

## **EXPLANATORY MEMORANDUM TO**

### **THE EDUCATION (INDEPENDENT EDUCATIONAL PROVISION IN ENGLAND)(PROVISION OF INFORMATION) REGULATIONS 2010**

**2010 No. 2919**

- 1.** This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.
- 2. Purpose of the instrument**
  - 2.1 The purpose of the instrument is to prescribe the information that must be provided by proprietors of independent schools in an application to register an independent school under section 98(1) of the Education and Skills Act 2008. The instrument also sets out the information to be provided periodically under section 123 of that Act, and makes provision in the event that such information is not provided.
- 3. Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None.
- 4. Legislative Context**
  - 4.1 The instrument revokes and replaces the Education (Provision of Information by Independent Schools) (England) Regulations 2003 (the 2003 Regulations) which were made under sections 160 and 168 of the Education Act 2002. These sections will, in due course, apply to Wales only. These Regulations are made under equivalent provisions in sections 98 and 123 of the Education and Skills Act 2008. The 2003 Regulations set out in detail the information required by the Department from independent school proprietors on an application for a school to be entered on the register of independent schools, within the first year of operating, annually and when they have ceased to use or, had they not resigned would have ceased to use, a person's services on specified grounds. These Regulations do not introduce any major changes to the 2003 Regulations and instead reduce some of the administrative burden on schools and remove duplication.
- 5. Territorial Extent and Application**
  - 5.1 This instrument applies to England.
- 6. European Convention on Human Rights**
  - 6.1 As the instrument is subject to negative resolution procedure, and does not amend primary legislation, no statement is required.
- 7. Policy background**
  - 7.1 The instrument preserves, in regulations 3, 4 and 5, provisions requiring the

proprietor to provide specified information in the application form for registration, the form completed shortly after the admission of pupils and the form completed annually. However, instead of providing a signature applicants will check an accuracy statement contained in the relevant forms. This will make it easier to make an electronic application for registration and to provide information electronically and forms part of the Department's compliance with EU Services Directive 2006/123 on removing barriers to trade between EU member states.

7.2 Regulation 6 preserves the provision to remove a school from the register of independent schools for failing to provide the information required under regulations 4 and 5. It also requires the Secretary of State to notify the proprietor of a decision to remove a school from the register and provides that such a decision does not have effect during the period when an appeal may be brought or, if such an appeal is brought, the period before the appeal has been disposed of.

7.3 The instrument does not re-enact the provision that made it an offence for an independent school proprietor not to provide required information. Since making it a requirement in 2003 for new independent schools to obtain registration with this Department prior to the admission of pupils the possibility of deletion from the register is sufficient to prompt proprietors to make the required information returns.

7.4 The requirement for independent schools to make referrals to the Independent Safeguarding Authority (ISA) of cases where they have ceased to use a person's services, or would have ceased had the person not resigned, on the grounds that the person is unsuitable to work with children, and provide certain information about the circumstances involved, is no longer contained in these regulations. Instead, a requirement for schools to make referrals to the ISA where they have, or would have, ceased to use a person's services because the person has caused, or may cause, harm to children, is contained in section 35 of the Safeguarding Vulnerable Groups Act 2006. The Safeguarding Vulnerable Groups Act 2006 (Prescribed Information) Regulations 2008 (S.I. 2008/3265) set out the information that must be provided about the circumstances involved.

7.5 Paragraph 3(7) of Part 1 of the Schedule is a new requirement for schools to identify in the registration application form the type or types of special educational need (SEN) it intends to cater for. The purpose of the amendment is to ensure that proposed schools have proper policies and resources in place for the relevant SEN. The duty to require this information is contained in section 98(3)(g) of the Education and Skills Act 2008. The requirement places a negligible burden on proprietors applying for a school to be entered on the register of independent schools.

7.6 The instrument removes requirements for the proprietors of proposed independent schools to provide a copy of their fire risk assessment to the Department with an application for registration. The original purpose of the requirement was so that the Department could forward the assessment to the local fire service in advance of their inspection of the premises. However, this is no longer necessary as the assessments are looked at by fire services during inspection of the school premises.

7.7 The instrument also removes requirements for the proprietors of newly operating independent schools to provide identification details of pupils with a statement of SEN in the initial return (the return made within 3 months of the

admission of pupils). This information is no longer needed in view of the removal of the requirement for local authorities to seek the consent of the Secretary of State before placing these pupils in independent schools.

7.8 The requirement to provide employee gender, dates of birth and national insurance numbers is also removed. This information was previously used by the Department to carry out List 99 checks on staff, but this function is no longer necessary as such checks form part of a criminal records check.

