

EXPLANATORY MEMORANDUM TO
THE EDUCATION (INDEPENDENT SCHOOL STANDARDS) (ENGLAND) REGULATIONS
2010

2010 No. 1997

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 This instrument sets out the standards that independent schools must meet and introduces amendments that align the requirements for safeguarding children and staff recruitment checks for independent schools with those for maintained schools. It also clarifies requirements for the provision of information for parents and makes provision for parents of boarding pupils to be sent a copy of the report of boarding inspections.
3. **Matters of special interest to the Joint Committee and Select Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 These Regulations revoke and replace the Education (Independent School Standards) (England) Regulations 2003 (the 2003 Regulations), consolidating amendments made to those regulations in 2004, 2007 and 2008. The 2003 regulations set out the standards that independent schools must meet in order to obtain and retain registration. The regulations have worked well but need amending to reflect the amendments referenced above. The standards govern the:
 - quality of education;
 - spiritual, moral, social and cultural development of pupils;
 - welfare, health and safety of pupils;
 - suitability of proprietors and staff;
 - premises and accommodation;
 - provision of information; and
 - the manner in which complaints are dealt with.
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**

The principal amendments are as follows:

7.1 Regulation 2. The definition of staff in this regulation no longer includes volunteers. Instead, any arrangements for recruiting volunteers will be carried out with regard to the Safeguarding Children and Safer Recruitment in Education guidance (SCSRE) issued by this Department. This is in line with arrangements for maintained sector schools.

7.2 Regulation 2(3) makes provision for independent schools with websites to make information available to parents either by placing the information on a website or sending it direct to parents.

7.3 **Part 1 of the Schedule – the quality of education provided**

This preserves requirements in paragraph 1 of the Schedule to the 2003 regulations.

7.4 **Part 2 of the Schedule – the spiritual, moral, social and cultural development of students**

This preserves requirements in paragraph 2 of the Schedule to the 2003 Regulations.

7.5 **Part 3 of the Schedule - the welfare, health and safety of pupils**

This preserves requirements in paragraph 3 of the Schedule to the 2003 Regulations and introduces the following amendments:

7.6 Paragraph 7 makes it clear that it is the responsibility of the proprietor to ensure the welfare of all pupils and set out the arrangements that a proprietor must have regard to in order to safeguard pupils at the school.

7.7 Paragraph 8 makes it clear that it is the responsibility of the proprietor to safeguard the welfare of boarders, whether or not they are pupils of the school, and requires the proprietor to have regard to the National Minimum Standards for Boarding Schools or, where relevant, those for Residential Special Schools.

7.8 Paragraphs 9 to 17 cover a range of existing requirements that proprietors must meet.

7.9 **Part 4 of the Schedule - the suitability of proprietors and staff**

This preserves requirements in paragraph 4 of the Schedule to the 2003 Regulations and introduces the following amendments:

7.10 The removal of the current requirement for checks to be made on staff with regard to their previous employment history, character references and professional references. Instead, these will be carried out with regard to SCSRE in line with arrangements for maintained sector schools.

7.11 Paragraph 21(3)(b) makes provision for identity checks, checks with equivalent overseas bodies on those who have lived in other countries, right to work checks and CRB checks to be carried out on individual proprietors of registered schools before, or as soon as practicable after, appointment. This change will mitigate the current problem of delays in approving proprietors caused by delays in obtaining the outcome of checks.

7.12 Paragraph 21(8)(a) makes the same provision for Chairs of proprietorial bodies of registered schools.

7.13 Paragraph 21(8)(b) makes the same provision for members of proprietorial bodies of registered schools with the exception of identity and right to work checks which can be made very quickly.

7.14 Paragraph 21(7) makes provision for a CRB check countersigned by a local authority to be

accepted in place of one countersigned by the Secretary of State for the Chair of a maintained school that is applying to register the maintained school as an academy.

