

EXPLANATORY MEMORANDUM TO
THE EDUCATION (INDEPENDENT SCHOOL STANDARDS) (CORONAVIRUS)
(AMENDMENT) REGULATIONS 2020

2020 No. 542

1. Introduction

- 1.1 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 amends the Education (Independent School Standards) Regulations 2014 (“the 2014 Regulations”) to allow for more flexibility in relation to applications for enhanced criminal record certificates, which the 2014 Regulations require to be made. It does this in four ways. Firstly, it allows for such applications to be processed through a Disclosure and Barring Service (“DBS”) registered body which is authorised by the DBS to transmit such applications electronically. Secondly, it permits such applications made in respect of individual proprietors and chairs of proprietor bodies to be made through a DBS registered body (as an alternative to being countersigned by the Secretary of State), so long as the registered body acts at the request of the Secretary of State. Thirdly, it makes it unnecessary to provide a certificate to the Secretary of State, resulting from an application made in relation to an individual proprietor or chair, when it is confirmed that a certificate is not required. Finally, by removing the requirement for the Secretary of State to be involved by countersigning applications in respect of other members of proprietor bodies, where the Secretary of State has requested an enhanced criminal record check, applications in such circumstances can be countersigned or transmitted by any DBS registered body.
- 2.2 The amendments are administrative in nature, and there is no substantive policy change in regard to the suitability checks done in connection to proprietors and staff or supply staff of independent schools.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The schedule to the 2014 Regulations sets out the independent school standards. Independent schools must meet the independent school standards as a condition of registration as an independent school. The Secretary of State can only approve applications to change certain of the registered details of an independent school (including a change of proprietor), or applications for the registration of an independent school, where he is satisfied that the standards will be likely to be met when the change is made, or (in the case of an application to register) when the school is registered.
- 6.2 Part 4 of the schedule sets out the independent school standards relating the suitability of staff, supply staff and proprietors. The standards in Part 4 require applications for enhanced criminal record certificates to have been made in relation to individual proprietors, members of proprietor bodies, and in relation to school staff and supply staff.
- 6.3 The legislation relating to applications for such certificates (section 113B of the Police Act 1997) requires such applications to be countersigned by a “registered person” or, where the registered person is authorised to do so, transmitted electronically. Such authorisations are given for certain bodies which handle high volumes of applications either on their own behalf or for others.
- 6.4 Currently, regulation 2(2)(a) of the 2014 Regulations provides that such applications, when made for the purposes of meeting the independent school standards, must be countersigned by a registered person and does not permit electronic transmission. In the case of applications relating to individual proprietors and chairs of proprietor bodies, and where the Secretary of State requests an enhanced criminal record check relating to other members of proprietor bodies, the standards currently require applications to be countersigned by the Secretary of State.
- 6.5 The instrument amends the 2014 Regulations to allow applications for enhanced criminal record checks made for the purposes of the independent school standards to be transmitted electronically by a registered person, as an alternative to being countersigned by a registered body. In addition, where they relate to individual proprietors or chairs of proprietor bodies, the amendments permit applications for such checks to be countersigned or transmitted by another registered person where asked to by the Secretary of State, which will allow another registered body to transmit such applications electronically on the Department’s behalf. The amendments will also mean that it is no longer mandatory to provide a copy of the certificate resulting from an application, made in relation to an individual proprietor or chair, if the Secretary of State confirms it is not required. Finally, the instrument changes the position relating to applications for enhanced criminal record checks relating to other members of proprietor bodies, made at the request of the Secretary of State, so that they no longer require counter signature by the Secretary of State.

7. Policy background

What is being done and why?

