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STATUTORY INSTRUMENTS

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**2011 No. 1627**

**EDUCATION**

**The Education (Non-Maintained Special Schools) (England) Regulations 2011**

*Made* - - - - *4th July 2011*  
*Laid before Parliament* *8th July 2011*  
*Coming into force* - - *1st September 2011*

The Secretary of State for Education makes the following Regulations in exercise of the powers conferred by sections 328(6), 342(2), (4), (5) and (5A), 342B and 569(4) of the Education Act 1996<sup>(1)</sup>.

PROSPECTIVE

**Citation, commencement, application and revocation**

**1.**—(1) These Regulations may be cited as the Education (Non-Maintained Special Schools) (England) Regulations 2011 and come into force on 1st September 2011.

(2) These Regulations apply to non-maintained special schools<sup>(2)</sup> in England.

(3) The following Regulations are revoked—

- (a) the Education (Non-Maintained Special Schools) (England) Regulations 1999<sup>(3)</sup>,
- (b) the Education (Non-Maintained Special Schools) (England) (Amendment) Regulations 2002<sup>(4)</sup>, and
- (c) the Education (Non-Maintained Special Schools) (England) (Amendment) Regulations 2007<sup>(5)</sup>.

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(1) 1996 c.56. Section 342(5A) was inserted by section 143(1) and (2) of the Education and Skills Act 2008 (c.25), and section 342B was inserted by section 145 of that Act. For the meanings of “prescribed” and “regulations”, see section 579(1) of the Education Act 1996 (“the 1996 Act”).

(2) A non-maintained special school is a school approved by the Secretary of State under section 342 of the 1996 Act (see section 337A).

(3) S.I. 1999/2257.

(4) S.I. 2002/1982.

(5) S.I. 2007/1088.

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## Commencement Information

**II** Reg. 1 in force at 1.9.2011, see [reg. 1\(1\)](#)

## Interpretation

**2.**—(1) In these Regulations—

“the 1996 Act” means the Education Act 1996;

“the 1997 Act” means the Police Act 1997(6);

“the 2002 Act” means the Education Act 2002(7);

“the 2005 Act” means the Education Act 2005(8);

“the Chief Inspector” means Her Majesty’s Chief Inspector of Education, Children’s Services and Skills(9);

“employment business” has the meaning given by section 13(3) of the Employment Agencies Act 1973(10) and includes a local authority and a person carrying on an employment business;

“enhanced criminal record certificate” means a certificate within the meaning of section 113B(3) of the 1997 Act(11), which includes suitability information relating to children within the meaning of section 113BA(2) of that Act;

“maintained special school” means a community or foundation special school(12);

“National Minimum Standards” means the national minimum standards relating to residential special schools(13) published under section 87C(1) of the Children Act 1989(14) and in a case where a non-maintained special school is also a children’s home, the national minimum standards relating to children’s homes(15) issued by the Secretary of State under section 23 of the Care Standards Act 2000;

“proprietor” in relation to a non-maintained special school means the governing body of the school;

“work” includes work of any kind, whether under a contract of service or apprenticeship, under a contract for services or otherwise than under a contract or as a volunteer.

(2) For the purposes of these Regulations an application for an enhanced criminal record certificate is made if—

(a) the application is—

(i) countersigned by the proprietor as a person registered under section 120(1) of the 1997 Act or countersigned on the proprietor’s behalf by such a person, and

(ii) submitted to the Secretary of State in accordance with section 113B of that Act; or

(6) 1997 c.50.

(7) 2002 c.32.

(8) 2005 c.18.

(9) Her Majesty’s Chief Inspector of Education, Children’s Services and Skills means the person holding the office of that title under section 113 of the Education and Inspections Act 2006 (c.40).

(10) 1973 c. 35.

(11) Section 113B was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 (c.15). Section 113BA was inserted by section 63(1) of, and paragraph 14(1) and (4) of Part 2 of Schedule 9 to, the Safeguarding Vulnerable Groups Act 2006 (c. 47) (“the 2006 Act”). Section 113BA(2) is amended by sections 169 and 170 of, and paragraph 12 of Part 1 of Schedule 1 to, the 2006 Act and section 81 of the Policing and Crime Act 2009 (c. 26).

(12) For the meaning of “community special school” and “foundation special school” see section 20 of the School Standards and Framework Act 1998 (c.31) (“the 1998 Act”).

(13) The National Minimum Standards relating to residential special schools are available at [www.education.gov.uk](http://www.education.gov.uk).

(14) 1989 c.41. Section 87C was inserted by section 107 of the Care Standards Act 2000 (c.14) (“the 2000 Act”).

(15) The National Minimum Standards relating to children’s homes are available at [www.education.gov.uk](http://www.education.gov.uk). A children’s home is defined in section 1 of the 2000 Act.

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- (b) in accordance with section 113B(2A)(16) of the 1997 Act, the application is transmitted electronically to the Secretary of State by the proprietor as a person registered under section 120(1) of that Act or is so transmitted on the proprietor's behalf by such a person.
- (3) For the purposes of these Regulations a person is appointed to a position if that person is—
  - (a) engaged to work at a school, other than a person supplied by an employment business, or
  - (b) appointed to the governing body of a school.
- (4) A person (X) is to be treated as meeting any staff qualification requirements if X—
  - (a) fulfils any requirements with respect to qualifications or registration which apply to X by virtue of regulations made under sections 132 to 135 of the 2002 Act(17) and regulations made under section 19 of the Teaching and Higher Education Act 1998(18),
  - (b) meets any conditions with respect to health and physical capacity, which apply to X by virtue of regulations made under section 141 of the 2002 Act(19), and
  - (c) is not barred from regulated activity relating to children, to vulnerable adults or to both under section 3 of the Safeguarding Vulnerable Groups Act 2006.