7.9 Lastly, proprietors of independent schools will no longer have to provide details annually of the qualifications of new staff. This was previously used to check that schools had verified the qualifications claimed but is no longer necessary as schools must now keep a record of all recruitment checks.

7.10 The implementation of regulations for schools normally occurs on 1 September each year, preceded by a term's notice. These regulations were consulted on earlier this year and have been delayed due to the suspension of activity during the election period and the introduction of new regulatory clearance procedures. However, as the amendments are de-regulatory, and a public commitment to them was given in the consultation, it would be unreasonable to further delay the regulations until next September.

## **8. Consultation outcome**

8.1 The amendments formed part of a larger full public consultation that ran from 3 December 2009 to 11 March 2010. We received 63 responses and several organisations that represent the bulk of the sector objected to a proposal for schools to provide DfE with a copy of a report of an independent scrutiny of safeguarding arrangements. This proposal is not being implemented.

8.2 The consultation may be viewed at:

<http://www.dcsf.gov.uk/consultations/index.cfm?action=conResults&consultationId=1664&external=no&menu=3>

## **9. Guidance**

9.1 The new regulations will be notified to all independent schools and inspectorates with an explanation of the amendments.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies which are also independent schools is beneficial as the removal of superfluous requirements will, based on advice from the sector, result in annual savings for the sector of £75,000.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website.

## **11. Regulating small business**

11.1 The legislation applies to small businesses that are independent schools.

11.2 No approach has been taken to minimise the impact of the requirements on firms employing up to 20 people.

11.3 The basis for the approach described at paragraph 11.2 is that there can be no difference in the information provided by schools.

## **12. Monitoring & review**

12.1 Regulations governing independent schools are regularly reviewed every 2 years.

## **13. Contact**

Stephanie Lidster at the Department for Education (tel: 01325 735564 e-mail: [stephanie.lidster@education.gsi.gov.uk](mailto:stephanie.lidster@education.gsi.gov.uk)) can answer any queries regarding the instrument.

<b>Title:</b> <b>The Education (Independent Educational Provision in England) (Provision of Information) Regulations 2010</b>  <b>Lead department or agency:</b> Department for Education <b>Other departments or agencies:</b> None	<b>Impact Assessment (IA)</b>
	<b>IA No:</b> DFE0005
	<b>Date:</b> 2010
	<b>Stage:</b> Final
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Secondary legislation
<b>Contact for enquiries:</b> Stephanie Lidster 01325 735564 stephanie.lidster@education.gsi.gov.uk	

## Summary: Intervention and Options

<b>What is the problem under consideration? Why is government intervention necessary?</b> The regulations set out the information that all independent schools must provide and some changes are required. These include requiring proposed schools to state in their application for registration the type of special education need (SEN) they will cater for, if any. This will allow judgements to be made during inspection on whether proper resources are in place. Section 124 of the Education and Skills Act 2008 (the Act) introduces a right of appeal against deletion from the Register of Independent Schools for not providing required information. The regulations introduce arrangements to facilitate these appeals. Other changes remove superfluous information obligations and the need for signatures on forms.	
<b>What are the policy objectives and the intended effects?</b> The objective is to ensure that the information which independent schools are required to provide is relevant and proportionate. Knowing the type of SEN a school will cater for in advance of the pre-operating inspection will ensure proper resources are in place before the admission of pupils. Removing the requirement to provide superfluous information will reduce the administrative burden on schools. Removing the need for signatures on forms will make electronic applications easier.	
<b>What policy options have been considered? Please justify preferred option (further details in Evidence Base)</b> The preferred option is to make the necessary amendments to the regulations as this is the only way to obtain information about the type of SEN provision a proposed school intends to offer and to remove for all schools any requirement to provide unnecessary information.  The other option is to do nothing. This means it will not be possible to determine that new schools have made suitable SEN provision and schools will not benefit from the removal of surplus information obligations.	
<b>When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?</b>	It will be reviewed on an ongoing basis
<b>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</b>	No

**Ministerial Sign-off for** final proposal stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.***

Signed by the responsible Minister: *Nick Gibb*..... Date: 7.12.10.....

# Summary: Analysis and Evidence

# Policy Option 1

Description:

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: £0.6m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	None	None	None
High	None	None	None
Best Estimate	None	None	None

**Description and scale of key monetised costs by 'main affected groups'**

None

**Other key non-monetised costs by 'main affected groups'**

None

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate	None	£0.08	£0.6m

**Description and scale of key monetised benefits by 'main affected groups'**

The removal of the requirement for around 100 proposed schools and 2400 registered schools to provide specified information about staff and some pupils.

