

**EXPLANATORY MEMORANDUM TO
THE EDUCATION (INDEPENDENT SCHOOL STANDARDS) (ENGLAND)
(AMENDMENT) REGULATIONS 2014**

2014 No. 2374

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**

To change the requirements on independent schools in relation to the standard for the spiritual, moral, social and cultural (SMSC) development of pupils. Proprietors will be required to actively promote the fundamental British values (rather than to promote principles which encourage pupils to respect them) and ensure other relevant principles are actively promoted (rather than promoted) to, for example, encourage respect for and tolerance of other people, and respect for democracy and English law.

3. **Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments**
None.

4. **Legislative Context**

This instrument amends the Education (Independent Schools Standards) Regulations 2010 (S.I. 2010/1997). It is part of a wider programme to reform the basis on which independent schools in England are regulated by the Secretary of State. Two other instruments make changes to support this reform and they will come into force in September 2014. They are: the Independent Inspectorates (Education and Boarding Accommodation) Regulations 2014 (S.I. 2014/2158); and the Independent Educational Provision in England (Prohibition on Participation in Management) Regulations 2014 (S.I. 2014/1977). Further reforms will be introduced later in 2014, as Part 4 of the Education and Skills Act 2008 (which sets out a new framework for the regulation and inspection of independent schools in England) is brought into force. This will include new independent school standards regulations (to replace the 2010 Regulations).

5. **Territorial Extent and Application**

This instrument applies to England only.

6. **European Convention on Human Rights**

As the instrument is subject to a negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 This instrument is intended to contribute to raising standards across the independent schools sector in England. The regulation of independent schools is governed by Part 10 of the Education Act 2002, and the Secretary of State is the regulator of independent schools in England. The Department for Education is in the process of introducing a new framework for the regulation of independent schools in England, which is set out in the Education and Skills Act 2008. The Education (Independent School Standards) Regulations 2010 prescribe standards which independent schools are required to meet. Under section 165 of the Education Act 2002, the Secretary of State may take a range of actions in relation to an independent school where he is satisfied that a school is not meeting any one or more of the standards. Standards are prescribed by reference to quality of education (which does not apply to academies); SMSC; welfare, health and safety of pupils; suitability of staff and proprietors; premises and accommodation; provision of information; and the handling of complaints.

7.2 These regulations make changes to the SMSC standard. The main changes are:

- to strengthen the current standard about spiritual, moral, social, and cultural development of pupils in the Independent School Standards. Specifically, school proprietors are required to actively promote British values, as distinct from the current requirement which is for the proprietor to ensure principles are promoted which encourage pupils to respect the values; and
- introduce a new requirement to encourage respect for other people, with particular regard to the protected characteristics in the Equality Act.

7.3 The changes are intended to emphasise the importance of the fundamental British values and to help address extremism.

Consolidation

7.4 It is intended to make further changes to the Independent School Standards later in 2014 when we make new regulations (under the Education and Skills Act 2008) to replace the current regulations. These changes have been the subject of a consultation. The responses to this are now being analysed. .

8. Consultation outcome

8.1 The proposed changes made by these Regulations were subject to a six-week consultation from 23 June to 4 August. This resulted in 1462 responses. Of these 909 were in support of a campaign that claimed the effect

of the changes would be, amongst other things, to: introduce new values; extend the equality agenda; discriminate against Christianity; and undermine religious freedoms. This is not correct. The fundamental British values are not new. They were defined in the government's 2011 Prevent Strategy and have been part of the Independent School Standards since the beginning of 2013.

8.2 In relation to equality legislation, the proposals are that schools should encourage pupils to respect other people, even if they do not agree with them. This does not extend equality requirements or discriminate against Christianity or religious freedoms. The amended standard would not require a school to do anything that they are not currently required to do by the Equality Act 2010 (which applies to independent schools).

8.3 Of the remaining responses there were 516 on whether the changes to the SMSC standard are required to ensure the active promotion of fundamental British values and respect for other people. A significant number of respondents indicated that they disagreed with the proposed changes, but analysis of the related comments revealed that this was because of misunderstanding the effect or raising issues that were not part of the consultation. For example, some responses questioned the definition of the fundamental British values and requested that this be opened up for further debate; others maintained that the changes extend the equality agenda and will result in the marginalisation of Christianity; and others considered that the changes are not necessary, that the standards were only amended in January 2013, and that many schools are already doing this.

8.4 The Department has not made any changes to the proposed revision to the SMSC standard as a result of the consultation. However, in light of the consultation responses the proposed changes to the suitability of staff and proprietors standard that were consulted on at the same time will not now be introduced in September. The Government's position was that these provisions contained no new policy, but were technical changes required, and expected by the independent school sector, to update the standards in line with the requirements on staff vetting already set out for local authority maintained schools, following changes to criminal record checks and the introduction of teacher prohibition orders, as set out in the statutory guidance "*Keeping Children Safe in Education*", published in March 2014. However, the consultation raised a number of technical points on the drafting of those provisions that the Department would like to consider in greater detail. The intention is, therefore, to introduce the changes to the suitability of staff and proprietors standard along with the remaining standards, at the October half-term.

8.5 The consultation and consultation response document can be found at: <https://www.gov.uk/government/consultations/proposed-new-independent-school-standards>

9. Guidance

The Department's SMSC advice for independent schools will be updated and published to support the new requirements. Similarly, the Department's SMSC

advice for maintained schools will be updated, to ensure consistency of practice across the whole of the schools sector.

10. Impact

10.1 The impact on business, charities or voluntary bodies is minimal.

10.2 The impact on the public sector is minimal.

10.3 An Impact Assessment will be published on www.legislation.gov.uk later in 2014 when the proposed changes to the rest of the Independent School Standards are introduced.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The Department has not taken any action to minimise the impact of the requirements on schools employing up to 20 people. At the time the Impact Assessment was prepared there were 2,405 independent schools in England, of which 1,790 were small and micro businesses with fewer than 50 employees.

11.3 The basis for the final decisions on what action to take to assist small business is that the Department:

- does not consider that the changes to the SMSC standard will impose any particular burdens on good schools;
- the only schools where there might be an impact will be those that only just barely meet the current standard and those that do not adhere to their current duties under the Equality Act. This is unavoidable and it is absolutely right that these schools are required to improve;
- believes that the safeguarding and welfare of pupils (including protection from extremism) is fundamental to the education system, regardless of the size of the school concerned;
- does not consider, because of the importance of the issues involved, that small and micro independent schools should not be exempted from the requirements.

12. Monitoring & review

The regulations will be reviewed as and when required.

13. Contact

Paul Mackenley at the Department for Education Tel: 01325 735631 or email: paul.mackenley@education.gsi.gov.uk can answer any queries regarding the instrument.