#### Commencement Information

I2 Reg. 2 in force at 1.9.2011, see [reg. 1\(1\)](#)

#### Conditions of approval and requirements to be complied with

3.—(1) The requirements which are to be complied with as a condition of approval by the Secretary of State(20) under section 342(1) of the 1996 Act are set out in Part 1 of the Schedule.

(2) The requirements which are to be complied with by a school while approved under section 342(1) of the 1996 Act are set out in Part 2 of the Schedule.

#### Commencement Information

I3 Reg. 3 in force at 1.9.2011, see [reg. 1\(1\)](#)

#### Withdrawal of approval

4.—(1) The Secretary of State may withdraw approval from a school on the ground that there has been a failure to comply with any requirement contained in these Regulations.

(2) Subject to paragraph (3), approval may not be withdrawn unless—

(16) Subsection (2A) was inserted into section 113B by [S.I. 2009/203](#).

(17) At the time of making these Regulations, the relevant Regulations are the Education (School Teachers' Qualifications) (England) Regulations 2003, [S.I. 2003/1662](#), amended by [S.I. 2007/2782](#) and [2009/3156](#); the Education (Specified Work and Registration) (England) Regulations 2003, [S.I. 2003/1663](#), amended by [S.I. 2007/2117](#) and [2008/1883](#); and the Education (Head Teachers' Qualifications) (England) Regulations 2003, [S.I. 2003/3111](#), amended by [S.I. 2005/875](#), [2005/3322](#) and [2011/602](#).

(18) [1998 c. 30](#). Section 19 is amended by sections 139 and 153 of, and Schedule 11 to, the Learning and Skills Act 2000 ([c.21](#)), section 215 of, and Schedule 21, paragraph 85 to the Education Act ("the 2002 Act") and [S.I. 2010/1158](#). At the time of making these Regulations, the relevant Regulations are the Education (Recognition of School Teachers Professional Qualifications) (Consequential Provisions) (England) Regulations 2007, [S.I. 2007/2782](#) and the Education (Induction Arrangements for School Teachers) (England) Regulations 2008, [S.I. 2008/657](#).

(19) Regulations made under this section are the Education (Health Standards) (England) Regulations 2003 [S.I. 2003/3139](#).

(20) Section 337A of the 1996 Act (substituted by section 142(1) of the Education and Skills Act 2008 ([c.25](#))) provides that the Secretary of State is the appropriate national authority in relation to a special school in England.

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- (a) the Secretary of State has given written notice to the proprietor specifying each requirement that must be complied with (“the specified requirement”) and the time limit within which compliance must be achieved (“the specified time limit”), and
- (b) the proprietor has failed to comply with a specified requirement within the specified time limit.

(3) The Secretary of State must withdraw approval from a school if the proprietor makes a written request to that effect.

(4) Where the Secretary of State withdraws approval from a school following a request to do so from the proprietor, the Secretary of State may determine that the decision will have effect from such date as the Secretary of State may specify.

#### Commencement Information

**I4** Reg. 4 in force at 1.9.2011, see [reg. 1\(1\)](#)

#### Appeal against a decision of Secretary of State

5.—(1) An appeal against any decision by the Secretary of State —

- (a) to withdraw approval from the school under regulation 4(1),
- (b) not to approve, or not to approve a change to, or to withdraw approval from relevant arrangements<sup>(21)</sup> in relation to the school,

lies to the First-tier Tribunal<sup>(22)</sup> and must be brought by the proprietor of the school.

(2) On an appeal, the First-tier Tribunal may uphold the decision of the Secretary of State, or direct that it is of no effect.

(3) Where the First-tier Tribunal upholds a decision of the Secretary of State to withdraw approval, the school ceases to be approved under section 342 of the 1996 Act from such date as the First-tier Tribunal may specify or, if it does not specify a date, from such date as the Secretary of State may determine.

#### Commencement Information

**I5** Reg. 5 in force at 1.9.2011, see [reg. 1\(1\)](#)

#### Effect of decisions of the Secretary of State pending an appeal

6. Where the Secretary of State withdraws approval from a school under regulation 4(1), the Secretary of State’s decision to withdraw approval does not have effect during the period in which an appeal against the decision could be brought or, where an appeal has been brought, the appeal has not been determined, withdrawn or otherwise disposed of.

#### Commencement Information

**I6** Reg. 6 in force at 1.9.2011, see [reg. 1\(1\)](#)

(21) For the meaning of “relevant arrangements” see section 342B of the 1996 Act.

(22) The First-tier Tribunal is established under section 3 of the Tribunals, Courts and Enforcement Act 2007 (c.15).

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4th July 2011

*Sarah Teather*  
Minister of State  
Department for Education

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PROSPECTIVE

## SCHEDULE

Regulation 3

## PART 1

## CONDITIONS OF APPROVAL UNDER SECTION 342 OF THE 1996 ACT

**Special educational provision**

1. The arrangements to be made at the school with respect to—
  - (a) the registered pupils<sup>(23)</sup> for whom special educational provision is to be made, categorised by reference to the number, age and sex of day pupils and boarding pupils respectively, and their respective special educational needs, and
  - (b) the special educational provision to be made for these pupils,

are approved by the Secretary of State.

