
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace the Education (Independent School Standards) (England) Regulations 2010 (“the 2010 Regulations”). Both these Regulations and the 2010 Regulations apply only in relation to England.

These Regulations set out the Independent School Standards (“the standards”) to which independent educational institutions which are independent schools will be inspected under Part 4 of the Education and Skills Act 2008 (“the 2008 Act”).

A person conducting such an inspection will make a report on the extent to which any relevant standard is met, which the Secretary of State will consider along with any other evidence in determining whether to register a new school or to take enforcement action against an existing one. A standard is a relevant one if it is specified by the Secretary of State for the purposes of the inspection or considered to be relevant by the person carrying out the inspection in the circumstances of the case.

Regulation 2 is an interpretation provision. The definitions are largely unchanged from the 2010 Regulations, but new definitions have been inserted to reflect changes to the standards as a result of changes to primary legislation, for example in the areas of safeguarding and special educational needs.

Regulation 3 provides that the standards in the Schedule apply to all independent schools and alternative provision Academies that are not independent schools, save for some limited exceptions, most notably that Part 1 does not apply to Academies. Regulation 3 also introduces the Schedule which contains the new standards for independent schools for the purposes of Part 4 of the 2008 Act. The paragraph numbers below are references to the paragraphs contained in the Schedule to these Regulations.

Part 1 of the Schedule sets out the standards on the quality of education to be provided. The standard in paragraph 2(1) is met if the proprietor ensures that a written policy on the curriculum, supported by plans and schemes of work, is drawn up and implemented effectively which provides for the matters set out in paragraph 2(2). It is a new requirement that the written policy, plans and schemes of work do not undermine the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs. Another new requirement is that personal, social, health and economic education encourages respect for other people, paying particular regard to the protected characteristics set out in the Equality Act 2010. Paragraph 3 relates to the teaching at the school. The two main new requirements are that the teaching does not undermine the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs and does not discriminate against pupils contrary to Part 6 of the Equality Act 2010.

Part 2 sets out the standard relating to the spiritual, moral, social and cultural development of pupils. It is the same as in Part 2 of the 2010 Regulations as amended by the Education (Independent School Standards) (England) (Amendment) Regulations 2014. It has been amended by those Regulations so as to require a proprietor of an independent school to actively promote British values.

Part 3 sets out the standards on the welfare, health and safety of pupils. These include standards on the promotion of good behaviour (paragraph 9), the prevention of bullying (paragraph 10), compliance with health and safety laws (paragraph 11) and the administration of first aid (paragraph 13). There is now a new standard requiring the proprietor to ensure that a written risk assessment policy is

drawn up and implemented effectively and that appropriate action is taken to reduce risks that are identified (paragraph 16).

Part 4 sets out the standards on the suitability of proprietors and staff. All members of staff (separate provision is made for proprietors and supply staff) must be subject to checks on any bar from working with children and young persons, and on their identity, medical fitness, right to work in the United Kingdom and their qualifications (paragraph 18(2)(a) and (c)). It is also a requirement that, subject to exceptions, such a member of staff, prior to or as soon as practicable after, their appointment be subject to an enhanced criminal record check under the Police Act 1997 (paragraph 18(2)(d)). Paragraph 18(2)(e) provides that any person who has lived outside the United Kingdom must be subject to further checks if an enhanced criminal record check is insufficient to establish suitability to work in a school.

There are also new requirements to check that no member of staff carries out work at a school, or intends to do so, in contravention of a prohibition order, an interim prohibition order, or any direction made under section 128 of the 2008 Act that they may not take part in the management of an independent school (paragraph 18(2)(b)). A prohibition order is an order prohibiting the person to whom it relates from carrying out teaching work and an interim prohibition order may be made by the Secretary of State at any time pending a decision as to whether to make a prohibition order should she consider it necessary in the public interest to do so.

A person supplied by an employment business (supply staff) cannot work at a school until the employment business has confirmed that checks have been carried out (paragraph 19(2)(a)) and schools are required in their arrangements with agencies to place them under an obligation to provide this information (paragraph 19(2)(d)(i)). The person cannot work at a school unless the proprietor considers them suitable for the work for which they are being supplied (paragraph 19(2)(b)) and has checked their identity (paragraph 19(2)(c)). The new requirement that no member of staff carries out work at a school, or intends to do so, in contravention of a prohibition order or an interim prohibition order, or any direction made under section 128 of the 2008 Act that they may not take part in the management of an independent school also applies to supply staff (paragraphs 19(2)(a)(i)(aa) and 21(3)(a)(iii)) and proprietors (paragraphs 20(3)(a)(ii), 20(5)(a)(ii) and 20(6)(a)(ii)).

Part 5 sets out the standards relating to school premises and accommodation. These require the proprietor to ensure that the school premises and the accommodation and facilities provided are maintained to a proper standard. There must be suitable toilet and washing facilities as well as suitable accommodation provided to cater for the medical and therapy needs of pupils. No changes have been made to this Part and it is the same as it is in the 2010 Regulations.

Part 6 sets out the standard on the provision of information, requiring certain information to be provided or made available to parents of pupils and parents of prospective pupils. The standard is largely unchanged from the standard contained in Part 6 of the 2010 Regulations. The main change is that there is a new requirement for a proprietor to publish information relating to certain regulatory action that has been taken in relation to the school.

Part 7 sets out the standard on the handling of complaints. The proprietor must ensure that a complaints procedure is drawn up and effectively implemented which deals with the handling of complaints from parents of pupils and which meets the requirements set out in the standard. The only significant change to the standard as set out in Part 7 of the 2010 Regulations is that there is no longer a requirement for the complaints procedure to provide for a written record to be kept of all complaints, only those that are made in accordance with the formal complaints procedure.

Part 8 sets out the new standard on the quality of leadership and management. The proprietor can now be held accountable for ensuring that those with leadership and management responsibilities at the school demonstrate good skills and knowledge, fulfil their responsibilities effectively and actively promote pupil well-being. There is no leadership and management standard contained in the 2010 Regulations.

The National Minimum Standards for Boarding Schools can be found at <https://www.gov.uk/government/publications/boarding-schools-national-minimum-standards>

and the National Minimum Standards for Residential Special Schools can be found at <https://www.gov.uk/government/publications/residential-special-schools-national-minimum-standards>

The National Minimum Standards for Further Education Colleges have been archived but they still apply to some independent schools and can be found via http://webarchive.nationalarchives.gov.uk/+www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4005629

An impact assessment of the effect that this instrument will have on the costs of business and the public and voluntary sector is available from the Independent Education and Boarding Team, Department for Education, LG11, Mowden Hall, Staindrop Road, Darlington DL3 9BG and accessible on the Department's internet website at <http://www.education.gov.uk> Copies have also been placed in the Library of each House of Parliament.