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STATUTORY INSTRUMENTS

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**1998 No. 417**

**EDUCATION, ENGLAND AND WALES**

**The Education (Special Educational Needs) (Approval  
of Independent Schools) (Amendment) Regulations 1998**

<i>Made</i>	- - - -	<i>24th February 1998</i>
<i>Laid before Parliament</i>		<i>26th February 1998</i>
<i>Coming into force</i>	- -	<i>1st April 1998</i>

In exercise of the powers conferred on the Secretary of State by sections 347(2) and 569(4) and (5) of the Education Act 1996<sup>(1)</sup>, the Secretary of State for Education and Employment, as respects England, and the Secretary of State for Wales, as respects Wales, hereby make the following Regulations:—

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Education (Special Educational Needs) (Approval of Independent Schools) (Amendment) Regulations 1998 and shall come into force on 1st April 1998.

(2) In these Regulations a reference to the principal Regulations is a reference to the Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994<sup>(2)</sup>.

**Amendment to regulation 2 of the principal Regulations**

2. In regulation 2(1) of the principal Regulations, after the definition of “relevant local education authority”—

(a) the word “and” shall be omitted, and

(b) there shall be inserted the following new definition—

““sensory impaired children” means children who are hearing impaired or visually impaired, or both hearing and visually impaired; and”.

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(1) 1996 c. 56. See section 579(1) for the definition of “regulations”.

(2) S.I.1994/651.

**Amendments to Schedule 1 to the principal Regulations**

3. Schedule 1 to the principal Regulations shall be amended in accordance with regulations 4 to 6 below.

4. For paragraph 2, there shall be substituted the following paragraph—

**“Teaching staff**

2.—(1) The proprietor shall ensure that the school has 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 in the school; and the staff shall include a head teacher.

(2) Subject to sub-paragraph (7), no teacher (other than a teacher of a class of sensory impaired children) shall be regarded as suitable for the purposes of sub-paragraph (1) unless—

- (a) he falls within paragraph 1(1)(a) of Schedule 3 to the 1993 Teachers Regulations<sup>(3)</sup>, or
- (b) he has received notification under paragraph 1(1)(b) of that Schedule that he is a qualified teacher.

(3) A teacher of a class of sensory impaired children shall not be regarded as suitable for the purposes of sub-paragraph (1) (irrespective of whether or not he satisfies one of the requirements mentioned in sub-paragraph (2)) unless, subject to sub-paragraphs (4) to (7), he possesses a qualification for the time being approved for the purposes of—

- (a) regulation 14 of the 1993 Teachers Regulations, where he is a teacher of a class of hearing impaired children;
- (b) regulation 15 of the 1993 Teachers Regulations, where he is a teacher of a class of visually impaired children; or
- (c) regulation 16(1) of the 1993 Teachers Regulations, where he is a teacher of a class of children who are both hearing and visually impaired.

(4) Where—

- (a) a vacancy exists for a person to be employed at a school as a teacher of a class of children who are both visually and hearing impaired, and
- (b) the proprietor is satisfied that there is no person available to be employed to fill that vacancy who possesses a qualification approved under regulation 16(1) of the 1993 Teachers Regulations,

the proprietor may, notwithstanding sub-paragraph (3), treat a person as suitable for the purposes of sub-paragraph (1) to be so employed if he possesses a qualification approved under either regulation 14 or regulation 15 of those Regulations.

(5) Subject to sub-paragraph (6), a person may be employed as a teacher of a class of sensory impaired children even though, at the time of his appointment in that capacity, he does not possess the qualification mentioned in sub-paragraph (3) which would apply in his case, provided that the proprietor is satisfied that it is that person’s intention to acquire the said qualification.

(6) Sub-paragraph (5) does not apply in the case of a person who, prior to the date on which he would take up the appointment, has been employed in one or more schools

(3) The Education (Teachers) Regulations 1993, S.I. 1993/543; as amended by S.I. 1994/222, 1995/602, 1995/2594, 1996/1603, 1997/368 and 1997/2679. The Education (Teachers) (Amendment) (No. 2) Regulations 1997 (S.I. 1997/2679) substituted a new Schedule 3 to S.I. 1993/543 with effect from 1st December 1997.

as a teacher of a class of sensory impaired children for a period or for periods which, in aggregate, exceed three years.