**Commencement Information**

**I7** Sch. para. 1 in force at 1.9.2011, see [reg. 1\(1\)](#)

**Governing body**

- 2.—(1) The arrangements to be made at the school with respect to the composition and proceedings of the governing body and the appointment or election of its members—
  - (a) meet the requirements set out in sub-paragraph (2), and
  - (b) are approved by the Secretary of State.
- (2) The arrangements referred to in sub-paragraph (1) must provide—
  - (a) for the governing body to include—
    - (i) at least one member appointed by one or more local authority,
    - (ii) at least one member elected by teachers at the school from among their number, and
    - (iii) subject to sub-paragraph (3), at least one member elected by, or appointed to represent, parents of children at the school;
  - (b) that a governor is to hold office for a period of four years from the date of election or appointment, except in the case of a governor who is the head teacher of the school who may hold office as long as they are the head teacher; and
  - (c) that the governing body must hold at least three meetings in every school year.
- (3) The person who is elected or appointed under sub-paragraph (2)(a)(iii) must be a person who is the parent of—
  - (a) a registered pupil at the school,
  - (b) a child of compulsory school age with special educational needs,

<sup>(23)</sup> For the meaning of “registered pupil” see section 434(5) of the 1996 Act.

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- (c) a person of any age with special educational needs, or
- (d) a child of compulsory school age, and

must not be an elected member of the local authority, or a person paid to work at the school for more than 500 hours in any consecutive twelve month period.

#### Commencement Information

**18** Sch. para. 2 in force at 1.9.2011, see [reg. 1\(1\)](#)

### Welfare of pupils

**3.** The arrangements for safeguarding and promoting the health, safety and welfare of the registered pupils at the school—

- (a) have regard to any guidance published from time to time about safeguarding and promoting the health, safety and welfare of pupils, and
- (b) are approved by the Secretary of State.

#### Commencement Information

**19** Sch. para. 3 in force at 1.9.2011, see [reg. 1\(1\)](#)

### Suitability of staff

**4.—(1)** Where at the time that an application for approval of a school is made, a person has been appointed to a position at the school, which is not the position of chair of the governing body, the checks referred to in sub-paragraphs (2) to (6) have been carried out before the appointment was made or, if permitted, as soon as practicable thereafter.

(2) The identity of the person must be checked, the person must meet all relevant staff qualification requirements and a check must be made of the person's right to work in the United Kingdom.

(3) An application for an enhanced criminal record certificate must be made in respect of the person, and an enhanced criminal record certificate obtained before, or as soon as practicable after, the person's appointment but in any event before the person starts work.

(4) In the case of a person who has lived outside the United Kingdom, for whom obtaining an enhanced criminal record certificate is not sufficient to establish suitability to work in a school, such further checks must be made as the proprietor considers appropriate, having regard to any guidance issued by the Secretary of State.

(5) In the case of a person who cares for, supervises or is in charge of children for whom accommodation is provided, a check must be made to ensure that person is vetted in accordance with the National Minimum Standards.

(6) Sub-paragraphs (3) to (5) do not apply in respect of a person who has worked in—

- (a) a school in England in a position involving regular contact with children or young persons,
- (b) a maintained school in England in a position to which the person was appointed on or after 12th May 2006 and which did not involve regular contact with children or young persons, or

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(c) an institution within the further education sector in England<sup>(24)</sup> in which the position involved regular contact with children or young persons in the provision of education, during a period which ended not more than three months before taking up the appointment at the non-maintained special school in question.

#### Commencement Information

**I10** Sch. para. 4 in force at 1.9.2011, see [reg. 1\(1\)](#)

#### Supply staff

**5.—(1)** Where at the time that an application for approval of a school is made, a person supplied by an employment business to the school is working as a teacher or member of support staff at the school, the requirements in sub-paragraphs (2) to (7) have been complied with.

(2) The proprietor must have received—

- (a) a written notification from the employment business in relation to that person—
  - (i) that the checks referred to in paragraph 6(5)(a) have been made,
  - (ii) that an application for an enhanced criminal record certificate has been made, or an enhanced criminal record certificate has been obtained by that or another employment business, and
  - (iii) if the employment business has obtained an enhanced criminal record certificate before the person is due to begin work at the school, whether it disclosed any matter or information, or any information was supplied to the employment business, in accordance with section 113B(6)(b) of the 1997 Act;
- (b) where the employment business has obtained an enhanced criminal record certificate before the person is due to begin work at the school, and it discloses any matter or information, or any information was provided to the employment business in accordance with section 113B(6)(b) of the 1997 Act, a copy of the certificate and the information supplied;
- (c) in the case of a person who has lived outside the United Kingdom, for whom obtaining such a certificate is not sufficient to establish suitability to work in a school, written notification of such further checks made by the employment business as it considered appropriate, having regard to any guidance issued by the Secretary of State and the information disclosed by such checks.

(3) Except in the case of a person to whom sub-paragraph (4) applies, the certificate referred to in sub-paragraph (2)(a)(ii) must have been obtained not more than three months before the date on which the person is due to begin work at the school.

(4) This sub-paragraph applies to a person who has worked in—

- (a) a school in England in a position involving regular contact with children or young persons,
- (b) a maintained school in England in a position to which the person was appointed on or after 12th May 2006 and which did not involve regular contact with children or young persons, or
- (c) an institution within the further education sector in England in which the position involved regular contact with children or young persons in the provision of education,

<sup>(24)</sup> An institution within the further education sector is an institution within the meaning of section 91(3) of the Further and Higher Education Act 1992 ([c.13](#)).



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during a period which ended not more than three months before the date on which the person is due to begin work at the non-maintained special school in question.

(5) Before a person who is offered for supply by an employment business may begin work at the school the person's identity must be checked by the proprietor (irrespective of whether any such check was carried out by the employment business before the person was offered for supply).