7.15 Paragraph 21(8)(c) makes provision for the Secretary of State to carry out CRB checks on members of proprietorial bodies. Currently, where there are concerns raised about a member, there is no mechanism which allows the Secretary of State to obtain a CRB disclosure for the purpose of determining the person's suitability to be a school proprietor.

7.16 Part 5 of the Schedule – the premises and accommodation

This preserves requirements in paragraph 5 of the Schedule to the 2003 Regulations.

7.17 Part 6 of the Schedule - the provision of information to parents

This preserves requirements in paragraph 6 of the Schedule to the 2003 Regulations and introduces the following amendment:

7.18 Paragraph 24(1)(e) requires boarding and residential special schools to send to parents of boarding pupils a copy of the 3 yearly boarding inspection reports. This will put these reports on the same level as reports on the education provision in independent schools. The associated costs are covered in the attached impact assessment.

7.19 Part 7 of the Schedule - the manner in which complaints are to be handled

This replicates requirements in paragraph 7 of the current Schedule.

8. Consultation outcome

8.1 A full, public consultation was held between 3 December 2009 and 11 March 2010 on a package of proposals for amendments to the regulations governing independent schools and non-maintained special schools and the National Minimum Standards for Boarding and Residential Special Schools. The proposals included recommendations made in "Keeping our School Safe" – the report of Sir Roger Singleton's review of safeguarding arrangements in these schools. 63 responses were received from associations, inspectorates, schools and other associated bodies. The independent sector was in favour of the proposal for clarifying the requirements governing the provision of information to parents. There was substantial opposition from the independent sector to implementing the recommendations made in the Singleton review as these were seen as increasing the regulatory burden on schools. Consequently, these proposals have not been carried forward apart from that requiring boarding schools to send a copy of the report of boarding inspections to parents of boarding pupils.

8.2 Concerns were raised that this requirement would cause problems for schools that provide accommodation for Looked After pupils. However, this has not been an issue with regard to reports on the education provision for schools with Looked After pupils. Schools must comply with court orders that place restrictions on parents having information about the whereabouts of their children.

8.3 The sector made very strong representations for parity with the maintained sector in arrangements for safeguarding children, including the application of Departmental guidance, and staff recruitment checks. The resultant changes are detailed above.

The consultation may be accessed at: <http://www.dcsf.gov.uk/consultations>

9. Guidance

9.1 All independent schools in England will be e-mailed a link to the amended regulations plus

a note setting out the changes.

10. Impact

10.1 The impact on businesses and charities which are also independent schools will be minimal. Whilst there is a cost associated with sending boarding inspection reports to parents there are also non-monetised benefits in the alignment of the safeguarding and staff recruitment requirements for the independent and maintained sectors and clarification of how information may be made available to parents.

10.2 The impact on the public sector is none.

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 which are also independent schools.

11.2 There has been no approach taken to minimise the impact of the requirements on firms employing up to 20 people. It is important for parents and pupils that all independent schools operate to the same standards, particularly with regard to safeguarding children and staff recruitment.

12. Monitoring & review

12.1 The regulations are reviewed regularly.

13. Contact

Stephanie Lidster (tel: 01325 392162, e-mail:stephanie.lidster@education.gsi.gov.uk) can answer any queries regarding the instrument.

Title: The Education (Independent School Standards) (England) Regulations 2010 Lead department or agency: Department for Education Other departments or agencies:	Impact Assessment (IA)
	IA No: DFE0003
	Date: 2/08/2010
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Primary legislation
	Contact for enquiries: Stephanie Lidster, 01325 392162 stepahnie.lidster@education.gsi.gov.uk

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

The current Education (Independent School Standards) (England) Regulations 2003, which set out the standards all independent schools must meet, do not provide for clear arrangements for the provision of information to parents about school provisions. Nor do they provide for boarding schools to send reports of boarding inspections to parents of boarders. Also, some safeguarding and recruitment requirements are currently non-statutory for maintained sector schools whilst being statutory for independent schools, causing independent schools to be uncertain about their responsibilities.

