of, or be disqualified for, promotion or other advantage.

Accounts

17.—(1) In the case of a non-maintained special school—

- (a) proper accounts, and proper records in relation to those accounts, shall be kept;
- (b) an annual statement of accounts shall be prepared, and
- (c) the accounts and annual statement shall be audited by an auditor eligible for appointment as a company auditor under section 25 of the Companies Act 1989(12).

(12) 1989 c. 40.

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(2) If the Secretary of State directs in the case of such a school, he shall be furnished with a copy of the annual statement of accounts for any year or years specified in his direction and the auditor's report in respect of that year or those years.

(3) A copy of the annual statement of accounts for such a school, for the last year for which it is available shall, on request, be furnished to any local authority which arranges for pupils to attend the school.

Reports and returns

18.—(1) In the case of a non-maintained special school, the Secretary of State shall be furnished with such reports, returns or information relating to the school as he may require.

(2) In the case of any school taking boarding pupils, any death occurring among those pupils shall be forthwith reported to the Secretary of State in writing.

Access to school by local authorities and participation in annual reviews

19.—(1) In the case of a non-maintained special school, a person authorised by a local authority which arranges for pupils to attend the school shall be afforded access to the school at all reasonable times.

(2) At the request of the local education authority the governing body, head teacher and staff of such a school shall participate in any review, conducted by the authority pursuant to section 172(5) of the 1993 Act(13), of a statement under section 168(13) of that Act which relates to any registered pupil at the school, making no charge to the authority for such participation.

Prospectus

20. In the case of a non-maintained special school, the governing body—

- (a) shall prepare and publish in advance of each school year a prospectus giving information about the school in relation to the school year in question, including, in particular, the information specified in Part III of this Schedule; and
- (b) shall send a copy of each year's prospectus to the Secretary of State and, on request, to any local authority which arranges for pupils to attend the school and to the parents of any registered pupil at the school or of any other child.

PART III

INFORMATION TO BE PUBLISHED BY THE GOVERNING BODY OF A NON-MAINTAINED SPECIAL SCHOOL

1. The name, address and telephone number of the school and the names of the head teacher and of the chairman of the governing body.

2. The classification of the school as a day or boarding school or a school taking both day and boarding pupils.

3. The description of pupils for whom provision is made categorised by reference to—

- (a) the number, age and sex of day and of boarding pupils, respectively, and
- (b) their respective special educational needs.

(13) Sections 168 and 172(5) are not in force at the date of making of these regulations.

(13) Sections 168 and 172(5) are not in force at the date of making of these regulations.

4. Where there are specific arrangements for parents of pupils at the school, or parents considering sending their child to the school, to visit it, particulars of those arrangements.

5.—(1) Particulars of the school curriculum including, in particular—

- (a) the curricula for different age groups;
- (b) the subject choices, if any, available (including the arrangements for the making by parents and pupils of such choices);
- (c) the manner and context in which sex education is given in accordance with paragraph 11 in Part II of this Schedule; and
- (d) the careers education provided.

(2) Particulars relating to the school curriculum including, in particular—

- (a) a list of the external qualifications for which courses of study are provided for pupils of compulsory school age at the school and which are for the time being approved by the Secretary of State or by designated body under section 5 of the Education Reform Act 1988;
- (b) the titles of the syllabuses associated with the qualifications referred to in subparagraph (a), or, where criteria for determining a syllabus have been so approved, a statement to that effect;
- (c) a list of the external qualifications, and the names of the syllabuses associated with them, which are offered to pupils over compulsory school age; and
- (d) the arrangements for the inspection and (where applicable) the obtaining of copies of any documents which are for the time being required to be made available by or under the Education (School Curriculum and Related Information) Regulations 1989⁽¹⁴⁾ or the Education (School Curriculum and Related Information) (Wales) Regulations 1991⁽¹⁵⁾.

6.—(1) The affiliation, if any, of the school with a particular religion or religious denomination.

(2) Without prejudice to paragraph 5, particulars of the religious education provided at the school and of any arrangements for the parent of a pupil to express his wish that the pupil be withdrawn from attendance at collective worship or religious education, as mentioned in paragraph 10 in Part II of this Schedule.

7. Without prejudice to paragraph 5, particulars of special curricular and other arrangements made for particular classes or descriptions of pupil.

8.—(1) This paragraph shall only apply in the case of a school in Wales.

(2) Without prejudice to paragraph 5, particulars of the use of the Welsh language in the school by pupils of all age groups or of different age groups including, in particular—

- (a) of the use of Welsh as the language in which instruction is given in all or any subjects forming part of the curriculum and, where instruction in any subject is given in Welsh, of the extent, if any, to which alternative instruction in English is available in that subject;
- (b) of any normal requirement that pupils should learn Welsh, of the circumstances in which pupils are excepted from any such requirement and of any alternative instruction provided for pupils so excepted, and
- (c) of the extent, if any, to which Welsh is the normal language of communication at the school.

⁽¹⁴⁾ S.I. 1989/954; amended by S.I.1989/1136, 1990/1109, 1991/1278 and 1582 and 1992/1089.

⁽¹⁵⁾ S.I. 1991/1658; amended by S.I. 1991/1813 and 1993/998.

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9. Particulars of the organisation of education at the school, in particular in respect of the teaching of children of different ages and abilities together or in separate groups (either generally or in particular subjects) and requirements as respects homework.

10. Particulars of arrangements for pastoral care.

11. General arrangements as to school discipline and the arrangements for bringing school rules to the attention of pupils and parents.

12. The main societies and activities open to, and the facilities available to, pupils at the school otherwise than as part of the education provided therein.

13. 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 takes boarding pupils.

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations replace the Education (Approval of Special Schools) Regulations 1983, as amended, which are revoked by regulation 3. They make new provision for the approval by the Secretary of State as special schools of schools which are not maintained by a local education authority and which are not grant-maintained schools (“non-maintained special schools”). They prescribe the requirements which must be observed by such schools in order to be approved and while such approval is in force.

Under section 188(3) of the Education Act 1993, any special school which is in existence at the date when that section comes into force (1st April 1994) is to be treated as approved under section 188. The Regulations prescribe the requirements to be observed by such schools and also by new special schools maintained by a local education authority, new grant-maintained special schools the proposals for which have been approved by the Secretary of State under section 184 of the 1993 Act and special schools which become grant-maintained special schools under section 186, which are also to be treated as approved under section 188. The requirements now include provisions relating to sex education (Schedule, paragraph 10).

Provision is made for the withdrawal of such approval (regulation 7) and for special schools in hospitals (regulation 8).

The Regulations prescribe the information to be included in the notices which have to be served when a local education authority proposes to establish a new maintained special school, when specified alterations (regulation 9) in maintained special schools are proposed and when it is proposed to discontinue such a school (regulation 11). They also prescribe on whom such notices are to be served (regulation 10).