(6) Sub-paragraph (7) applies to a person (other than a person to whom sub-paragraph (4) applies) who is offered for supply by an employment business to begin work at the school to care for, supervise or be in charge of children for whom accommodation is provided.

(7) Before a person to whom this sub-paragraph applies may begin work at the school, the proprietor must make a check to ensure that the person is vetted in accordance with the National Minimum Standards.

#### Commencement Information

I11 Sch. para. 5 in force at 1.9.2011, see [reg. 1\(1\)](#)

#### Register of checks

**6.—(1)** At the time an application for approval of a school is made a register of checks is maintained which meets the requirements set out in sub-paragraphs (2), (3), (5) and (6).

(2) In relation to each member of staff appointed, the register must show whether the checks required by paragraph 4(2) to (5) have been undertaken and the register must include the date on which each such check was completed and in the case of an enhanced criminal record certificate, the date on which the certificate was obtained.

(3) Subject to paragraph (4), in relation to each member of staff in post on 1st August 2007 who was appointed at any time before 1st May 2007, the register must show whether each check referred to in sub-paragraph (2) was made and whether an enhanced criminal record certificate was obtained, together with the date on which any check was completed or certificate obtained.

(4) Sub-paragraph (3) applies, in the case of a member of staff appointed before 12th May 2006, only if that person's post involves regular contact with children or young persons.

(5) In relation to any person supplied by an employment business to work at the school the register must show whether—

(a) written notification has been received from the employment business that it has made checks corresponding to those which sub-paragraph (2) requires (other than checks under paragraph 4(4)) in relation to the employee, together with the date on which the notification was received, and

(b) a check has been made in accordance with paragraph 5(7) together with the date on which the check was made.

(6) Where written notification has been received from the employment business that it has obtained an enhanced criminal record certificate which disclosed any matter or information, or that information was provided to it in accordance with section 113B(6)(b) of the 1997 Act, the register must show whether the employment business supplied a copy of the certificate and the information to the school.

(7) The register required to be kept under this paragraph may be maintained in electronic form, provided that any information recorded is capable of being reproduced in legible form.

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**Commencement Information**

**I12** Sch. para. 6 in force at 1.9.2011, see [reg. 1\(1\)](#)

**Suitability of the chair of the governing body**

7.—(1) No person is to be appointed chair of the governing body of a school unless the requirements of sub-paragraphs (2) to (4) have been complied with.

(2) The identity of any such person must have been checked and a check made of the person's right to work in the United Kingdom by the Secretary of State.

(3) An application for an enhanced criminal record certificate must have been made and the enhanced criminal record certificate obtained by the Secretary of State.

(4) In the case of any person for whom, by reason of the person's living or having lived outside the United Kingdom, obtaining such a certificate is not sufficient to establish that person's suitability to be the chair of the governing body, such further checks as the Secretary of State considers appropriate must have been made.

**Commencement Information**

**I13** Sch. para. 7 in force at 1.9.2011, see [reg. 1\(1\)](#)

**Financial interests**

8.—(1) The school is not conducted for profit.

(2) No member of the staff may have a financial interest in the school other than by reason of receiving a salary that is unrelated to the financial performance of the school.

**Commencement Information**

**I14** Sch. para. 8 in force at 1.9.2011, see [reg. 1\(1\)](#)

**Premises**

9.—(1) Subject to sub-paragraph (2), at the time that an application for approval of a school is made, the premises of the school conform to the standards applicable to maintained special schools prescribed in regulations from time to time in force under section 542 of the 1996 Act<sup>(25)</sup>.

(2) Where the Secretary of State is satisfied that it would be unreasonable to require conformity with any of the standards applicable to maintained special schools prescribed in regulations in force under section 542 of the 1996 Act, the Secretary of State may direct that different standards apply.

**Commencement Information**

**I15** Sch. para. 9 in force at 1.9.2011, see [reg. 1\(1\)](#)

<sup>(25)</sup> Section 542 has been amended by section 140(1) and (3) of, and Schedule 30, paragraph 158 and Schedule 31 to, the 1998 Act and [S.I. 2010/1158](#). Regulations in force under this section at the time of making these Regulations are the Education (School Premises) Regulations 1999 [S.I. 1999/2](#).

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## Fire safety

10. The Regulatory Reform (Fire Safety) Order 2005(26) is complied with.

### Commencement Information

I16 Sch. para. 10 in force at 1.9.2011, see [reg. 1\(1\)](#)

## PART 2

### REQUIREMENTS TO BE COMPLIED WITH BY A SCHOOL WHILE APPROVED UNDER SECTION 342 OF THE 1996 ACT

## Special educational provision

11.—(1) The arrangements made at the school with respect to the matters referred to in paragraph 1 are in accordance with the approval given by the Secretary of State.

(2) Where, at any time, a change is proposed in relation to the arrangements at a school for the special educational provision to be made for pupils with special educational needs, the proprietor must give written notice of the proposed change to the Secretary of State, and no proposed change in arrangements may take effect unless it is approved by the Secretary of State.

### Commencement Information

I17 Sch. para. 11 in force at 1.9.2011, see [reg. 1\(1\)](#)

## Governing body

12.—(1) The arrangements to be made at the school with respect to the matters referred to in paragraph 2(1) are in accordance with the approval given by the Secretary of State, and meet the requirements in paragraph 2(2).

(2) Where, at any time, a change is proposed in relation to the arrangements at a school with respect to the composition and proceedings of the governing body, the proprietor must give written notice of the proposed change to the Secretary of State.

(3) No proposed change in arrangements may take effect unless—

- (a) it is approved by the Secretary of State, and
- (b) the arrangements comply with paragraph 2(2).