(7) Sub-paragraphs (2) and (3) do not apply in the case of a person whose employment as a teacher at the school is solely for the purpose of giving instruction in a craft, trade or domestic subject.”.

5. For paragraph 4, there shall be substituted the following paragraph—

**“Admissions**

4.—(1) The proprietor shall adopt and give effect to arrangements for the admission of children to the school in order to secure that a child shall not be admitted to the school where—

- (a) the school would not be capable of providing him 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;
- (b) his admission would be incompatible with a condition imposed by the Secretary of State pursuant to section 347(3) of the Education Act 1996; or
- (c) his admission would result in the maximum number of children at the school, specified in a condition imposed by the Secretary of State pursuant to section 347(3) of that Act, being exceeded.

(2) The proprietor shall use his best endeavours to secure that the number of new pupils admitted to the school in every school year is sufficient to ensure that the total number of children attending the school is either equal to, or not substantially less than, the maximum number specified in any condition as is mentioned in sub-paragraph (1)(c).”.

6. In paragraph 10(1), for “section 10 of the Education Act 1944” there shall be substituted “section 542 of the Education Act 1996(4)”.

**Amendments to Schedule 2 to the principal Regulations**

7. Schedule 2 to the principal Regulations shall be amended in accordance with regulations 8 to 11 below.

8. Paragraph 3 shall be omitted.

9. For paragraph 5, there shall be substituted the following paragraph—

“5.—(1) Subject to sub-paragraph (2), before the expiry of five years from the date on which approval is granted and at intervals of no more than five years thereafter, the proprietor of the school shall request the fire authority in whose area the school is situated to give advice, pursuant of section 1(1)(f) of the Fire Services Act 1947(5), as to fire prevention, restriction of 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.

(2) Where the fire authority for that area gave such advice in relation to the school pursuant to a request made under paragraph 5 of Schedule 2 to the Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1991(6) within the period beginning on 1st April 1993 and ending on 31st March 1994, the first period of five

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(4) 1996 c. 56. The Regulations currently in force under section 542 are the Education (School Premises) Regulations 1996 (S.I. 1996/360).

(5) 1947 c. 41.

(6) S.I. 1991/449.

years prescribed by sub-paragraph (1) above begins on the date on which that advice was given.”.

**10.** For paragraph 10(1), there shall be substituted the following sub-paragraph—

“(1) Where the death of a child occurs at the school, or in the course of any activities organised by the school, the proprietor or head teacher shall, subject to sub-paragraph (2), report the death forthwith to—

- (a) the child’s parents;
- (b) (in the case of a child with a statement) the relevant local education authority;
- (c) (in the case of a child without a statement) any local authority who arranged for the placement of the child at the school;
- (d) the local authority in whose area the school is situated; and
- (e) the Secretary of State.”.

**11.** For paragraph 10(2) there shall be substituted the following sub-paragraphs—

“(2) The proprietor or head teacher shall not be required to report any such death to a person mentioned in sub-paragraphs (1)(a) to (c) where, in any particular case, it would be inappropriate for him to do so.

(3) Where a child suffers any serious illness or serious injury at the school, the proprietor or head teacher shall forthwith notify the following persons or bodies of the illness or injury—

- (a) the child’s parents (unless, in any particular case, it would be inappropriate for him to do so);
- (b) (in the case of a child with a statement) the relevant local education authority;
- (c) (in the case of a child without a statement) any local authority who arranged for the placement of the child at the school; and
- (d) the local authority in whose area the school is situated.”.

18th February 1998

*Estelle Morris*  
Parliamentary Under Secretary of State,  
Department for Education and Employment

24th February 1998

*Peter Hain*  
Parliamentary Under Secretary of State, Welsh  
Office

## **EXPLANATORY NOTE**

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

These Regulations amend the Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994 which 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 324 of the Education Act 1996.

As well as making minor technical changes to the 1994 Regulations, these Regulations clarify the requirements which relate to: the employment at a school of teachers of children whose sight or hearing is impaired (*regulation 4*); the admission of children (*regulations 5 and 8*); the obtaining and implementation of advice from the local fire authority (*regulation 9*); and the notification of parents and other persons in the event of a child's death, or where a child suffers a serious injury or illness (*regulations 10 and 11*).