- 7.1 As set out above, proprietors and members of proprietor bodies of independent schools, as well as staff and supply staff in those schools, are subject to enhanced criminal record checks. These checks are part of the safe recruitment checks necessary for all those who work in schools.
- 7.2 For individual proprietors and chairs of proprietor bodies (including chairs of academy and free school trusts), the standards require applications for enhanced criminal record certificates when a new school applies for registration, or when the individual proprietor or chair of a proprietor body is changing, so that the Secretary of State can make a decision as to the suitability of the person to carry out that role. The Department currently carries out around 1,100 Disclosure and Barring Service (DBS) checks each year and the Department for Education is currently registered with the DBS as a “registered person” for this purpose. These checks are paper-based, and the Department uses the Royal Mail to send the forms to the DBS.
- 7.3 The coronavirus (COVID-19) outbreak has restricted access to workplaces as a result of Government policy that people should work from home where possible. This has meant that the Department is currently unable to process these checks and current applications to register new independent schools, and approve changes of proprietors, have stalled.
- 7.4 This instrument amends the 2014 Regulations to allow for applications for enhanced criminal records checks relating to individual proprietors or chairs of proprietor bodies to be transmitted electronically and for the transmission to be by another registered person when asked to do so by the Secretary of State – which will mean in practical terms that the Department can restart processing applications. Further, by allowing other enhanced criminal records checks made for the purposes of the independent schools standards to be transmitted electronically rather than countersigned, the required suitability checks on staff, supply staff and members of proprietor bodies will be easier to obtain where they are required.
- 7.5 The instrument will ensure that these checks can continue to be made during the current Covid-19-related restrictions. In addition, the Department anticipates that the new system will be easier and quicker for both applicants and the Department to use as checks may be processed online, with results conveyed electronically where the disclosure is clear (and where the disclosure is clear, meaning there is a nil return in terms of criminal convictions etc, that will obviate the need for an applicant to provide the Department with a copy of an actual certificate). However, the Department is retaining the ability of the Secretary of State (in the case of applications about proprietors and chairs of proprietor bodies) and other registered persons (in the case of other applications) to countersign checks in case this is needed, for example for any school that may not have internet access.
- 7.6 There are a number of outstanding applications to change the registered details relating to the proprietors of independent schools that need to be determined, as well as many schools hoping to have their applications for registration determined before September, which will not be able to happen without the necessary DBS checks being made. The Department intends to make an arrangement with an “umbrella body” authorised to make enhanced criminal records checks electronically for this purpose.

This will allow these checks to be completed in time for schools to be registered for September.

- 7.7 The amendments are administrative in nature, and there is no substantive policy change in regard to the suitability checks done in connection to proprietors and staff or supply staff of independent schools.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 There are no current plans to consolidate the 2014 Regulations, but this will be considered again when the 2014 Regulations are next reviewed.

10. Consultation outcome

- 10.1 The Department has not consulted on the amendments and there is no statutory duty to consult on this instrument. We are in direct contact with individuals who are waiting for their DBS check applications to be processed and will write to them again once the new process is in place. As the change is to the way applications are made, rather than to the checks that are made, there is likely to be very little impact on those to whom the new provisions will apply. There have been informal discussions with the Independent Schools' Council and inspectorates who are content with the amendments.

11. Guidance

- 11.1 The Department intends to update guidance on <https://www.gov.uk/guidance/enhanced-dbs-disclosure-checks-for-chairs-of-academy-trusts> about how to apply for checks once an arrangement with an “umbrella body” able to undertake the electronic transmission of applications is in place. This will be done before the instrument comes into force.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies. The purpose of the amendments is to ensure that independent schools, most of which are companies or charities, can continue to make changes to their proprietorship, and allow new schools to be registered. More generally, they allow for greater flexibility in how applications for the required criminal record checks are carried out.
- 12.2 The impact on the public sector is not anticipated to be significant.
- 12.3 An Impact Assessment has not been prepared for this instrument because there is no significant anticipated impact on business.

13. Regulating small business

- 13.1 Some independent schools will be small businesses, but it is anticipated that there will be no significant impact on these businesses.

14. Monitoring & review

- 14.1 The Department will review this instrument when the 2014 Regulations are next reviewed.

15. Contact

- 15.1 Joanne Hudson at the Department for Education, telephone 07919 211696 or email joanne.hudson@education.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Peter Swift, Deputy Director for Independent Education, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Baroness Berridge, Parliamentary Under Secretary of State for the School System at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.