### Commencement Information

I18 Sch. para. 12 in force at 1.9.2011, see [reg. 1\(1\)](#)

## Welfare of pupils

13.—(1) The arrangements at the school with respect to the matters referred to in paragraph 3 are in accordance with the approval given by the Secretary of State.

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(2) The school complies with the National Minimum Standards in relation to safeguarding and promoting the health, safety and welfare of children for whom it provides accommodation.

.....  
**Commencement Information**

**I19** Sch. para. 13 in force at 1.9.2011, see [reg. 1\(1\)](#)

**Suitability of staff**

**14.** A person must not be appointed to a position at the school unless the checks referred to in paragraph 4(2) to (5) have been carried out in relation to that person.

.....  
**Commencement Information**

**I20** Sch. para. 14 in force at 1.9.2011, see [reg. 1\(1\)](#)

**Supply staff**

**15.** Where supply staff are employed at the school, paragraphs 5(2), (3), (5) and (7) must be complied with.

.....  
**Commencement Information**

**I21** Sch. para. 15 in force at 1.9.2011, see [reg. 1\(1\)](#)

**Register of checks**

**16.—(1)** A register is maintained that meets the requirements set out in paragraph 6(2), (3), (5) and (6).

(2) The register must be available for inspection at the school during school hours by the Chief Inspector for the purpose of carrying out functions under Part 1 of the 2005 Act.

(3) The register required to be maintained under this paragraph may be maintained in electronic form, provided that any information recorded is capable of being reproduced in legible form.

.....  
**Commencement Information**

**I22** Sch. para. 16 in force at 1.9.2011, see [reg. 1\(1\)](#)

**Suitability of the chair of the governing body**

**17.** Before any person is appointed as chair of the governing body, the requirements in paragraph 7(2) to (4) have been complied with.

.....  
**Commencement Information**

**I23** Sch. para. 17 in force at 1.9.2011, see [reg. 1\(1\)](#)

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### Financial interests

18.—(1) The school is not conducted for profit.

(2) No member of the staff may have a financial interest in the school other than by reason of receiving a salary that is unrelated to the financial performance of the school.

#### Commencement Information

I24 Sch. para. 18 in force at 1.9.2011, see [reg. 1\(1\)](#)

### Premises

19.—(1) Subject to sub-paragraph (2), the premises of the school conform to the standards applicable to maintained special schools prescribed in regulations from time to time in force under section 542 of the 1996 Act.

(2) Where the Secretary of State has directed that different standards apply in accordance with paragraph 9(2), the premises conform to the standards specified in the direction for as long as the direction remains in force.

#### Commencement Information

I25 Sch. para. 19 in force at 1.9.2011, see [reg. 1\(1\)](#)

### Fire safety

20. The Regulatory Reform (Fire Safety) Order 2005 is complied with.

#### Commencement Information

I26 Sch. para. 20 in force at 1.9.2011, see [reg. 1\(1\)](#)

### Admissions and special educational provision

21.—(1) No pupil may be admitted to a school unless that pupil falls within the arrangements approved for that school in relation to the categories referred to in paragraph 1(a).

(2) The special educational provision made under the arrangements referred to in paragraph 1(b) must be suitable for the registered pupils at the school having regard to their different ages, abilities and aptitudes and any special educational needs they may have, and constitute an efficient use of resources.

#### Commencement Information

I27 Sch. para. 21 in force at 1.9.2011, see [reg. 1\(1\)](#)

### Pupil numbers

22. The number of registered pupils at the school must at no time exceed the number specified in the arrangements approved by the Secretary of State.

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#### **Commencement Information**

**I28** Sch. para. 22 in force at 1.9.2011, see [reg. 1\(1\)](#)

#### **Health of pupils**

**23.**—(1) Appropriate arrangements must be in place—

- (a) for the care and supervision of the health of the registered pupils at the school by suitably qualified and experienced persons including, where relevant, provision for pupils with particular types of disability, and
- (b) for the maintenance of medical and dental records.

(2) Without prejudice to the generality of sub-paragraph (1), arrangements must be made for the medical and dental inspection of the pupils at appropriate intervals, and for their medical and dental treatment.

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#### **Commencement Information**

**I29** Sch. para. 23 in force at 1.9.2011, see [reg. 1\(1\)](#)

#### **Religious education and religious worship**

**24.** Arrangements must be made to ensure, so far as is practicable, that every registered pupil at the school—

- (a) receives religious education, unless withdrawn from receiving such education in accordance with the wishes of the pupil's parent, and
- (b) attends religious worship unless withdrawn from attendance at such worship—
  - (i) in the case of a sixth-form pupil, in accordance with the pupil's own wishes, and
  - (ii) in any other case, in accordance with the wishes of the pupil's parent.

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#### **Commencement Information**

**I30** Sch. para. 24 in force at 1.9.2011, see [reg. 1\(1\)](#)

#### **Sex education**

**25.**—(1) Arrangements must be made to ensure that every registered pupil who is provided with secondary education receives sex education unless wholly or partly excused from such education (except in so far as it is comprised in the National Curriculum) in accordance with a request from the pupil's parent.

(2) Arrangements may be made for registered pupils provided with primary education to receive sex education unless wholly or partly excused from such education in accordance with a request from the pupil's parent.

(3) Arrangements must be made, in relation to registered pupils who are provided with primary and secondary education at the school, to—

- (a) make and keep up to date—
  - (i) a written statement of the school's policy with regard to sex education for pupils provided with primary education, and

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- (ii) a written statement of the school's policy with regard to sex education for pupils provided with secondary education, and
  - (b) make a copy of both statements 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.
- (4) In this Schedule, and in relation to registered pupils who are provided with secondary education, "sex education" includes education about—
- (a) Acquired Immune Deficiency Syndrome and Human Immunodeficiency Virus, and
  - (b) any other sexually transmitted disease.