What are the policy objectives and the intended effects?

The objective is to improve clarity about how schools must provide information for parents and meet requirements for pupil safeguarding and staff recruitment. The independent sector has complained for some time that the current requirements for providing information to parents are not clear and this needs addressing to ensure schools understand what is required. Aligning safeguarding children and staff recruitment arrangements for the independent sector with those for the maintained sector will improve independent schools' understanding of their responsibilities. Ensuring parents of boarders receive boarding inspection reports will increase parental information about the standard of care provided for their child.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

1. Do nothing. Whilst schools would benefit from not having to provide boarding inspection reports they would not benefit from the alignment of safeguarding and recruitment arrangements. Parents would not benefit from the improved arrangements for the provision of information.

2. Make the necessary amendments to the regulations. Parents would benefit from the improved arrangements for providing information and schools would benefit from an improved understanding of their safeguarding and recruitment arrangements. In light of consultation responses this is our preferred option.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will be reviewed on an ongoing basis
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	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: 4th August 2010.....

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: None

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	£0.006m		£0.006m

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

Provide parents of boarding pupils with a copy of the 3 yearly boarding report - £5.600 for the coming academic year. After that boarding inspection reports will form part of the inspection report on the school which are already sent to parents.

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

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

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

None

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

Parents and pupils will benefit from easier access to information about schools. Schools will benefit from a better understanding of safeguarding children and staff recruitment requirements.

Key assumptions/sensitivities/risks

Assumption that 10% of parents of pupils in boarding schools do not have home internet access.

Discount rate (%)

3.5

Impact on admin burden (AB) (£m):		Impact on policy cost savings (£m):		In scope
NewAB:£0.006m	AB savings: £0m	Net:£0.006m	Policy cost savings: £0	Yes

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?		England			
From what date will the policy be implemented?		01/09/2010			
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?		No			
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: N/A		Non-traded: N/A	
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: 100		Benefits:	
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
Statutory equality duties ¹ Statutory Equality Duties Impact Test guidance	No	8
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	8
Small firms Small Firms Impact Test guidance	No	8
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

¹ 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	http://www.opsi.gov.uk/si/si2003/20031910.htm
2	http://www.opsi.gov.uk/si/si2004/20043374.htm
3	http://www.opsi.gov.uk/si/si2007/uksi_20071087_en_1
4	http://www.opsi.gov.uk/si/si2008/uksi_20083253_en_1
5	http://www.dcsf.gov.uk/consultations/index.cfm?action=conResults&consultationId=1664&external=no&menu=3

+ 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 ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	5,600									
Annual recurring cost										
Total annual costs	5,600									
Transition benefits										
Annual recurring benefits										
Total annual benefits										

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

Evidence Base (for summary sheets)

1. Problem under consideration

The regulations need changing in order to reflect changes identified as part of the ongoing review of the regulations.

2. Consultation

A full public consultation was held from 2 December 2009 to 11 March 2010 on a package of amendments. 63 responses were received and the proposal for clarifying the current arrangements for providing information to parents was welcomed. The proposal to send reports of boarding inspections to parents of boarders did not attract any comment.

Also, in light of responses to the consultation, changes have been made to the regulations which align the independent sector with the maintained sector with regard to arrangements for safeguarding the welfare, health and safety of pupils and the recruitment of staff. These changes do not impose any costs – rather than applying statutory requirements schools will instead have regard to requirements contained in guidance on safeguarding and recruitment, together with other specified guidance, in the same way as maintained schools.

The consultation may be accessed at:

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

3. Rationale for intervention

Responses to the consultation highlighted that the differences between the independent and maintained sectors in the requirements for safeguarding children and staff recruitment cause independent schools to be unsure of their responsibilities. Aligning the requirements will help to eliminate this.

