
STATUTORY INSTRUMENTS

2021 No. 1124

EDUCATION, ENGLAND

**The Non-Maintained Special Schools (England) and
Independent School Standards (Amendment) Regulations 2021**

<i>Made</i>	- - - -	<i>7th October 2021</i>
<i>Laid before Parliament</i>		<i>8th October 2021</i>
<i>Coming into force</i>	- -	<i>1st November 2021</i>

The Secretary of State, in exercise of the powers conferred by sections 342(2), 342(4)(a) and 569(4) of the Education Act 1996⁽¹⁾ and 94(1)(d) and (2)(a) and 166(6)(a) of the Education and Skills Act 2008⁽²⁾ makes the following Regulations.

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Non-Maintained Special Schools (England) and Independent School Standards (Amendment) Regulations 2021 and come into force on the 1st November 2021.

- (2) These Regulations extend to England and Wales.
- (3) These Regulations apply in relation to England only.

Amendment to the Non-Maintained Special Schools (England) Regulations 2015

2.—(1) The Non-Maintained Special Schools (England) Regulations 2015⁽³⁾ are amended as follows.

- (2) In regulation 2 (interpretation)—
 - (a) in paragraph (1), after the definition of “Quality Standards” insert ““registered person” has the meaning given in section 120(1) of the 1997 Act;”;
 - (b) for paragraph (2)(a) substitute—
 - “(a) an application for an enhanced criminal record certificate is made under section 113B(1) of the 1997 Act; or”;
 - (c) in paragraph (5), for “6(3)(a)” substitute “6(4)”.

(1) 1996 c. 56. section 342 was substituted by the School Standards and Framework Act 1998 (c. 31).
(2) 2008 c. 25; there is an amendment to section 94 which is not relevant to these Regulations.
(3) S.I. 2015/728, to which there are amendments not relevant to these Regulations.

(3) In Part 1 of the Schedule (conditions of approval under section 342(1) of the 1996 Act), paragraph 6 (suitability of the chair of the governing body)—

- (a) in sub-paragraph (1), for “(2) and (3)” substitute “(2), (3), (4), (5) and (6)”;
- (b) omit sub-paragraphs (3)(a) and (3)(b);
- (c) for sub-paragraph (4) substitute—

“(4) The Secretary of State receives confirmation that, where relevant to the individual, an enhanced criminal record check has been made relating to the individual—

- (a) which is countersigned by the Secretary of State or by or on behalf of another registered person who is asked to arrange countersignature of the application by the Secretary of State; or
- (b) which is transmitted by or on behalf of a registered person who is asked to arrange transmission of the application by the Secretary of State;

and, where an enhanced criminal record check is made, the Secretary of State either obtains an enhanced criminal record certificate relating to the individual or confirms to the individual that no certificate is required to be provided to the Secretary of State.”;

(d) after sub-paragraph (4) insert—

“(5) The Secretary of State—

- (a) makes checks confirming the individual’s identity; or
- (b) requests the individual or another person that checks are made for the purposes of confirming the individual’s identity, and following that request, evidence is provided to the satisfaction of the Secretary of State that the individual is in fact the person with the particular identity that the individual claims to have; and
- (c) notifies the individual that the Secretary of State is satisfied that the individual’s identity has been confirmed.

(6) The Secretary of State —

- (a) makes checks confirming that the individual has a right to work in the United Kingdom; or
- (b) requests the individual or another person that checks are made for the purposes of confirming that the individual has the right to work in the United Kingdom, and following that request, evidence is provided to the satisfaction of the Secretary of State that the individual has that right; and
- (c) notifies the individual that the Secretary of State is satisfied that the individual has that right.”.

(4) In Part 2 of the Schedule (requirements to be complied with by a school while approved under section 342(1) of the 1996 Act), paragraph 17 (suitability of the chair of the governing body), for “6(2) and (3)” substitute “6(2), (3), (4), (5) and (6)”.

Amendments to the Education (Independent School Standards) Regulations 2014

3.—(1) The Education (Independent School Standards) Regulations 2014(4) are amended as follows.

(2) In paragraph 20 of Part 4 of the Schedule (suitability of staff, supply staff, and proprietors)—

- (a) in sub-paragraph (3)—
 - (i) omit paragraph (b)(ii);

(4) [S.I. 2014/3283](#), amended by [S.I. 2020/542](#); there are other amending instruments but none is relevant.

