
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Education (Non-Maintained Special Schools) (England) Regulations 1999 (the “principal Regulations”). Both these Regulations and the principal Regulations apply only in relation to England.

Regulation 3 amends several definitions in the principal Regulations for the purposes of the changes introduced by these Regulations.

Regulation 4 introduces requirements into Part I of the Schedule of the principal Regulations. The requirements contained in Part I are both initial conditions of approval of a non-maintained special school under section 342(1) of the Education Act 1996 (under regulation 3 of the principal Regulations), and requirements to be complied with by such a school while approved (under regulation 4 of the principal Regulations). The paragraph numbers below are those of the Schedule of the principal Regulations as amended by these Regulations.

A new requirement introduced is that all members of staff and members of the governing body except for the Chair (in the capacity of Chair, but see reference to paragraph 3C below) must meet specified requirements as to qualifications, health, physical capacity and the absence of any bar from working with children and young persons. It is also a requirement that, subject to exceptions, such a person must, prior to, his appointment be subject to an enhanced Criminal Records Bureau (“CRB”) check made under the Police Act 1997.

These Regulations add further requirements: a person’s identity and right to work in the United Kingdom must be checked, paragraph 3A(3), and persons who have lived outside the United Kingdom must be subject to further checks if a CRB check is insufficient to establish suitability to work in a school, paragraph 3A(5).

Non-maintained special schools are required to keep a register of the checks which they have made in respect of their own staff, paragraph 3C(2), and, in the case of supply staff, of the information about checks provided by the supply agency, paragraph 3C(5).

Before a person is appointed as a Chair, identity, right-to-work and enhanced CRB checks carried out by the Secretary of State must have been obtained, paragraph 3D. The Chair is (except in paragraph 21 which now refers to the chair of the governing body) the chair of the relevant person where the relevant person is a body of persons or otherwise the relevant person himself.

A teacher or member of support staff supplied by an employment business cannot work at a school until the employment business has confirmed that checks have been carried out, and schools are required in their arrangements with employment businesses to place them under an obligation to provide this information, paragraph 3B.

Regulation 5 is a saving provision to ensure that non-maintained special schools approved under the principal Regulations at the date these Regulations come into force are not regarded retrospectively as having failed to perform their statutory duty under regulations 3 and 4 of the principal Regulations for failing to have complied with the new requirements made by these Regulations in relation to persons who are already in a position at the school, are already supplied to the school by an employment business or are already Chair when these regulations come into force; neither need checks be carried out on such persons going forward unless they cease to hold such positions and then acquire new positions.

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

The National Minimum Standards for Boarding Schools and the National Minimum Standards for Residential Schools are available for download at the following address: http://www.dh.gov.uk/en/PublicationsandStatistics/Publications/PublicationsPolicyAndGuidance/DH_4006472.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Vulnerable Children Group, Department for Education and Skills, Mowden Hall, Staindrop Road, Darlington DL3 9BG and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.