#### Commencement Information

**I31** Sch. para. 25 in force at 1.9.2011, see [reg. 1\(1\)](#)

#### Meals and refreshments

**26.—(1)** Facilities must be provided to enable the consumption of any meals or refreshments brought to school by registered day pupils.

(2) A school lunch must be provided where this is requested by, or on behalf of, a registered day pupil unless—

- (a) it would be impracticable to comply with this request, or
- (b) the pupil in question has not reached compulsory school age and is being provided with part-time education.

(3) Subject to sub-paragraphs (4) and (5), a charge may be made for the provision of meals or other refreshments to registered day pupils, and each pupil must be charged the same price for the same quantity of every item.

(4) Where any registered day pupil is in receipt of—

- (a) income support,
- (b) income-based jobseeker's allowance (payable under the Jobseekers Act 1995<sup>(27)</sup>),
- (c) income-related employment and support allowance, or
- (d) any other benefit or allowance prescribed under section 512ZB(4)(c)(i) of the 1996 Act<sup>(28)</sup> and meets such conditions prescribed under section 512ZB(4)(c),

a school lunch must be provided for the pupil free of charge and, where milk is provided for the pupil, it must be provided free of charge.

(5) Where the parent of any registered day pupil is in receipt of—

- (a) income support,
- (b) income-based jobseeker's allowance (payable under the Jobseekers Act 1995),
- (c) income-related employment and support allowance,
- (d) support provided under Part 6 of the Immigration and Asylum Act 1999<sup>(29)</sup>, or

<sup>(27)</sup> 1995 c.18.

<sup>(28)</sup> Section 512ZB was substituted, together with sections 512, 512ZA for section 512 as originally enacted, by the 2002 Act, section 201(1). Subsection (4)(aa) and (c) were inserted by the Child Poverty Act 2010 (c.9), section 26(1)(c) and (e).

<sup>(29)</sup> 1999 c.33.

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- (e) any other benefit or allowance prescribed under section 512ZB(4)(aa)(i) of the 1996 Act, in such circumstances as may be prescribed under section 512ZA(4)(aa), and the pupil meets any conditions prescribed under that provision,

a school lunch must be provide for the pupil free of charge and, where milk is provided for the pupil, it must be provided free of charge.

(6) Where—

- (a) any registered day pupil is entitled to any tax credit under the Tax Credits Act 2002<sup>(30)</sup> or element of such a tax credit that is prescribed under section 512ZB(4)(c)(ii) of the 1996 Act, and meets such conditions as may be prescribed under section 512ZB(4)(c), or
- (b) The parent of any registered day pupil is entitled to any tax credit under the Tax Credits Act 2002 or element of such a tax credit that is prescribed under section 512ZB(4)(aa)(ii) of the 1996 Act, in such circumstances as may be prescribed under section 512ZB(4)(aa), and the pupil meets any conditions prescribed under that provision.

(7) No charge may be made for the facilities provided under sub-paragraph (1).

(8) Nothing in this paragraph is to be construed as precluding the taking into account of the net cost of providing for registered day pupils—

- (a) such facilities as are mentioned in sub-paragraph (1), and
- (b) meals and other refreshments,

when determining the tuition and other fees payment of which is a condition of attendance at the school.

(9) In this paragraph “school lunch” in relation to a pupil, means food made available for consumption by the pupil as a midday meal on a school day.

#### Commencement Information

I32 Sch. para. 26 in force at 1.9.2011, see [reg. 1\(1\)](#)

#### Nutritional standards

27. The nutritional standards and requirements applicable to maintained special schools prescribed in regulations under section 114A of the Schools Standards and Framework Act 1998<sup>(31)</sup> must be complied with.

#### Commencement Information

I33 Sch. para. 27 in force at 1.9.2011, see [reg. 1\(1\)](#)

#### Incident books and records

28.—(1) An incident book must be kept which records—

- (a) any incident involving a person who is a registered pupil, is employed at, or is a volunteer working at the school, which results in personal injury or damage to property, and

<sup>(30)</sup> 2002 c.21.

<sup>(31)</sup> Section 114A was inserted by section 86(1) of the Education and Inspections Act 2006 and amended by [S.I. 2010/1158](#). Regulations currently in force are the Education (Nutritional Standards and Requirements for School Food) (England) Regulations 2007 [S.I. 2007/2359](#), amended by [S.I. 2008/1800](#) and [2011/1190](#).



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- (b) any loss of, theft of, or damage to, school property or property belonging to a person who is a registered pupil, is employed at, or is a volunteer working at the school (other than as referred to in sub-paragraph (a)),

and may record any other incidents and matters.

- (2) A record must be kept of all disciplinary measures taken against registered pupils.

#### Commencement Information

I34 Sch. para. 28 in force at 1.9.2011, see [reg. 1\(1\)](#)

#### Reports on pupils to local authorities

29. A report on each registered pupil in respect of whom a local authority maintains a statement under section 324 of the 1996 Act must be made to that authority at least once a year.

#### Commencement Information

I35 Sch. para. 29 in force at 1.9.2011, see [reg. 1\(1\)](#)

#### Non-teaching staff in residential schools

30. Without prejudice to paragraphs 4 and 5, in the case of a residential school, staff who are employed at the school must be suitably qualified and sufficient in number for the purpose of ensuring that pupils accommodated at the school (including any pupils accommodated during school holidays) are properly cared for and supervised.