Following the introduction of the current regulations representations made by the sector sought changes to the requirements for providing specified information to parents. The sector wanted the provision of information via websites to be voluntary and these regulations make provision for that.

4. Policy objective

To improve clarity for independent schools in their responsibility for safeguarding children, staff recruitment and requirements for providing information to parents. To ensure parents of boarding pupils receive clear information on the standard of care provided for their children

5. Description of options considered

Option 1: do nothing

Option 2: amend legislation to take forward the proposals contained in the new regulations.

Costs and Benefits

Sectors and groups affected

Parents and independent schools.

Benefits

Option 1: do nothing

Whilst schools would benefit from not having to bear the cost of providing boarding inspection reports they would not benefit from aligned safeguarding and recruitment arrangements and clear requirements for providing information to parents. Parents would not benefit from the improved arrangements for the provision of information.

Option 2: introduce legislation to take forward the proposals

There are approximately 580,000 pupils being educated in registered independent schools. They and their parents will benefit from an improvement in access to information. The 2400 registered independent schools in England will benefit from streamlined safeguarding and staff recruitment arrangements.

Costs

Option 1: do nothing

There would be no additional costs associated with this option.

Option 2: introduce legislation to take forward all of the proposals

There will be a cost of around £5600 in the next academic for providing parents of boarding pupils with a copy of the 3 yearly report on boarding accommodation provided at or by the school.

Administrative burden and policy saving calculations

There are around 600 boarding schools catering for 68,000 boarding pupils and the accommodation is inspected every 3 years. Advice from the sector is that it will cost £2.50 to issue a hard copy of the boarding welfare report in respect of each boarding pupil. This results in an annual cost to the sector of £56,000. However, schools can, of course, use e-mail and according to Ofcom around 84% of households with school aged children have internet access at home. However, there are significant differences between socioeconomic groups. Only 68% of children in social classes D and E had internet access at home but this figure was 87% for children in social class C2. 92% for children in social class C1 and 97% for social classes A and B². Given the demographic profile of many boarding schools, we think it is reasonable to assume around 90% of households with school age children at boarding school have internet access at home. Based on the assumption that 10% of parents of pupils in boarding schools do not have home internet access, and will require a hard copy of the report, the cost to the sector of providing hard copy reports is around £5,600 per annum.

From September 2011 boarding inspection reports will form part of the inspection report on the school which is already sent to parents.

Wider impacts

None. The regulations impact solely on registered independent schools in England.

Summary and preferred option with description of implementation plan

The preferred option, in light of the response to the consultation, is that the changes referenced above are made and the Education (Independent School Standards) (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.

² Becta (2009) Harnessing Technology Review 2009: The role of technology in education and skills.

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>Basis of the review: [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>Review objective: [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 have a clear understanding of their responsibilities for safeguarding children and staff recruitment and the provision of information for parents.</p>
<p>Review approach and rationale: [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 and any unintended consequences. This is the most cost-effective method of gathering information.</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured] The current regulations do not provide clear arrangements for providing information to parents and nor do they provide for an alignment of safeguarding arrangements between the independent and maintained sectors. Current feedback from the sector is that these arrangements are not clear.</p>
<p>Success criteria: [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] That independent schools have a clear understanding of their responsibilities for safeguarding children and staff recruitment and the provision of information for parents.</p>
<p>Monitoring information arrangements: [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>Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here] Not applicable</p>

Annexes

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 registration and inspection fee arrangements were introduced, only 48 (12%) of schools that were operating as small businesses responded. Generally, schools indicated that the introduction of the arrangements brought benefits in terms of improving the quality of the education and care of pupils and by providing a clear framework for inspection purposes.

We do not expect that the impact of these proposals would have a significantly greater impact on small schools than on 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 – Standards and equality and diversity

The focus of the Standards is to ensure a satisfactory level of provision in independent schools in the following areas:

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 containing these standards may be found at:

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

In addition, during inspection accessibility plans as required by the Disability Discrimination Act 1995 will be examined.

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