**Other key non-monetised benefits by 'main affected groups'**

Arrangements to facilitate appeals against deletion from the Register of Independent Schools for failing to provide required information.

**Key assumptions/sensitivities/risks**

Discount rate (%) 3.5%

The amount of the monetised benefit assumes a stable number of 100 new schools opening and closing each year and a stable figure of around 2,400 independent schools at any time.

<b>Impact on admin burden (AB) (£m):</b>			<b>Impact on policy cost savings (£m):</b>		<b>In scope</b>
New AB: £0m	AB savings: £0.8m	Net: £0.8m	Policy cost savings: £0m		Yes

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	England				
From what date will the policy be implemented?	01/11/2010				
Which organisation(s) will enforce the policy?	DfE				
What is the annual change in enforcement cost (£m)?	Nil				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	N/A				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	Traded:		Non-traded:		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs:		Benefits: 100		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro 0	< 20 0	Small 0	Medium 0	Large 0
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties</b> <sup>1</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	No	8
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	No	8
Small firms <a href="#">Small Firms Impact Test guidance</a>	No	8
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	
Justice system <a href="#">Justice Impact Test guidance</a>	No	
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	

<sup>1</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.



## Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

### References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	<a href="http://www.opsi.gov.uk/si/si2003/20031934.htm">http://www.opsi.gov.uk/si/si2003/20031934.htm</a>
2	<a href="http://www.opsi.gov.uk/si/si2004/20043373.htm">http://www.opsi.gov.uk/si/si2004/20043373.htm</a>
3	<a href="http://www.dcsf.gov.uk/consultations/index.cfm?action=conResults&amp;consultationId=1664&amp;external=no&amp;menu=3">http://www.dcsf.gov.uk/consultations/index.cfm?action=conResults&amp;consultationId=1664&amp;external=no&amp;menu=3</a>
4	
5	

+ Add another row

### Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

#### Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits	75000	75000	75000	75000	75000	75000	75000	75000	75000	75000
Total annual benefits	75000	75000	75000	75000	75000	75000	75000	75000	75000	75000

\* For non-monetised benefits please see summary pages and main evidence base section

# Evidence Base (for summary sheets)

## The problem under consideration

The current regulations have been reviewed and a small number of superfluous information obligations were identified that need removing. In addition, new powers contained in the Education and Skills Act 2008 need implementing. Following a consultation held between 2 December 2009 and 11 March 2010 these regulations implement these changes and revoke the current regulations. This impact assessment updates that published as part of the consultation and covers only those changes made in light of the consultation.

## Consultation

A full, public consultation was held from 2 December 2009 to 11 March 2010 and 63 responses were received. In light of these responses the consultation proposal for schools to send to the Department a copy of the annual report of the independent scrutiny of child protection policies and procedures will not be implemented.

The consultation may be viewed at:

<http://www.dcsf.gov.uk/consultations/index.cfm?action=conResults&consultationId=1664&external=no&menu=3>

## Rationale for intervention

The right of appeal for schools deleted from the Register of Independent Schools for failing to provide required information is contained in section 124 of the Education and Skills Act 2008. These regulations make arrangements to facilitate such appeals including a statutory requirement for relevant schools to be notified of deletion and provision for such schools to remain open during an appeal period. Requiring schools to provide information that is superfluous is an unnecessary administrative burden.

## Policy objective

The objective is to ensure that the information which independent schools are required to provide is necessary and proportionate. The regulations revoke the current Education (Provision of Information by Independent Schools) (England) Regulations 2003 (as amended).

## Options considered

The policy options available were:

a. To implement the power contained in section 98(g) of the Education and Skills Act 2008 requiring new schools to declare the type of SEN, if any, that they intend to cater for:

To facilitate appeals by schools against deletion for failing to provide required information including a provision for schools to remain open during an appeal period;

To remove superfluous requirements for employee gender, dates of birth, national insurance numbers and qualifications and the names of pupils with a statement of SEN; and

To remove the requirement for signatures in order to ease the making of electronic applications.

Or

b. To do nothing

Option a. is the preferred option as this provides the greatest benefit to schools and pupils.

## Costs and Benefits

### Sectors and groups affected

Parents, pupils and schools.

### Benefits

*Option 1: maintain the status quo*

None. Schools would not benefit from the removal of the need to provide surplus information to the Department or from arrangements to facilitate appeals against deletion for not providing required information. Information about the type of SEN provision will not be available to parents and pupils.

#### *Option 2: introduce legislation to take forward the proposals*

The administrative burden on schools will be reduced by the removal of surplus information obligations and they will benefit from arrangements that facilitate appeals against deletion for not providing required information. Parents and pupils will benefit from increased information on SEN provision. The Government cannot identify any risks or unintended consequences of implementing these changes.