#### Commencement Information

I36 Sch. para. 30 in force at 1.9.2011, see [reg. 1\(1\)](#)

#### Teaching of religious education

31. No person employed at the school may receive less pay or be deprived of, or be disqualified from, promotion or other advantage, for reasons of religion or because that person does, or does not, teach religious education.

#### Commencement Information

I37 Sch. para. 31 in force at 1.9.2011, see [reg. 1\(1\)](#)

#### Accounts

32.—(1) Proper accounts, and proper records in relation to those accounts, must be kept.

(2) An annual statement of accounts must be prepared.

(3) The accounts and annual statement of accounts must be audited by an auditor eligible for appointment as a company auditor under section 1212 of the Companies Act 2006(32).

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(4) If the Secretary of State so directs, a copy of the annual statement of accounts for any year or years specified in the direction and the auditor's report in respect of that or those years, must be sent to the Secretary of State.

(5) A copy of the annual statement of accounts for the last year for which it is available must, on request, be sent to any local authority which arranges for pupils to attend the school.

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#### Commencement Information

**I38** Sch. para. 32 in force at 1.9.2011, see [reg. 1\(1\)](#)

### Reports and returns

**33.**—(1) The proprietor must send to the Secretary of State any reports, returns or other information relating to the school as requested by the Secretary of State and within the timescale specified in the request.

(2) The proprietor must report the death, and the cause of death (if known), of any registered pupil to the Secretary of State in writing as soon as is reasonably practicable after the death has occurred.

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#### Commencement Information

**I39** Sch. para. 33 in force at 1.9.2011, see [reg. 1\(1\)](#)

### Access to school by local authorities and participation in annual reviews

**34.**—(1) A person authorised by a local authority which arranges for pupils to attend the school must be allowed access to the school at all reasonable times.

(2) At the request of the local authority, the governing body, head teacher and staff of a school must participate in any review, conducted by the authority under section 328 of the 1996 Act, of a statement under section 324 of that Act which relates to any registered pupil at the school, making no charge to the authority for their participation.

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#### Commencement Information

**I40** Sch. para. 34 in force at 1.9.2011, see [reg. 1\(1\)](#)

### Complaints

**35.**—(1) There must be a complaints procedure in operation at the school which—

- (a) is in writing,
- (b) is available on request to—
  - (i) registered pupils,
  - (ii) the parents of registered pupils,
  - (iii) the parents of prospective pupils, and
  - (iv) members of staff, including supply staff, and
- (c) sets out clear time scales for the management of a complaint.

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(2) The complaints procedure must allow for a complaint to be made and considered initially on an informal basis.

(3) Where a complainant is not satisfied with the response to the complaint made in accordance with sub-paragraph (2), the complaints procedure must make provision for a procedure for the complaint to be made in writing.

(4) Where a complainant is not satisfied with the response to the complaint made in accordance with sub-paragraph (3), the complaints procedure must make provision for the complaint to be considered by a person (“the independent person”) appointed by or on behalf of the proprietor who—

- (a) has not, at any time, been a governor of the school, or a member of staff, or member of supply staff, at the school,
- (b) is not the parent of a registered pupil, or former registered pupil, at the school, and
- (c) has not been directly involved in any matter detailed in the complaint.

(5) The complaints procedure must provide for the independent person to make findings and recommendations, and stipulate that the complainant, proprietor and head teacher, and where relevant, the person complained about, are to be given a copy of any findings and recommendations.

(6) The complaints procedure must—

- (a) provide for a written record to be kept of all complaints, and of whether they are resolved informally, at the preliminary stage or proceed to be considered by the independent person,
- (b) provide that correspondence, statements and records relating to individual complaints are to be kept confidential, and may only be disclosed where the Secretary of State or the Chief Inspector conducting an inspection under section 5 of the 2005 Act requests access to them, and
- (c) where the school provides accommodation, comply with the National Minimum Standards concerning accommodation.

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#### Commencement Information

**I41** Sch. para. 35 in force at 1.9.2011, see [reg. 1\(1\)](#)

#### Inspection reports

**36.—**(1) A copy of the most recent report published by the Chief Inspector under section 11 of the 2005 Act must be made available, on request, to the parents of registered pupils and prospective pupils.

(2) Following an inspection under section 87(6) of the Children Act 1989, a copy of any report of that inspection must be sent to the parents of any registered pupil for whom the school provides accommodation.

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#### Commencement Information

**I42** Sch. para. 36 in force at 1.9.2011, see [reg. 1\(1\)](#)

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## Prospectus

**37.—**(1) A prospectus must be prepared and published in advance of each school year providing information about the school in relation to the school year in question and including the information specified in Part 3.

(2) A copy of each year’s prospectus must be made available, on request, to any local authority and to the parents of registered pupils and prospective pupils.

### Commencement Information

**I43** Sch. para. 37 in force at 1.9.2011, see [reg. 1\(1\)](#)

## Temporary arrangements

**38.** Where notice has been given under regulation 4(2)(a), and the Secretary of State has approved relevant temporary arrangements and directed that the proprietor put them into operation, those temporary arrangements must operate pending compliance with the requirements specified in the notice.

### Commencement Information

**I44** Sch. para. 38 in force at 1.9.2011, see [reg. 1\(1\)](#)

## PART 3

### INFORMATION TO BE PUBLISHED BY THE GOVERNING BODY

**39.—**(1) The information referred to in paragraph 37 to be included in the prospectus must include—

- (a) the name, address, email address, website address and telephone number of the school and the names of the head teacher and of the chair of the governing body;
- (b) the classification of the school as a day or boarding school, or a school taking both day and boarding pupils;
- (c) the description of 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.