- (ii) at the end of paragraph (b)(iii) omit “and”;
- (iii) after paragraph (c) insert—
 - “(d) before the school is entered in the register or, in the case of a registered school, before or as soon as practicable after the individual takes over as proprietor—
 - (i) the Secretary of State makes checks confirming the individual’s identity; or
 - (ii) the Secretary of State requests the individual or another person that checks are made for the purposes of confirming the individual’s identity and following that request—
 - (aa) evidence is provided to the satisfaction of the Secretary of State that the individual is in fact the person with the particular identity that the individual claims to have; and
 - (bb) the Secretary of the State notifies the individual that the Secretary of State is satisfied that the individual’s identity has been confirmed;
 - (e) before the school is entered in the register or, in the case of a registered school, before or as soon as practicable after the individual takes over as proprietor—
 - (i) the Secretary of State makes checks confirming that the individual has the right to work in the United Kingdom; or
 - (ii) the Secretary of State requests the individual or another person that checks are made for the purposes of confirming that the individual has the right to work in the United Kingdom and following that request—
 - (aa) evidence is provided to the satisfaction of the Secretary of State that the individual has that right; and
 - (bb) the Secretary of State notifies the individual that the Secretary of State is satisfied that the individual has that right.”;
- (b) in sub-paragraph (5)—
 - (i) omit paragraph (b)(ii);
 - (ii) at the end of paragraph (b)(iii) omit “and”;
 - (iii) after paragraph (c) insert—
 - “(d) subject to sub-paragraphs (7) to (8)—
 - (i) the Secretary of State makes checks confirming the individual’s identity; or
 - (ii) the Secretary of State requests the individual or another person that checks are made for the purposes of confirming the individual’s identity and following that request—
 - (aa) evidence is provided to the satisfaction of the Secretary of State that the individual is in fact the person with the particular identity that the individual claims to have; and
 - (bb) the Secretary of State notifies the proprietor of the school that the Secretary of State is satisfied that the individual’s identity has been confirmed; and

- (e) subject to sub-paragraphs (7) to (8)—
 - (i) the Secretary of State makes checks confirming that the individual has the right to work in the United Kingdom; or
 - (ii) the Secretary of State requests the individual or another person that checks are made for the purposes of confirming that the individual has the right to work in the United Kingdom and following that request—
 - (aa) evidence is provided to the satisfaction of the Secretary of State that the individual has that right; and
 - (bb) the Secretary of State notifies the proprietor of the school that the Secretary of State is satisfied that the individual has that right.”;
- (c) in sub-paragraph (7), after “(5)(c)” where it first appears insert “, (5)(d)(i), (5)(e)(i)”;
- (d) in sub-paragraph (7), after “(5)(c)” where it second appears insert “, (5)(d), (5)(e)”;
- (e) after sub-paragraph (8)(a) insert—
 - “(aa) sub-paragraph (5)(d) is met where the checks referred to in paragraph (d)(i) are completed, or notification is given by the Secretary of State to the proprietor of the school as referred to in paragraph (d)(ii)(bb), before or as soon as reasonably practicable after the Chair of the school starts acting as such;
 - (ab) sub-paragraph (5)(e) is met where the checks referred to in paragraph (e)(i) are completed, or notification is given by the Secretary of State to the proprietor of the school as referred to in paragraph (e)(ii)(bb), before or as soon as reasonably practicable after the Chair of the school starts acting as such;”.

7th October 2021

Barran
Parliamentary Under Secretary of State
Department for Education

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Non-Maintained Special Schools (England) Regulations 2015 (“the 2015 Regulations”) and to the Independent School Standards, as set out in the Schedule to the Education (Independent School Standards) Regulations 2014 (“the 2014 Regulations”).

These Regulations amend the 2015 Regulations in relation to the suitability of the chair of the governing body. Due to the coronavirus pandemic, it has become more difficult for the Department for Education to countersign applications for Disclosure and Barring Service checks which the Secretary of State requires to be carried out. The Regulations allow for alternative methods of requesting such checks which include a “registered person” making the request instead of the Department for Education. A registered person is a person listed in a register to be maintained by the Disclosure and Barring Service and reference to a registered person is made in 2(3)(c) of these Regulations. Consequently, regulation 2(2) of these Regulations inserts a definition of “registered person” in regulation 2 (interpretation) of the 2015 Regulations. Regulation 2(2) also amends the definition of “enhanced criminal record check” to ensure that it includes certificates obtained through the electronic transmission process.

Regulation 2(3) will permit the Secretary of State to request that an application for an enhanced criminal record check is countersigned or transmitted by or on behalf of another registered person rather than the Secretary of State countersigning the application. It also introduces provisions for identity checks and checks for the right to work in the UK to be carried out by another person at the behest of the Secretary of State.

Regulation 2(4) makes consequential amendments.

Regulation 3(2) makes amendments to paragraphs 20(3) and (5) of the Schedule to the 2014 Regulations. Paragraphs 20(3) and (5) require, amongst other things, checks to be made by the Secretary of State to confirm the identity and right to work in the United Kingdom, respectively, of individual proprietors of independent schools and alternative provision Academies, and of chairs of proprietor bodies of such educational institutions. The amendments ensure that these checks may be carried out by a third party at the behest of the Secretary of State. Regulation 3(2) also makes consequential changes.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

An Explanatory Memorandum is published alongside this instrument on www.legislation.gov.uk.