#### Costs

Option 1: maintain the status quo

Not removing the surplus information obligations from schools will lead to a continuation of an annual cost of £75,000

Option 2: introduce legislation to take forward the proposals

This option will result in an annual saving of £75,000. The cost of stating the type of SEN the school will provide in an application form is negligible.

#### **Risks and assumptions**

The amount of the key monetised benefit assumes a stable number of 100 new schools opening and closing each year and a stable figure of around 2,400 independent schools at any time.

#### **Administrative burden and policy savings calculations**

Following advice from the sector the benefit of the removal of the surplus information obligations in respect of staff details is estimated at an average annual saving per school of £30. This saving will be made by each of the approximately 100 schools that open each year which must currently provide this information within the first year of the admission of pupils. This part of the sector will therefore benefit from an annual saving of £3,000.

Established schools will benefit by an equivalent amount because the same information is currently provided for newly recruited staff every year in the Annual School Census. This results in an annual saving of £72,000.

The total annual saving for the whole sector is therefore £75,000.

#### **Wider impact**

None, these requirements impact solely on proposed and registered independent schools in England

#### **Summary and preferred option and description of implementation plan**

That in light of the response to the consultation the changes referenced above are made and the Education (Provision of Information by Independent Schools) (England) Regulations 2010 are implemented.

The regulations will come into force on 1 September 2010 and schools will be notified directly of the changes once the regulations have been laid.

## Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

### Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p><b>Basis of the review:</b> [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review]; There is an ongoing commitment to review existing policy</p>
<p><b>Review objective:</b> [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?] To ensure independent schools are not subject to any unnecessary burdens</p>
<p><b>Review approach and rationale:</b> [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach] The approach is to seek advice from organisations that represent the sector on whether the changes have had the desired effect.</p>
<p><b>Baseline:</b> [The current (baseline) position against which the change introduced by the legislation can be measured] The current regulations require schools to provide information that is no longer required.</p>
<p><b>Success criteria:</b> [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives] Confirmation from the sector that the estimated savings have been made</p>
<p><b>Monitoring information arrangements:</b> [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review] None, the costs of this would be disproportionate to the benefit.</p>
<p><b>Reasons for not planning a PIR:</b> [If there is no plan to do a PIR please provide reasons here] Not applicable</p>

## **ANNEX 2**

### **Small Firms Impact Test**

Around 600 institutions have less than 100 pupils (i.e. 29% of the sector). Of these, 417 do not have charitable status and are therefore operating as small businesses (i.e. 19% of the sector). When independent schools were consulted in 2003, when the new provision of information arrangements were introduced, only 12% of schools that were operating as small businesses responded. 36% of respondents did not agree with our proposals for providing information prior to registration compared with 46% who agreed.

Whilst schools with a small number of staff may make less of a saving than large schools in no longer needing to provide certain information about staff, the overall cost to the sector is calculated on an average amount. Therefore, these proposals will not significantly affect small schools compared to large schools.

### **Competition Assessment**

There are around 2,400 independent schools in England of which about 50% are charities. Independent schools vary in size depending upon the market they target. Some are small schools catering for children with special educational needs with placements paid for by the local authority. Others are small schools catering for pupils from minority faiths. Some 600 independent schools have less than 100 pupils. No independent school has more than a 10% market share. There would be no effect on the market structure as the proposals apply equally to all schools.

### **Equality Screening Impact Assessment**

#### **Introduction**

The Department has a duty to assess the likely impact on gender, minority ethnic groups, those with disabilities and human rights of legislation that we propose to introduce. Everyone should have an equal opportunity to meet their aspirations, realise their full potential and improve their life chances.

#### **Context – Provision of Information regulations and equality and diversity**

The focus of these regulations is to obtain information from independent schools that allows inspectorates and the Department to ensure independent schools are meeting the following statutory standards:

The quality of the education provided;  
The spiritual, moral, social and cultural development of pupils;  
The welfare, health and safety of pupils;  
The suitability of proprietors and staff;  
School premises and accommodation;  
The provision of information; and  
The manner in which complaints are handled.

The current regulations (as amended) containing these standards may be found at:

<http://www.legislation.hmsso.gov.uk/si/si2003/20031910.htm>

These standards are fully inclusive of all registered independent schools and their pupils, regardless of their ethnicity, culture, religion or belief, home language, family background, disability or special educational need, gender or ability.

The current regulations governing the provision of information may be found at;

<http://www.opsi.gov.uk/si/si2003/20031934.htm>

The proposed amendments to these regulations do not impact more heavily on one group than another and nor do they infringe any human rights.