(2) Where there are specific arrangements for parents of registered pupils at the school, or parents of prospective pupils, to visit the school, the information must include particulars of those arrangements.

(3) The information must include 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 of such choices by parents and pupils),
- (c) the manner and context in which sex education is given in accordance with paragraph 25, and
- (d) the careers education provided.

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- (4) The information must include particulars relating to the school curriculum including, in particular—
- (a) a list of the relevant 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 a designated body under section 98 of the Learning and Skills Act 2000<sup>(33)</sup>,
  - (b) the titles of the syllabuses associated with each of the qualifications referred to in sub-paragraph (4)(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 inspection and (where applicable) obtaining 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<sup>(34)</sup>.
- (5) The information must include the affiliation, if any, of the school with a particular religion or religious denomination.
- (6) Without prejudice to sub-paragraphs (3) and (4), the information must include—
- (a) particulars of the religious education provided at the school and of any arrangements for the parent of a registered pupil, (or in the case of a sixth-form pupil, the pupil), to express a wish that the pupil be withdrawn from attendance at religious worship or religious education, as provided for in paragraph 24, and
  - (b) particulars of special curricular and other arrangements made for particular classes or descriptions of pupil.
- (7) The information must include—
- (a) 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,
  - (b) particulars of arrangements for pastoral care,
  - (c) general arrangements as to school discipline and the arrangements for bringing school rules to the attention of registered pupils and parents,
  - (d) the main societies and activities open to, and the facilities available to, registered pupils at the school otherwise than as part of the education provided at the school,
  - (e) 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, and
  - (f) a copy of the accessibility plan for the school prepared under paragraph 3 of Schedule 10 to the Equality Act 2010<sup>(35)</sup>.

<sup>(33)</sup> 2000 c.21. Section 98 is amended by sections 159 and 169 of, and Schedule 2 to, the Education and Skills Act 2008, and sections 123(2), 174, 192 and 266 of, and paragraphs 14 and 44 of Schedule 6, paragraphs 26 and 28 of Schedule 12 and Part 2 of Schedule 16 to, the Apprenticeships, Skills, Children and Learning Act 2009 (c.22) (“the 2009 Act”). “Relevant qualifications” has the meaning in section 96 of, the Learning and Skills Act 2000. Section 96 is amended by sections 174 and 192 of, and paragraphs 26 and 27 of Schedule 12 to, the 2009 Act and by S.I. 2010/1158.

<sup>(34)</sup> S.I. 1989/954.

<sup>(35)</sup> 2010 c.15.

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### Commencement Information

**I45** Sch. para. 39 in force at 1.9.2011, see [reg. 1\(1\)](#)

PROSPECTIVE

### EXPLANATORY NOTE

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

These Regulations make provision for the approval of non-maintained special schools by the Secretary of State, and set out the requirements which must be met for a school to continue to be approved as a non-maintained special school. They replace with amendment the Education (Non-Maintained Special Schools) (England) Regulations 1999, the Education (Non-Maintained Special Schools) (England) (Amendment) Regulations 2002 and the Education (Non-Maintained Special Schools) (England) (Amendment) Regulations 2007 which are revoked by these Regulations (regulation 1(3)).

Regulation 3 provides that the proprietor must ensure that conditions of approval (set out in Part 1 of the Schedule) and the requirements following approval (set out in Part 2 of the Schedule) are met. The requirements align with those for maintained special schools.

Regulation 4 provides that approval may be withdrawn for failure to comply with requirements in these Regulations. Approval may not be withdrawn unless written notice has been given to the proprietor and after giving the proprietor time to comply with requirements. Approval must be withdrawn at the request of the proprietor.

Regulations 5 and 6 set out the provisions for appeal against a decision to withdraw approval or in relation to the approval of relevant arrangements (as defined in section 342B of the Education Act 1996). Appeals are made to the First-tier Tribunal. Where approval is withdrawn for failure to comply with requirements in these Regulations under regulation 4(1), the decision will not take effect until the last date for lodging an appeal to the Tribunal has expired if no appeal is made, or where an appeal is made, the appeal is finally determined. (The time-limits for appeals to the First-tier Tribunal are set out in the Schedule to the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008(36)). Where an appeal is made to the Tribunal, the decision to withdraw approval will not take effect until the date specified by the Tribunal.

Part 1 of the Schedule provides for the conditions of approval. These include the arrangements to be made at the school with respect to the pupils at the school and the special educational provision to be made for them (paragraph 1), the arrangements to be made with respect to the composition and proceedings of the governing body (paragraph 2) and the arrangements relating to the welfare of pupils (paragraph 3). The other conditions of approval relate to suitability of staff, registers of checks and suitability of the chair of the governing body, financial interests, premises and fire safety (paragraphs 4 to 10 of Part 1).

(36) [S.I. 2008/2699](#).

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Part 2 of the Schedule sets out the requirements which must be complied with following approval and paragraphs 11 to 20 reflect those conditions of approval which are also continuing requirements. The other requirements include: provision for sixth form pupils to withdraw from acts of religious worship in line with the arrangements for maintained special schools (paragraph 24); requirements relating to sex education (paragraph 25); requirements relating to nutritional standards (paragraph 27); requirements relating to complaints procedures (paragraph 35); a requirement for non-maintained special schools with residential provision to make copies of welfare inspection reports available to parents, on request (paragraph 36); and a requirement for a school to prepare and publish a prospectus each year which must include the information set out in Part 3.

No regulatory impact assessment has been prepared for these Regulations as the impact on the non-maintained special schools sector is minimal.

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